



# California Fair Political Practices Commission

October 7, 1988

David J. Aleshire  
Signal Hill City Attorney  
Rutan & Tucker  
611 Anton Boulevard  
P.O. Box 1950  
Costa Mesa, CA 92628-1950

Re: Your Request for Advice  
Our File No. A-88-325

Dear Mr. Aleshire:

You have requested advice on behalf of three members of the Signal Hill City Council and four members of the Signal Hill Planning Commission, concerning their duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

Under the current zoning ordinance for the City of Signal Hill, if a building that does not conform to the zoning ordinance is damaged by fire, explosion or acts of God, it may be reconstructed or repaired without conforming to the zoning ordinance, subject to certain limitations. The building may remain nonconforming only if the cost of reconstruction or repairs does not exceed 50 percent of the reasonable replacement value of the building immediately prior to the damage.

May councilmembers and planning commissioners who own nonconforming residential condominiums or industrial buildings participate in a decision on an amendment to the city zoning ordinance that would exempt those buildings from the 50-percent requirement?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSION

Councilmembers and planning commissioners who own nonconforming condominiums may participate in the decision. The effect of the decision on the officials is substantially the same as the effect on the public generally.

The councilmember who owns nonconforming industrial property must disqualify himself from participating in the decision if the decision would materially affect the value of his industrial property.

### FACTS

The zoning ordinance for the City of Signal Hill currently provides that any nonconforming building which is damaged by fire, explosion or acts of God may be reconstructed or repaired without conforming to the current zoning requirements, but only if the cost does not exceed 50 percent of the reasonable replacement value of the building immediately prior to the damage. If the cost exceeds the 50-percent threshold, replacement or repair of the building is deemed to exceed the scope of the permissible nonconforming status and that status is lost. Consequently, any such reconstruction or repair must conform to all current zoning requirements.

The city is considering an amendment to the zoning ordinance which would revise the city's treatment of nonconforming uses. No specific amendment has been drafted, but there is a proposal that would grant owners of nonconforming residential condominium units a limited exemption from the 50-percent requirement. The exemption would apply if the nonconforming status is a result of reductions in allowable densities due to downzoning of the property since the time the building was constructed. This amendment would affect owners of residential condominiums whose units are located in condominium projects with densities permissible at the time of construction, but are now in excess of intervening, lower density standards. The amendment would permit those residential condominium owners to rebuild all damaged or destroyed units to the existing, nonconforming density.

You have informed us that it also is possible that the amendment will remove the 50-percent requirement from nonconforming industrial and commercial buildings.

You have informed us that 1,094 condominium units are nonconforming because of density allowance changes. This is approximately 79 percent of all condominium units in the city and approximately 30.5 percent of all dwelling units. There are 15 nonconforming industrial uses in the city. The total number of industrial uses is estimated as between 400 and 800.

Three councilmembers and four planning commissioners own property which does not conform to the current zoning ordinance. Six of these officials own residential condominium units. Each of the six condominiums in question is part of a project which exceeds the density permitted under the current zoning ordinance due to intervening downzoning. One councilmember owns an industrial building that is nonconforming because it is located in a residential zone.

The officials and their respective interests are listed below:

<u>City Councilmembers</u>	<u>Real Property Interest</u>
Sara Hanlon	Condominium owner/occupant
Gerard Goedhart	Condominium owner/occupant
Louis Dare	Industrial use owner
<u>Planning Commissioners</u>	<u>Real Property Interest</u>
Leslie Andersen Little	Condominium owner/lessor
Michael Noll	Condominium owner/occupant
Jack McManus	Condominium owner/occupant
Allan Ross	Condominium owner/occupant

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his or her official position to influence any governmental decision in which the official knows or has reason to know he or she has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, different from the effect on the public generally, on, among other interests:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

The three councilmembers and four planning commissioners are public officials. (Section 82048.) All seven officials have interests in real property valued at \$1,000 or more. Thus, they must disqualify themselves from participating in any decision which would foreseeably and materially affect their real property interests in a manner that is different from the effect on the public generally. In the following discussion, we first analyze the conflict of interest situation for the six officials who own residential condominiums, and then discuss Councilmember Dare's situation as owner of an industrial building.

#### Effect on Residential Condominium Owners

Councilmembers Hanlon and Goedhart, and Planning Commissioners Little, Noll, McManus and Ross each own one residential condominium unit. Except for Planning Commissioner Little, they also occupy the condominium units.

