



FAIR POLITICAL PRACTICES COMMISSION

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June 5, 2000

Jimmy L. Gutierrez
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11333 Valley Boulevard
El Monte, California 91731-3293

**Re: Your Request for Advice
Our File No. I-00-050**

Dear Mr. Gutierrez:

This letter responds to your request for informal assistance on behalf of Jay Brands, Maria De La Luz Ruiz, Vincent DiBella, Irene Hager, Deborah Regan, Carol Trujillo, and John Wolsdorf (collectively, "members"), all of whom are members of the Downtown El Monte Redevelopment Project Area Committee ("committee"), about the Political Reform Act (the "Act").¹

I. QUESTION

Which, if any of the members, have a conflict of interest in the committee's decision to recommend approval or disapproval of the plan amendments?

II. CONCLUSION

Since you have requested informal assistance on behalf of the members, in lieu of providing more detailed facts,² we are able to provide the general guidance in the discussion below, but we are not able to draw concrete conclusions.

III. FACTS

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

² You originally requested formal assistance on behalf of the members. After several telephone conversations about additional facts we would need to provide formal assistance, you informed me that you had decided to opt for informal assistance instead. Informal assistance provides general guidance, and does not confer immunity on the advisees. (Regulation 18329.)

Pursuant to its duties under the Community Redevelopment Law (Health and Safety Code Section 33385), the Downtown El Monte Redevelopment Project Area Committee (the "committee") will review proposed amendments to the Downtown El Monte Redevelopment Project Area Plan ("plan amendments"). In summary, the plan amendments would do two things. First, the amendments would add 231 acres to the existing project area. Second, the amendments would reestablish the time frame for eminent domain proceedings for the project area. The committee will vote to recommend approval or disapproval of the plan amendments as a whole.

Member Brands is an elected full-time business representative of District Council Number 36 of the International Union of Painters and Allied Trades. He works out of offices owned by the District Council, which are located within the project area.

Member De La Luz Ruiz owns and works at a hair salon in the project area. She owns the building in which this business is located. She also has one other tenant in the building.

Member DiBella owns a private, for-profit school, called Arcadia Excelsior Academy. The Academy leases offices and facilities in the project area.

Member Hager is employed by the City of El Monte, whose offices are within the project area.

Member Regan is employed by a non-profit corporation, which leases offices in the project area.

Member Trujillo is employed by the Downtown El Monte Business Association, a non-profit corporation. This non-profit corporation leases offices in the project area.

Member Wolsdorf owns a residence and one rental residential unit in the project area. He is employed by a labor union, which has offices in the project area.

IV. ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a *financial interest*.

A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103;

Regulation 18700(a).) The Commission applies a standard, eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

A. The members are public officials and subject to the Act's conflicts provisions.

In the *In re Rotman* opinion, the Commission found that members of a project area committee are subject to the Act's conflict of interest provisions since a project area committee is considered to have decision making authority and, therefore, is not solely advisory. (*In re Rotman* (1987) 10 FPPC Ops.1.) Consequently, the members of the project area committee are public officials under the Act and are subject to the prohibition specified in Section 87100.

B. What constitutes "making," "participating in making," or "influencing" a governmental decision.

The Act's conflict-of-interest provisions apply only where a public official "make[s], participate[s] in making, or in any way attempts to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100; Regulation 18700(b)(2).) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision, and which provide certain exceptions. (Regulations 18702-18702.4.)

A public official "makes a governmental decision," when the official, acting within the authority of his or her office or position, does any of the following:

- votes on a matter,
- appoints a person,
- obligates or commits his or her agency to any course of action,
- enters into any contractual agreement on behalf of his or her agency,
- or determines not to do anything of these things, unless such determination is made because of his or her financial interest.³

(Regulation 18702.1(a)(1)-(4).)

