



# California Fair Political Practices Commission

April 3, 1992

Marjorie Gelb  
Assistant City Attorney  
Berkeley City Attorney's Office  
2180 Milvia Street  
Berkeley, CA 94704

Re: Your Request for Advice  
Our File No. A-92-138

Dear Ms. Gelb:

This letter is in response to your request for advice regarding the duties of City of Berkeley Councilmembers Shirley Dean, Ann Chandler, and Mary Wainwright under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTION

Do the conflict-of-interest provisions of the Act require the above councilmembers to disqualify themselves from participating in governmental decisions regarding a proposed ordinance which would permit the conversion of rental units and tenancy in common (TIC) units to condominiums.

## CONCLUSION

The conflict-of-interest provisions of the Act do not require the councilmembers to disqualify themselves from participating in the proposed decisions unless it is reasonably foreseeable that the pending decisions will have a material financial effect on the councilmembers' properties.

## FACTS

Since 1984, the City of Berkeley had conditioned condominium conversion on the vacancy rate for rental housing being in excess of 5%. That rate has never been exceeded. Recently, the city

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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.

council enacted a moratorium on the creation of tenancy in common projects (TIC), a method of ownership that sought to avoid the condominium conversion restrictions. The TIC moratorium was the subject of the Commission's Gelb Advice Letter, No. A-91-511.

The city council is now considering an ordinance which would permit the creation of TICs from rental units, and condominiums from rental units and TICs under certain conditions. You seek our advice to determine whether certain councilmembers have a conflict of interest under the provisions of the Act because they own property which may be affected by the proposed legislation.

You have submitted for our consideration an appraisal of the properties owned by the councilmembers in the City of Berkeley. The appraisal was prepared by the city's appraiser, Michael Yovino-Young. You have also submitted to us a statement of the professional qualifications of the appraiser.

The descriptions of the properties and appraisal of each are as follows:

Councilmember Shirley Dean

Councilmember Dean is a part owner of a duplex located at 1344 Bonita Avenue which has always been owner occupied. The property is currently occupied by the councilmember's son.<sup>2</sup> The other unit is rented but not subject to rent control. This property would be eligible for conversion to condominiums or a TIC.

The appraiser has concluded that this property has already experienced a substantial value enhancement in the marketplace as a two unit, partly owner-occupied residential property and that the proposed ordinance will not add any significant value to this property.

Councilmember Ann Chandler

Councilmember Chandler owns one unit of a two-unit TIC in which she lives. The property is located at 1836 Cedar Street. This property would be eligible for conversion to a condominium.

The appraiser has concluded that this property has already experienced whatever enhancement in market value that might be attributable to multiple ownership. He concludes that, in his opinion, there will be no additional enhancement or influence on this property's market value by reason of the proposed ordinance.

Councilmember Mary Wainwright

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<sup>2</sup> The facts on your previous request for advice regarding these councilmembers indicate that Councilmember Dean's son is a 50% owner of this property.

Councilmember Wainwright owns seven fourplexes in the City of Berkeley which she holds as rental property. The properties are located at 2758-64, 2774-80, 2750-56, 2782-2788 and 2790-2796 Sacramento Street, 1235 Dwight Way, and 2453 10th Street. These properties would be eligible for conversion to condominiums or TICs.

The appraiser has concluded as follows with respect to these properties:

1. 2750-56, 2758-64, 2774-80, 2782-88 and 2790-96 Sacramento Street.

These properties are not of a quality, type or age physically or economically suitable for conversion to either TICs or condominiums. There will be no significant change in their values with the enactment of the proposed ordinance.

2. 1235 Dwight Way.

This property is not of a quality, type, or size to be economically suitable for conversion to other than rental units. Whatever potential there might be is more than offset by the costs that would be necessary to rehabilitate the building if a conversion was ever contemplated. The net enhancement, if any, would certainly be less than \$10,000.

3. 2453 10th Street

This property is of a design that might be considered suitable for condominium or TIC conversion but the costs of rehabilitation more than offset any possible value enhancement. It would not be economically feasible to consider such a conversion.

#### ANALYSIS

On December 12, 1991, we advised you that the three councilmembers on whose behalf you now seek our advice would be disqualified from participating in governmental decisions regarding adoption of an ordinance that would restrict the conversion of certain residential dwelling units to tenancies in common if their interests in real property would be materially affected by adoption of the ordinance. (Gelb Advice Letter, No. A-91-511.) The legal analysis and advice provided to you at that time are equally applicable to your new request for advice and we now reiterate our previous advice. If, as a result of a governmental decision such as the proposed ordinance, the fair market value of any of the units owned by the councilmembers will increase or decrease by \$10,000 or more, disqualification would be

required. Disqualification would also be required if the proposed decision would affect the rental value of any of the properties by \$1,000 or more in a twelve-month period. (Regulation 18702.3(a)(3).)

As we have previously advised you, the Commission does not act as a finder of fact. (In re Oglesby (1975) 1 FPPC Ops. 71.) The appraisal of the councilmembers' properties which you have submitted for our consideration states that the fair market value of Councilmember Wainwright's property situated at 1235 Dwight Way will not be affected materially by the proposed ordinance. This is so because the effect of the ordinance on the fair market value of the property would be less than \$10,000. The appraisal does not provide dollar amounts for either fair market values or rental values for the remaining properties.

The appraisal you have submitted appears to include considerations such as "offset" and "net enhancement," "economic suitability" for conversion, "cost of rehabilitation" and "significant value." However, for purposes of the Act, the determination of materiality involves a determination of the effect of a decision on the fair market value of the property in question. In addition, a determination of the effect of a decision should include application of the factors listed in Regulation 18702.3(d). These factors include, but are not limited, to the following:

- (1) The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;
- (2) Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;
- (3) In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

Regulation 18702.3(d)(1)-(3).

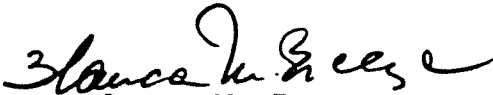
Accordingly, to the extent that it is reasonable for the city to rely on the appraisal and the city concludes that a disqualifying financial impact pursuant to Regulation 18702.3 will not occur, the councilmembers would not be precluded from participating in the forthcoming decisions on the proposed ordinance. Conversely, if upon further review of the facts the city concludes that some or all of the properties will be affected materially by the proposed decisions, disqualification would be required. We do not have sufficient facts to make this

determination. Moreover, as stated above, the Commission does not Act as a finder of fact (Oglesby, supra) and will not assess the material financial effect of a decision.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.<sup>3</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: Blanca M. Breeze  
Counsel, Legal Division

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<sup>3</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.