The proposed amendment to the zoning ordinance will foreseeably affect the value of nonconforming condominium units by removing obstacles to reconstruction or repair of those units in the event of fire or other disaster. Without the proposed amendment, the owner of a nonconforming condominium unit could be unable to replace his or her unit with a similar unit, or would be required to obtain special approval to do so. Consequently, we conclude that there is a "substantial likelihood" that the proposed zoning amendment will have a financial effect on the officials' condominium units. Thus, the proposed amendment will have a foreseeable effect on the officials' real property interests. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Regulation 18702 (copy enclosed) provides guidelines for determining whether a decision which foreseeably affects an official's real property interest also will materially affect that interest. These guidelines are based on the fair market value of the real property in which the official has an interest.

Under Regulation 18702, if the fair market value of the real property in which the official has an interest is less than \$200,000, a \$1,000 increase or decrease in the fair market value is considered material. (An increase or decrease of less than \$1,000 is never material.) If the fair market value of the property is more than \$200,000

but less than \$2,000,000, a 0.5-percent increase or decrease in the fair market value is considered material. If the fair market value of the property is \$2,000,000 or more, a \$10,000 increase or decrease in the fair market value is considered material.<sup>2/</sup>

We do not know the fair market value of the condominium units in question, nor do we have any information concerning the likely increase or decrease in fair market value of those units as a result of the proposed amendment. Therefore, we are unable to determine whether the proposed amendment will foreseeably and materially affect the condominium units owned by the six city officials. However, even if the effect of the amendment were material, the six officials are not disqualified from participating in the decision to adopt the proposed amendment if the effect on their condominium units is the same as the effect on the public generally. (Section 87103.)

The "general public" is all residents and property owners in the jurisdiction of the officials in question. (In re Owen (1976) 2 FPPC Ops. 77, 81.) Accordingly, the residents and property owners of Signal Hill are the "general public" for purposes of this analysis.

The proposed zoning amendment will not affect all residents and property owners of Signal Hill in the same way. However, under Regulation 18701 (copy enclosed), an effect on a "significant segment" of the general public will suffice. (See In re Owen, supra.) The proposed amendment will affect 30.5 percent of the residential units in substantially the same manner. We conclude that the group owning 30.5 percent of the residential units in the city is a significant segment of the general public. (See Harron Advice Letter, No. A-86-189, copy enclosed.)

Therefore, the councilmembers and planning commissioners who own residential condominium units may participate in the decision concerning the proposed amendment to the city's zoning ordinance because the effect on their real property interests would be substantially the same as the effect on the general public. This conclusion applies equally to Planning

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<sup>2/</sup> New materiality regulations were adopted by the Commission on July 26, 1988. Enclosed are copies of the new regulations. We anticipate that the new regulations will become effective in November.

Commissioner Little, who is the owner and lessor of a residential condominium unit. The Commission has determined that owners of three or fewer residential rental units are a significant segment of the general public. (In re Ferraro (1978) 4 FPPC Ops. 62.) Thus, the effect of the proposed amendment on Planning Commissioner Little's real property interest would be the same as the effect on the public generally.

#### Effect on Industrial Property Owners

Councilmember Dane is the owner of an industrial building which is located in a residential area. Accordingly, the industrial building is a nonconforming use. There are only 15 nonconforming industrial uses in the city.

The above analysis concerning foreseeable and material financial effect applies equally to the effect of the proposed zoning amendment on Councilmember Dane's real property. Thus, we conclude that there is a foreseeable financial effect on his property. We do not have sufficient information to determine whether there would be a material financial effect, but the guidelines for that determination are contained in Regulation 18702.

The "public generally" exception does not apply to Councilmember Dane's situation. There are between 400 and 800 industrial uses in the city. Of those, only 15 are nonconforming. The owners of the 15 nonconforming industrial uses do not constitute a significant segment of residents and property owners in the city. Accordingly, if the foreseeable effect of the proposed amendment on Councilmember Dane's real property is material, then Councilmember Dane must disqualify himself from participating in the decision concerning the proposed amendment. Of course, if the proposed amendment is drafted to apply only to residential uses, it would have no effect on Councilmember Dane's industrial use.