A public official "participates in making a governmental decision," when, acting within the authority of his or her position, the official does any of the following:

³ When the determination not to act occurs because of the official's financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record, or made in writing to the official's supervisor as provided in 2 Cal. Code of Regs. Section 18730(b)(10), to the appointing power, or to any other person specified in a Conflict of Interest Code adopted pursuant to Government Code Section 87300.

- negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision,
- advises or makes recommendations to the decision maker either directly or without significant intervening substantive review, by conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision, or by preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision.

(Regulation 18702.2(a), (b).)

However, a public official neither makes nor participates in making a governmental decision by doing any of the following:

- Taking actions which are solely ministerial, secretarial, manual, or clerical;
- Making appearances as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests;
- Taking actions relating to his or her compensation or the terms or conditions of his or her employment or contract. In the case of public officials who are 'consultants,' as defined above, this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the agency, so long as they are acting in their private capacity.

(Regulation 18702.4(a).)

There are two rules concerning whether a public official uses or attempts to use his or her official position to influence a governmental decision. The first rule applies when the relevant governmental decision is within or before the public official's own agency, or an agency appointed by or subject to the budgetary control of the public official's agency. (Regulation 18702.3(a).) In that case, "... the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer." (*Ibid.*)

However, an official is not attempting to use his or her official position to influence a governmental decision if he or she does any of the following:

- Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to, an interest in real property which is wholly owned by the official or members of his or her immediate family; a business entity wholly owned by the official or members of his or her immediate family; or, a business

entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

- Communicates with the general public or the press;
- Negotiates his or her compensation or the terms and conditions of his or her employment or contract.
- Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.
- Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met: (A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency; (B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and, (C) The official is a sole practitioner.

(Regulation 18702.4(b).)

The second rule applies when the relevant governmental decision is within or before an agency *other than* the public official's own agency, or an agency appointed by or subject to the budgetary control of the public official's agency. (Regulation 18702.3(b).) In that case, "... the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery." (*Ibid.*)

C. Identifying the members' economic interests.

1. Introduction.

The Act's conflict-of-interest provisions apply only to conflicts arising from *economic interests*. The economic interests from which conflicts of interest may arise are defined in Regulations 18703-18703.5. Identifying which, if any, of these economic interests are held by a public official is the third step in analyzing a potential conflict of interest under the Act. (See Regulation 18700(b)(3).) There are five kinds of such economic interests:

- A public official has an economic interest in a *business entity* in which he or she has a

direct or indirect *investment*⁴ of \$1,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which he or she is a *director, officer, partner, trustee, employee, or holds any position of management* (Section 87103(d); Regulation 18703.1(b));

- A public official has an economic interest in *real property* in which he or she has a direct or indirect interest of \$1,000 or more (Section 87103(b); Regulation 18703.2);
- A public official has an economic interest in any *source of income*, including *promised* income, which aggregates to \$250 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- A public official has an economic interest in any *source of gifts* to him or her if the gifts aggregate to \$300 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family—this is sometimes known as the “personal financial effects” rule (Section 87103; Regulation 18703.5).

2. Member Brands.

Member Brands has two relevant economic interests:

- He has an economic interest in his employer, the District Council. (Regulation 18705.3.)
- He has an economic interest in his personal finances. (Regulation 18703.5.)

3. Member De La Luz Ruiz.

Member De La Luz Ruiz has four relevant economic interests:

- She has an economic interest in her hair salon, a business entity. (Regulation 18703.1(a), (b).)
- She has an economic interest in the real property she owns (i.e., the property on which the business is located). (Regulation 18703.2.)
- She has an economic interest in her tenant, who is a source of income to her. (Regulation 18703.3.)
- She has an economic interest in her personal finances. (Regulation 18703.5.)

⁴ An indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.)

4. Member DiBella.

Member DiBella has two relevant economic interests:

- He has an economic interest in the Arcadia Excelsior Academy, a business entity. (Regulation 18703.1(a).)
- He has an economic interest in his personal finances. (Regulation 18703.5.)

