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## FAIR POLITICAL PRACTICES COMMISSION

September 2, 1997

Michael Biddle, City Attorney  
City of Emeryville  
Office of the City Attorney  
2200 Powell Street, 12th Floor  
Emeryville, California 94608

**Re: Your Request for Advice  
Our File No. A-97-413**

Dear Mr. Biddle:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Does the term "public board or commission," as used by Section 87505, include the City of Emeryville's civic center project committee, the housing committee, and/or the finance committee?

### CONCLUSION

The housing committee is a "public board or commission"; thus, and its appointed members are subject to the prohibitions of Section 85705. The civic center project committee and the finance committee are not currently a "public board or commission"; thus, their appointed members are *not* subject to the prohibitions of Section 85705.

### FACTS

The City of Emeryville has a large number of boards, commissions, and committees that were established by the city council to provide advice on specific issues. Some of the committees are standing committees that handle ongoing matters, such as the housing committee and others are temporary committees that handle single projects, such as the civic center project

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

committee. Some of the committees are subcommittees of the city council and are comprised of two members of the city council. These committees are advisory only. The city council makes an independent judgment on the issue based on an independent review of the facts and information available, of which the committee's recommendation is one element.

The first committee is the civic center project committee. The purpose of the committee is to provide recommendations to the city council on the design of the new city hall. The committee has made two recommendations over the past three months: the selection of an architect and the use of an adjoining property for a new building. The council approved the recommended architect and the use of the adjoining property. The council directed staff to proceed with the adjoining property and provide staff with additional directions as to security and other design issues which were not part of the committee's recommendations.

The second committee is the housing committee. This is a standing committee that reviews proposed housing projects and provides recommendations to the planning commission and the city council. It was formed in 1990 and has made numerous recommendations to the council over the years. The recommendations do not include whether the project should be approved, but how to proceed with the development of the project. The council does not always go through the housing committee for decisions on projects. If the housing committee makes a recommendation, the city council debates the issue on the merits, considering all information including the recommendation of the housing committee. It is the general impression of the staff without a thorough review of the record, that the council follows the recommendations of the housing committee in approximately 65 to 75 percent of the cases.

The third committee is the finance committee. It consists of two members of the city council who are appointed by the full council. The purpose of the committee is to review finance issues and provide advice to the full council as appropriate. This committee has only one regular meeting per year. The staff's impression is that this committee's recommendations are followed approximately 50 percent of the time.

#### **APPLICABLE LAW**

Section 85705, which was added by Proposition 208, states as follows:

“No person appointed to a public board or commission or as Trustee of the California State University or Regent of the University of California during tenure in office shall donate to, or solicit or accept any campaign contribution for, any committee controlled by the person who made the appointment to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment.”

The Act does not define "public board" or "commission." However, Commission staff has developed guidelines for when a governmental entity is a "public board" or "commission" for purposes of Section 85705. Commission staff has concluded that any appointed board or similar body created by a governmental entity and empowered (formally or informally) to make governmental decisions is a "public" body within the meaning of Section 85705. (*Lyions Advice Letter, No. A-97-203.*)

To determine whether a board or similar body is authorized to make a governmental decision, we look to Regulation 18700(a)(1):

"A board or commission possesses decisionmaking authority whenever:

(A) It may make a final governmental decision.

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency."

#### ANALYSIS

You have asked whether a number of the City of Emeryville's advisory committees satisfy the criteria in Regulation 18700(a)(1)(C).

##### *Civic Center Project Committee*

This committee was established for what will be a limited time for a limited purpose, to provide recommendations to the city council on the design of the new city hall. To date the committee has existed for three months. Commission staff has consistently held that committees established for a limited time for a limited purpose are not the type of body contemplated in Regulation 18700(a)(1)(C). (*Wasserman Advice Letter, No. A-97-153; Biddle Advice Letter, No. A-93-390.*) Consequently, the prohibitions of Section 85705 do not apply to members of the civic center project committee. However, if in the future, the committee should continue to exist even after it has fulfilled the limited purpose for which it was created, and its substantive recommendations continue to be approved without significant amendment or modification by the city council, then the committee would fall within the prohibitions of Section 85705.

##### *Housing Committee*

The housing committee is a standing committee that has been in existence since 1990 and has made numerous recommendations to the city council and the planning commission. You

have stated that the city council follows the recommendations of the housing committee in approximately 65 to 75 percent of the cases. However, you have not stated whether the city council or planning commission follows the recommendation of the housing committee "without significant amendment or modification" when they do follow the recommendations of the housing committee. If it is the case that the recommendations are followed without significant amendment or modification in approximately 65 to 75 percent of the cases, then the housing committee meets the requirements of Regulation 18700(a)(1)(C). Therefore, the prohibitions of Section 85705 apply to appointed members of the housing committee.

### *Finance Committee*

It is unclear from the facts provided whether the finance committee is a standing committee or how long it has been in existence. However, you have stated that the finance committee has only one regular meeting a year and that its recommendations are followed approximately 50 percent of the time by the city council. Again, you do not state whether the recommendations are made "without significant amendment or modification." Nevertheless, Commission staff finds that a committee whose recommendations are followed approximately 50 percent of the time is not a committee whose recommendations are "regularly approved." Therefore, the prohibitions of Section 85705 do not apply to members of the finance committee.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Marte Castaños  
Staff Counsel, Legal Division

SGC:MC:jlw