#### Legally Required Participation

Based on the above analysis, it appears that a majority of the city council and planning commission may participate in the decision concerning the proposed zoning amendment. Therefore, the rule of "legally required participation" in Section 87101 would not apply. Enclosed is a copy of In re Hudson (1978) 4 FPPC Ops. 13, which provides guidance in the event you need to apply this rule in the future. In that opinion, the Commission ruled that Section 87101 differs from the common law "rule of necessity" in that it permits one or more otherwise disqualified officials to participate in a decision only if their participation is necessary to achieve a quorum. (See Regulation

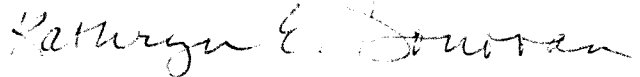
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18703, copy enclosed.) In the event that Section 87101 permits one or more otherwise disqualified officials to participate in a decision, the Hudson Opinion provides that those officials are to be selected by drawing lots or another method of random selection.

If you have any further questions concerning this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:ld

Enclosures

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August 16, 1988

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Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95814-0807

Attn: Diane M. Griffiths, General Counsel

Dear Ms. Griffiths:

This letter is sent under Government Code Section 83114(b), to request an advice letter as to a possible conflict of interest and disqualification requirement presented by a zoning ordinance proposed for the City of Signal Hill. I understand that pursuant to that section, your advice will be provided within 21 working days. Your attention to this matter is most appreciated.

Government Code Sections 65853-55, and applicable provisions of the Signal Hill City Code, require the Planning Commission and City Council to review any proposed zoning ordinance amendment after holding a duly noticed public hearing. Thereafter the City Council must adopt the amendment if it is to become binding.

The currently proposed zoning ordinance amendment has not been drafted by City staff in any final form, but as contemplated would revise the City's treatment of nonconforming uses. Currently, any nonconforming building which is damaged by fire, explosion, or acts of God may be reconstructed, repaired, or rebuilt, but only so long as the cost does not exceed fifty percent of the reasonable replacement value of the building immediately prior to the damage. Should the costs exceed fifty-percent, the repair or

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replacement of the building is deemed to exceed the scope of the nonconforming status, and that status is lost. Consequently, any such reconstruction, etc. must conform to all current zoning and other requirements.

One aspect of the contemplated new ordinance would exempt the owners of nonconforming residential condominium units from this fifty percent requirement, if the nonconformity pertains to reductions in allowable densities due to intervening downzoning. The practical effect of this provision will allow owners of residences whose units are located in condominium projects whose densities were permissible at the time of construction, but are now in excess of intervening, lower density standards, to rebuild all damaged or destroyed units to existing, nonconforming densities. This appears to be the principal concern, however, other provisions may be included in the ordinance. For example, the ordinance may only apply to nonconforming residences built after 1964. The ordinance may also be drafted broadly to permit not only the unrestricted rebuilding of residences, but also the unrestricted rebuilding of nonconforming industrial and commercial buildings, even though more than 50 percent is destroyed.

The potential conflict of interest issue arises because members of both the City Council and Planning Commission own buildings or conduct uses which are nonconforming, and which will be affected. The various officials, and their respective interests, are listed below:

City Council Member  
Sara Hanlon

Status  
Condominium unit owner/  
occupant - building  
exceeds permitted density.

Gerard Goedhart

Condominium unit owner/  
occupant- building exceeds  
permitted density.

Louis Dare

Owner of industrial use  
located in residential  
zone.

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<u>Planning Commission Member</u>	<u>Status</u>
Leslie Andersen Little	Condominium unit owner (income source) - building exceeds permitted density.
Michael Noll	Condominium unit owner/ occupant - building exceeds permitted density.
Jack McManus	Condominium unit owner/ occupant - building exceeds permitted density.
Allan Ross	Condominium unit owner/ occupant - building exceeds permitted density.

Each of the above-listed individuals has an interest in their respective properties in excess of \$1000, the threshold level for disqualification under Title 2, California Administrative Code Section 18702(a)(3). Both the City Council and Planning Commission have five members.

Specifically, the issues presented to the Commission are three:

- (1) Is it reasonably foreseeable that the value of nonconforming residences and industrial uses will increase materially if the ordinance is amended so that the nonconforming buildings could be rebuilt, even if more than 50 percent destroyed?
- (2) (a) Assuming it is reasonably foreseeable that excluding industrial buildings from provisions which might lead to a loss of nonconforming status would create a material financial effect, would the effect on the public officials owning such nonconforming buildings differ from that on the public generally?  
  