5. Member Hager.

Member Hager has one relevant economic interest,⁵ which is her economic interest in her personal finances.

6. Member Regan.

Member Regan has two relevant economic interests:

- She has an economic interest in her employer, which is a source of income to her. (Regulation 18703.3.)
- She has an economic interest in her personal finances. (Regulation 18703.5.)

7. Member Trujillo.

Member Trujillo has two relevant economic interests:

- She has an economic interest in her employer, which is a source of income to her. (Regulation 18703.3.)
- She has an economic interest in her personal finances. (Regulation 18703.5.)

8. Member Wolsdorf.

Member Wolsdorf has four relevant economic interests:

- He has an economic interest in the real property on which he resides. (Regulation 18703.2.)
- He has an economic interest in the residential rental real property he owns. (Regulation 18703.2.)
- He has an economic interest in his tenant, who is a source of income to him. (Regulation 18703.3.)
- He has an economic interest in his personal finances. (Regulation 18703.5.)

⁵ Ordinarily, a public official has an economic interest in his or her employer, either under Section 87103(d) if the employer is a for-profit business entity, or under Section 87103(c) (source of income) if the employer is a non-profit. However, a public official who is employed by a local government agency, as is Member Hager, typically does not have an economic interest in his or her employer because of the so-called "government salary exception." The Act's definition of income expressly excludes "salary and reimbursement for expenses and per diem received from a ... local ... government agency...." (Section 82030(b)(2).)

Once an official identifies an economic interest, he or she must determine whether it is "reasonably foreseeable" that the decision(s) in question will have a "material financial effect" on that interest. (Section 87103.) Under the FPPC's standard analysis of conflicts issues (Regulation 18700(b)), the official must decide whether the economic interest is directly or indirectly involved in the decision. (Regulation 18700(b)(4).) Having established the degree of involvement, the official can identify the materiality standard appropriate to the circumstances. (Regulation 18700(b)(5).) The official then knows what amount of financial effect would be considered "material" under the Act. Finally, the official decides whether such a material financial effect is a "reasonably foreseeable" consequence of the decision(s) at issue. (Regulation 18700(b)(6).)

D. Deciding whether the members' respective economic interests are directly or indirectly involved in the decision to approve the plan amendments.

The fourth step in analyzing a potential conflict of interest is to determine whether each of the public official's economic interests is directly or indirectly involved in the governmental decision at-issue. (Regulation 18700(b)(4).) This step is important because it helps determine (in the fifth step) which *materiality standard* to use in deciding whether it is reasonably foreseeable that the governmental decision will have a *material* financial effect on the economic interests.

A business entity, employer (including a non-profit employer), or other source of income (e.g., a tenant) in which a member of the project area committee has an economic interest is directly involved in the decision to approve the plan amendment if it:

- Initiates the proceeding in which that decision will be made by filing an application, claim, appeal, or similar request (Regulation 18704.1(a)(1));
- Is a named party in, or is the subject of, the proceeding concerning that decision. An economic interest is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity. (Regulation 18704.1(a)(2).)

Based on these tests and the facts you have presented, none of the business entities, employers, or sources of income which are economic interests of the respective members of the committee are directly involved in the decision to recommend approval or disapproval of the plan amendments. Therefore, these economic interests are considered indirectly involved. (Regulation 18704.1(b).)

Based on the facts you have provided, two members of the committee, De La Luz Ruiz and Wolsdorf, have economic interests in real property located in the project area. The Commission's regulations provide that real property is *directly involved* in a governmental decision when, among other things, the decision is to adopt or amend the redevelopment plan, and any part of the real property in which the public official has an economic interest is located

in the project area. (Regulation 18704.2(a)(4).) Therefore, the real property economic interests of Members De La Luz Ruiz and Wolsdorf are directly involved in the decision to recommend approval or disapproval of the plan amendments.

E. Choosing the *materiality standards* to use to decide if there will be a reasonably foreseeable *material* financial effect on the members' economic interests.

