



## FAIR POLITICAL PRACTICES COMMISSION

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February 26, 1999

David M. Madway  
General Counsel  
San Francisco Redevelopment Agency  
770 Golden Gate Avenue, 3rd Floor  
San Francisco, California 94102

**Re: Your Request for Advice  
Our File No. A-99-029**

Dear Mr. Madway:

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

### QUESTION

Does the Act require the members of citizen advisory committees appointed by the San Francisco Redevelopment Agency Commission to be listed in the agency's conflict of interest code?

### CONCLUSION

Yes. The members of the citizen advisory committees should be designated in the agency's conflict of interest code.

### FACTS

You are the general counsel to the San Francisco Redevelopment Agency ("redevelopment agency"). The redevelopment agency currently has three citizen advisory committees—the shipyard advisory committee, the Rincon Point South Beach advisory committee, and the Trans-Bay Survey Area advisory committee. The committees advise agency

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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.

staff and the Redevelopment Agency Commission ("commission") on redevelopment planning and implementation activities within separate redevelopment project areas. All of the committees have been in existence for seven years or more. The advisory committees are appointed by the commission and consist of residents, and other individuals and organizational representatives who have a stake in the redevelopment area and who, as a group, are deemed to reflect the views and interests of the affected communities. The advisory committees exist in project areas where elected project area committees are not required by law. The agency also has three project area committees. Pursuant to the FPPC's opinion in *In re Rotman* (1987) 10 FPPC Ops. 1, the members of the project area committees are designated in the agency's conflict of interest code.

The agency has no rules or policy on the role or jurisdiction of the advisory committees, but in general they are used as a kind of community "sounding board." Staff attends regular public advisory committee meetings and consults informally with committee members when staff deems necessary. Staff will bring major development projects and significant policy issues to the meetings. Advisory committees receive presentations on everything within the full range of redevelopment planning and regulatory activities (e.g., redevelopment plans and amendments, design regulations, variances, etc.), as well as project-specific matters, such as developer selection, preferred land use for a site, community amenities or affordable housing components appurtenant to particular developments, building design, project financing, and so forth.

If an advisory committee chooses to make a recommendation, it is presented to the commission. The recommendation is usually in the form of a simple positive or negative recommendation on the question presented to it. Occasionally, advisory committees include specific suggestions in their recommendations. The commission has never taken the position that it feels bound to accept recommendations from advisory committees, but commissioners typically expect to hear the recommendations on major matters. The commission's preference is to act with the support of the advisory committees. Typically where the advisory committees do not endorse staff proposals, staff is directed to consult further with the committees and make refinements that can be supported by the committees. There have been occasions where an advisory committee's initial recommendation included a suggestion that was not included in the final position adopted by the commission, but that usually occurs in the context of staff negotiations with the advisory committee resulting in a compromise. In extreme cases, staff will take measures to persuade an advisory committee to support a proposal the committee initially opposed. The commission has never made a decision that has been publicly opposed by an advisory committee.

## ANALYSIS

The Act prohibits public officials from making, participating in making or in any way attempting to influence a governmental decision in which the official has a financial interest. (Section 87100.) In furtherance of this prohibition, every agency must adopt and promulgate a

conflict of interest code. (Section 87300.) A conflict of interest code enumerates the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial interest. (Section 87302.) Persons so designated in the conflict of interest code are “designated employees.” The conflict of interest code specifies the economic interests designated employees must report on their statements of economic interests.

The term “designated employee” includes any “officer, employee, *member* or consultant” of an agency whose position involves making or participating in making decisions that may have a foreseeable and material effect on any financial interest. (Section 82019(c), emphasis added.) A “designated employee” does not include an unsalaried member of any board or commission that serves a solely advisory function. (Section 82019, last paragraph.)

Regulation 18701 provides guidelines for determining whether a board or commission is “solely advisory.” The provision defines “member” to include “salaried or unsalaried members of board or commissions with decisionmaking authority.” (Regulation 18701(a)(1).) A board or commission possesses decisionmaking authority if, among other things, 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.” (Regulation 18701(a)(1)(C).) This regulatory language requires that we assess the impact of an advisory body’s recommendations by analyzing the extent to which its recommendations have been followed in the past. We have advised that if there is a history or track record of “rubber stamping” an advisory body’s recommendations, the advisory body will be considered to have decisionmaking authority. (*Baird* Advice Letter, No. A-94-299.) The concept supported by the regulation, as highlighted in the *Rotman* opinion, is that if the recommendations of a body have a significant impact upon the ultimate outcome of a decision, the body is considered to have decisionmaking authority and is therefore not solely advisory. (*In re Rotman, supra*, p. 6.)

Your facts reveal that the commission does not adopt every recommendation made by the advisory committees. Nevertheless, it is evident that the advisory committees wield considerable influence in decisions ultimately adopted by the commission. While the commission is not bound to adopt the recommendations of the advisory committees, it prefers to act with their support. In addition, if an advisory committee does not endorse a staff proposal, the commission directs staff to negotiate with the committee until it has its support. In extreme cases, staff will take measures to persuade an advisory committee to support a proposal the committee initially opposed. It is particularly compelling that the commission has never made a decision that has been publicly opposed by an advisory committee during the seven years or more the committees have been in existence. Clearly, the advisory committees have a significant impact upon decisions made by the commission. Therefore, consistent with *Rotman* and regulation 18701, it is our determination that the citizen advisory committees have decisionmaking authority. Accordingly, its members should be designated in the agency’s conflict of interest code.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink that reads "Julia Butcher". The signature is written in a cursive, flowing style.

By: Julia Butcher  
Staff Counsel, Legal Division

SGC:JB:tls