(b) Assuming it is reasonably foreseeable that excluding residential buildings from provisions which might lead to a loss of nonconforming status

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would create a material financial effect, would the effect on the public officials owning such non-conforming buildings differ from that on the public generally?

- (3) If a majority of the City Council and/or Planning Commission must disqualify themselves from voting or deliberating on the ordinance, does the "rule of necessity" in Title 2 Cal. Admin. Code Section 18701 require participation of some or all of the disqualified officials, and if so which ones?

The second issue is directed to the exception in Government Code Section 87103, which implicitly requires that a public official's material financial effect must be "distinguishable from its effect on the public generally" in order to constitute a disqualifying financial interest. This is further defined in Title 2, California Administrative Code Section 18703, which states that the effect is distinguishable unless the decision will affect the official's interest in substantially the same manner as it will affect "all members of the public or a significant segment of the public." [Emphasis added.] The relevant inquiry here, therefore, is whether those owners of nonconforming residences, and in the case of Mr. Dare nonconforming industrial uses in residential zones, constitute a "significant segment" of the public in Signal Hill. The effect of the contemplated ordinance on the above listed officials would not be distinguishable from the segment of nonconforming owners, and if this segment is "significant," it would appear that the officials may proceed.

The question of what constitutes a "significant segment of the public" itself presents two questions: (1) Who is the applicable "public?" and (2) When does a subgroup of that public become a "significant segment?" As to the first, one prior F.P.P.C. ruling indicates that for elected bodies, the "public" is the entire jurisdiction of the Agency in question. In Re Legan 9 F.P.P.C. Opinions, 1, 12. Here, this presumably would be either the entire number of total residential dwelling units in the City or may be restricted to the number of condominium owners. As to Mr. Dare, the "public" would presumably be the entire number of industrial uses.

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The City's Planning Department has compiled the following data regarding Signal Hill's dwelling unit mix:

<u>Type of Dwelling</u>	<u>Number</u>	<u>% of Total Dwellings</u>
Single Family	1,352	38
Apartments	580	24
Condominiums	<u>1,384</u>	<u>38</u>
Total Dwellings Units	3,586	100%

As to the "significant segment" issue, the City has determined that some 1,094 condominium units are nonconforming because of density allowance changes. This is some 79% of all condominium units in the City, and some 30.5% of all dwelling units. The City has likewise determined that there are 15 nonconforming industrial uses in the City, and estimates the number of total industrial uses as between four hundred and eight hundred.

The F.P.P.C. has previously stated that all residential homeowners within a jurisdiction constitute a "significant segment" of the public, as do all retail merchants. In re Owen 2 F.P.P.C. Opinions 77. Residential lessors of three or fewer units have also been considered sufficiently diverse not to be members of an industry, and therefore a "significant segment." In re Ferraro 4 F.P.P.C. Opinions 62, 66. Similarly, all residential tenants within a community are a "significant segment." In re Overstreet 6 F.P.P.C. Opinions 12, 17.

Conversely, a group of downtown commercial property owners in San Clemente has been determined not a significant segment as compared to other commercial property owners or the City's business community. In re Brown 4 F.P.P.C. Opinions 19, 23. This leaves the question as to whether condominium owners whose units are nonconforming by reason of intervening density reductions, a segment of City residential homeowners, constitute a "significant segment." The same question arises on nonconforming industrial uses in residential zones.

The third issue arises only if the Commission rules that there is no "significant segment" under these facts. In that

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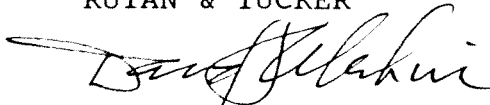
event, four of the five planning commissioners, and up to three of the five City Council members, would be disqualified. In this event, no quorum could be achieved, since neither body has any appointed alternate members.

Title 2, California Administrative Code Section 18701(b)(5) restricts participation of an official with conflict "only to the extent that such participation is legally required." This has been construed by the Commission to allow only the participation of the minimum number of interested officials necessary to achieve a quorum. In re Hudson 4 F.P.P.C. Opinions 13, 17-18. Hudson also suggests that the selection should be done by lot or other means of random selection. Id. at 18. Please comment on the method which the City should utilize to determine participation and whether the owner of the nonconforming industrial use should be treated differently than the owners of the nonconforming residences.