Knowing the degree to which the members' respective economic interests are involved in the committee's decision to recommend approval or disapproval of the plan amendment, the next step is picking the appropriate standard for evaluating the "materiality"—this is, the importance—of the effect of the decision on the economic interests. (See Regulation 18700(b)(5).)

1. Member Brands.

Member Brands has an economic interest in his employer, the District Council; the District Council is indirectly involved in the decision to recommend approval or disapproval of the plan amendments (see part IV.D, above). Since the District Council is a non-profit entity which is a source of income to Member Brands, the materiality standards in Regulation 18705.3(b)(2) apply. There are alternative materiality standards in Regulation 18705.3(b)(2), which particular one applies to the District Council depends on its gross annual receipts.

Member Brands also has an economic interest in his personal finances. The materiality standard for this economic interest is \$250 or more in any twelve-month period; that is, if it is reasonably foreseeable that the decision to recommend approval or disapproval of the plan amendments will increase or decrease the expenses, income, assets or liabilities of Member or his immediate family in any twelve-month period, then that financial effect is material. (Regulation 18705.5.)

2. Member De La Luz Ruiz.

Member De La Luz Ruiz has an economic interest in her hair salon, a business entity, which is indirectly involved in the decision to recommend approval or disapproval of the plan amendments (see part IV.D., above.) Assuming that the salon is a typical "small business," the materiality standards in Regulation 18705.1(b)(7) apply. That subdivision provides that the financial effects of a governmental decision are material if it is reasonably foreseeable that any of the following are true as a result of the decision:

“(A) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

“(B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

“(C) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.” (Regulation 18705.1(b)(7)(A)-(C).)

Member De La Luz Ruiz also has an economic interest in the real property she owns (i.e., the property on which the business is located); this real property is directly involved in the decision to recommend approval or disapproval of the plan amendments (see part IV.D., above). When real property in which a public official has an economic interest is directly involved in a governmental decision, the materiality standard is strict: *any* reasonably foreseeable financial effect—even a penny’s worth—on the real property is deemed material. (Regulation 18705.2(a).)

Member De La Luz Ruiz has an economic interest in her tenant, who is a source of income to her; this tenant is indirectly involved in the decision to recommend approval or disapproval of the plan amendments (see part IV.D., above.) You have not provided information about the identity of the tenant. If the tenant is an individual, the materiality standards in Regulation 18705.3(b)(3) will apply. If the tenant is a business entity, one of the materiality standards in Regulation 18705.1(b) will apply, depending on the financial size of the tenant. For example, if the tenant is also a typical small business, the materiality standards applicable to the hair salon will also apply to the tenant.

Finally, Member De La Luz Ruiz has an economic interest in her personal finances. The materiality standard for this economic interest is the same as explained for Member Brands above, with one exception. When deciding whether a governmental decision will have a material financial effect on a public official’s personal finances, financial effects of the decision on a business entity or on real property in which the public official has an ownership interest are not considered. (Regulation 18703.5.) Thus, when deciding whether the decision to recommend approval or disapproval of the plan amendments will have a material financial effect on Member De La Luz Ruiz’ personal finances, effects derived through her ownership of the salon and the real property on which it is located should not be considered.

3. Member DiBella.

Member DiBella has an economic interest in the Arcadia Excelsior Academy, a business entity, which is indirectly involved in the decision to recommend approval or disapproval of the plan amendments (see part IV.D., above). Assuming that the Academy is a typical “small business,” the materiality standards in Regulation 18705.1(b)(7) apply. These materiality standards were explained above in the discussion of Member De La Luz Ruiz’ economic interests.

Member DiBella also has an economic interest in his personal finances. (Regulation 18703.5.) The materiality standard for this economic interest is the same as explained for Member De La Luz Ruiz, above.

4. Member Hager.

Member Hager has an economic interest in her personal finances. The materiality standard for this economic interest is the same as explained for Member Brands, above. When deciding whether the decision to recommend approval or disapproval of the plan amendments will have a material financial effect on Member Hager's income (see Regulation 18703.5), effects on income excluded by the "government salary exception" should not be considered. (See footnote 5, above.)

5. Member Regan.

Member Regan has an economic interest in her employer, a non-profit corporation which is a source of income to her; this non-profit is indirectly involved in the decision to recommend approval or disapproval of the plan amendments. Since the non-profit is a source of income to her, the materiality standards in Regulation 18705.3(b)(2) apply. There are alternative materiality standards in Regulation 18705.3(b)(2), which particular one applies to her employer depends on its gross annual receipts.

Member Regan also has an economic interest in her personal finances. (Regulation 18703.5.) The materiality standard for this economic interest is the same as explained for Member Brands, above.

6. Member Trujillo.

Member Trujillo has an economic interest in her employer, a non-profit corporation which is a source of income to her; this non-profit is indirectly involved in the decision to recommend approval or disapproval of the plan amendments. (Regulation 18703.3.) Since the non-profit is a source of income to her, the materiality standards in Regulation 18705.3(b)(2) apply. There are alternative materiality standards in Regulation 18705.3(b)(2), which particular one applies to her employer depends on its gross annual receipts.

Member Trujillo also has an economic interest in her personal finances. (Regulation 18703.5.) The materiality standard for this economic interest is the same as explained for Member Brands, above.

7. Member Wolsdorf.

Member Wolsdorf has an economic interest in the real property on which he resides, and in the residential rental real property he owns; both of these properties are directly involved in the decision to recommend approval or disapproval of the plan amendments (see part IV.D., above.) When real property in which a public official has an economic interest is directly involved in a governmental decision, the materiality standard is strict: *any* reasonably foreseeable financial effect—even a penny's worth—on the real property is deemed material. (Regulation 18705.2(a).)

Member Wolsdorf also has an economic interest in his tenant, who is a source of income to him. Since it is residential real property, we assume the tenant is an individual and the materiality standards in Regulation 18705.3(b)(3) apply. That regulation provides that the financial effect of a decision on the individual is material if it is reasonably foreseeable that either of the following will be true as a result of the decision:

- The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities-excluding real property interests-by \$1,000 or more; or
- The decision will affect the individual's real property interest, which includes a leasehold interest, in a manner which is material under the tests in Regulation 18705.2(b).

Presumably the second prong of this test is relevant here since the tenant who is a source of income to Member Wolsdorf has a leasehold interest in Mr. Wolsdorf's real property. Regulation 18705.2(b), to which the second prong refers, has several alternative rules; which one applies in a given case usually depends on the proximity of the real property interest to the property which is the subject of the governmental decision. In this case, the real property in which the tenant has an economic interest (i.e., Member Wolsdorf's real property) is in the project area. In such a case, we interpret subdivision (b)(1)(A) to apply, and the materiality standard to be this: any financial effect from the decision on the value of the tenant's leasehold interest is deemed material.

Member Wolsdorf has an economic interest in his personal finances. (Regulation 18703.5.) The materiality standard for this economic interest is the same as explained for Member De La Luz Ruiz, above.

F. Using the materiality standards to decide if there will be a reasonably foreseeable material financial effect.

The sixth, and usually most important step, in deciding whether a public official has a conflict of interest is using the materiality standards (from step 5, above) to decide if a *material* financial effect on one of more of his or her economic interests is reasonably foreseeable as a result of the decision. (Regulation 18706.) It is important to understand that this determination must be made separately for each economic interest involved in the decision.