Your attention to these questions will be most appreciated. If you need any further information, please do not hesitate to contact me.

Very truly yours,

RUTAN & TUCKER



David J. Aleshire  
City Attorney  
City of Signal Hill

DJA:jl

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# California Fair Political Practices Commission

August 19, 1988

David J. Aleshire  
Rutan & Tucker  
P.O. Box 1950  
Costa Mesa, CA 92628-1950

Re: 88-325

Dear Mr. Aleshire:

Your letter requesting advice under the Political Reform Act was received on August 19, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan, esq.*  
Diane M. Griffiths  
General Counsel

DMG:plh

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Attn: Diane M. Griffiths, General Counsel

Dear Ms. Griffiths:

This letter is sent under Government Code Section 83114(b), to request an advice letter as to a possible conflict of interest and disqualification requirement presented by a zoning ordinance proposed for the City of Signal Hill. I understand that pursuant to that section, your advice will be provided within 21 working days. Your attention to this matter is most appreciated.

Government Code Sections 65853-55, and applicable provisions of the Signal Hill City Code, require the Planning Commission and City Council to review any proposed zoning ordinance amendment after holding a duly noticed public hearing. Thereafter the City Council must adopt the amendment if it is to become binding.

The currently proposed zoning ordinance amendment has not been drafted by City staff in any final form, but as contemplated would revise the City's treatment of nonconforming uses. Currently, any nonconforming building which is damaged by fire, explosion, or acts of God may be reconstructed, repaired, or rebuilt, but only so long as the cost does not exceed fifty percent of the reasonable replacement value of the building immediately prior to the damage. Should the costs exceed fifty-percent, the repair or

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replacement of the building is deemed to exceed the scope of the nonconforming status, and that status is lost. Consequently, any such reconstruction, etc. must conform to all current zoning and other requirements.

One aspect of the contemplated new ordinance would exempt the owners of nonconforming residential condominium units from this fifty percent requirement, if the nonconformity pertains to reductions in allowable densities due to intervening downzoning. The practical effect of this provision will allow owners of residences whose units are located in condominium projects whose densities were permissible at the time of construction, but are now in excess of intervening, lower density standards, to rebuild all damaged or destroyed units to existing, nonconforming densities. This appears to be the principal concern, however, other provisions may be included in the ordinance. For example, the ordinance may only apply to nonconforming residences built after 1964. The ordinance may also be drafted broadly to permit not only the unrestricted rebuilding of residences, but also the unrestricted rebuilding of nonconforming industrial and commercial buildings, even though more than 50 percent is destroyed.

The potential conflict of interest issue arises because members of both the City Council and Planning Commission own buildings or conduct uses which are nonconforming, and which will be affected. The various officials, and their respective interests, are listed below:

City Council Member  
Sara Hanlon

Status  
Condominium unit owner/  
occupant - building  
exceeds permitted density.

Gerard Goedhart

Condominium unit owner/  
occupant- building exceeds  
permitted density.

Louis Dare

Owner of industrial use  
located in residential  
zone.

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<u>Planning Commission Member</u>	<u>Status</u>
Leslie Andersen Little	Condominium unit owner (income source) - building exceeds permitted density.
Michael Noll	Condominium unit owner/ occupant - building exceeds permitted density.
Jack McManus	Condominium unit owner/ occupant - building exceeds permitted density.
Allan Ross	Condominium unit owner/ occupant - building exceeds permitted density.

Each of the above-listed individuals has an interest in their respective properties in excess of \$1000, the threshold level for disqualification under Title 2, California Administrative Code Section 18702(a)(3). Both the City Council and Planning Commission have five members.

Specifically, the issues presented to the Commission are three:

- (1) Is it reasonably foreseeable that the value of nonconforming residences and industrial uses will increase materially if the ordinance is amended so that the nonconforming buildings could be rebuilt, even if more than 50 percent destroyed?
- (2) (a) Assuming it is reasonably foreseeable that excluding industrial buildings from provisions which might lead to a loss of nonconforming status would create a material financial effect, would the effect on the public officials owning such nonconforming buildings differ from that on the public generally?  
  
(b) Assuming it is reasonably foreseeable that excluding residential buildings from provisions which might lead to a loss of nonconforming status

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would create a material financial effect, would the effect on the public officials owning such non-conforming buildings differ from that on the public generally?

- (3) If a majority of the City Council and/or Planning Commission must disqualify themselves from voting or deliberating on the ordinance, does the "rule of necessity" in Title 2 Cal. Admin. Code Section 18701 require participation of some or all of the disqualified officials, and if so which ones?

The second issue is directed to the exception in Government Code Section 87103, which implicitly requires that a public official's material financial effect must be "distinguishable from its effect on the public generally" in order to constitute a disqualifying financial interest. This is further defined in Title 2, California Administrative Code Section 18703, which states that the effect is distinguishable unless the decision will affect the official's interest in substantially the same manner as it will affect "all members of the public or a significant segment of the public." [Emphasis added.] The relevant inquiry here, therefore, is whether those owners of nonconforming residences, and in the case of Mr. Dare nonconforming industrial uses in residential zones, constitute a "significant segment" of the public in Signal Hill. The effect of the contemplated ordinance on the above listed officials would not be distinguishable from the segment of nonconforming owners, and if this segment is "significant," it would appear that the officials may proceed.

The question of what constitutes a "significant segment of the public" itself presents two questions: (1) Who is the applicable "public?" and (2) When does a subgroup of that public become a "significant segment?" As to the first, one prior F.P.P.C. ruling indicates that for elected bodies, the "public" is the entire jurisdiction of the Agency in question. In Re Legan 9 F.P.P.C. Opinions, 1, 12. Here, this presumably would be either the entire number of total residential dwelling units in the City or may be restricted to the number of condominium owners. As to Mr. Dare, the "public" would presumably be the entire number of industrial uses.

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The City's Planning Department has compiled the following data regarding Signal Hill's dwelling unit mix:

<u>Type of Dwelling</u>	<u>Number</u>	<u>% of Total Dwellings</u>
Single Family	1,352	38
Apartments	580	24
Condominiums	<u>1,384</u>	<u>38</u>
Total Dwellings Units	3,586	100%

As to the "significant segment" issue, the City has determined that some 1,094 condominium units are nonconforming because of density allowance changes. This is some 79% of all condominium units in the City, and some 30.5% of all dwelling units. The City has likewise determined that there are 15 nonconforming industrial uses in the City, and estimates the number of total industrial uses as between four hundred and eight hundred.

The F.P.P.C. has previously stated that all residential homeowners within a jurisdiction constitute a "significant segment" of the public, as do all retail merchants. In re Owen 2 F.P.P.C. Opinions 77. Residential lessors of three or fewer units have also been considered sufficiently diverse not to be members of an industry, and therefore a "significant segment." In re Ferraro 4 F.P.P.C. Opinions 62, 66. Similarly, all residential tenants within a community are a "significant segment." In re Overstreet 6 F.P.P.C. Opinions 12, 17.

Conversely, a group of downtown commercial property owners in San Clemente has been determined not a significant segment as compared to other commercial property owners or the City's business community. In re Brown 4 F.P.P.C. Opinions 19, 23. This leaves the question as to whether condominium owners whose units are nonconforming by reason of intervening density reductions, a segment of City residential homeowners, constitute a "significant segment." The same question arises on nonconforming industrial uses in residential zones.

The third issue arises only if the Commission rules that there is no "significant segment" under these facts. In that

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event, four of the five planning commissioners, and up to three of the five City Council members, would be disqualified. In this event, no quorum could be achieved, since neither body has any appointed alternate members.

Title 2, California Administrative Code Section 18701(b)(5) restricts participation of an official with conflict "only to the extent that such participation is legally required." This has been construed by the Commission to allow only the participation of the minimum number of interested officials necessary to achieve a quorum. In re Hudson 4 F.P.P.C. Opinions 13, 17-18. Hudson also suggests that the selection should be done by lot or other means of random selection. Id. at 18. Please comment on the method which the City should utilize to determine participation and whether the owner of the nonconforming industrial use should be treated differently than the owners of the nonconforming residences.

Your attention to these questions will be most appreciated. If you need any further information, please do not hesitate to contact me.

Very truly yours,

RUTAN & TUCKER



David J. Aleshire  
City Attorney  
City of Signal Hill

DJA:jl

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