As used here, "reasonably foreseeable" means "substantially likely." (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made is highly situation-specific. A financial effect need not be a certainty to be considered reasonably foreseeable; a substantial likelihood that it will occur suffices to meet the standard. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*Ibid.*)

For example, Member De La Luz Ruiz must decide if it is substantially likely that the decision to recommend approval or disapproval of the plan amendments will increase or decrease the gross revenues of her salon by \$10,000 in a fiscal year, or increase or decrease its expenses

by \$2,500 in a fiscal year, or increase or decrease the value of its assets or liabilities by \$10,000. (See part IV.E.3., above.) She must also decide if it is substantially likely the decision to recommend approval or disapproval of the plan amendments will have any financial effect on her real property. (*Ibid.*) Similarly, she must decide if it is substantially likely that the materiality standard applicable to her tenant, and to her personal finances, will be met as a result of the decision. (*Ibid.*) If the answer to *any* of the questions is yes, then she will have a conflict of interest, unless the public generally exception applies. (See part IV.G., below.)

Similarly, each of the members must decide, for each of their respective economic interests, whether it is substantially likely that the materiality standard will be met as a result of the decision.

G. The public generally exception.

If any of the members concludes that it is substantially likely that the decision to recommend approval or disapproval of the plan amendments will have a material financial effect on one or more of his or her economic interests, he or she will be disqualified unless the public generally exception applies.

If the reasonably foreseeable material financial effect of a governmental decision on the public official's economic interest is *indistinguishable* "from its effect on the public generally," then the public official does not have a conflict. (Section 87103; Regulations 18700(b)(7), 18707(a).) This rule is referred to as the "public generally exception." This exception exists because a public official is less likely to be biased by a financial impact on his or her economic interests when a significant part of the community is substantially likely to feel essentially the same impact from the governmental decision.

Generally, the reasonably foreseeable material financial effect on a public official's economic interest is *indistinguishable* from the effect on the public generally if it is also reasonably foreseeable that the decision will affect a "significant segment" of the public "in substantially the same manner" it will affect the public official's economic interest. (Regulation 18707(b)(1),(2).) In general terms, applying the public generally exception requires two closely interrelated judgments. Using rules found in the FPPC's regulations, one must determine whether there is a "significant segment" of the public which is likely to be affected the governmental decision in "substantially the same manner" as is the economic interest which is potentially creating the conflict.

When it comes to redevelopment project area committees, the public from which the significant segment must be drawn are the persons within the project area. (*Rotman, supra.*) Depending on the type of economic interest which is otherwise causing the conflict, a "significant segment" may be comprised of:

- 10 percent or more of the population in the jurisdiction of the official's agency. (Regulation 18707(b)(1)(A)(i).)

- 10 percent or more of all property owners, all home owners or all households in the jurisdiction of the official's agency. (Regulation 18707(b)(1)(A)(ii).)
- 50 percent of all businesses in the jurisdiction so long as the businesses are composed of more than a single industry, trade, or profession. (Regulation 18707(b)(1)(B).)
- At least 5,000 individuals who are residents of the jurisdiction. (Regulation 18707(b)(1)(C).)
- Where the decision will affect a predominant industry, trade, or profession in the official's jurisdiction.⁶ (Regulation 18707.3.)

In *rare* cases, “exceptional circumstances” may allow the recognition of a significant segment, within the meaning of the public generally exception, even if the numerical thresholds otherwise established are not met. (Regulation 18707(b)(1)(B).)

For example, if the economic interest on which there is a reasonably foreseeable material financial effect is a business entity, a significant segment may be comprised of 50 percent of the businesses in the project area. That is, the financial effect of the decision to recommend approval or disapproval of the plan amendments on 50 percent of the businesses in the project must be substantially similar to the financial effect on the member’s business.

“Substantially the same manner” is defined in Regulation 18707(b)(2):

“(2) Substantially the Same Manner: The governmental decision will affect the official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation.”

In addition to the general rule explained in the preceding paragraphs, there is also a “special” version of the public generally exception which may apply to any of the members who are *appointed* to the committee. Under Regulation 18707.4, members of boards and commissions “appointed to represent a specific economic interest” may claim the benefit of the public generally exception if certain criteria are met. We have advised in the past that Regulation

⁶ The Commission construes this exception narrowly for the following reason: “In order to prevent members of homogeneous interest groups from participating in decisions which will affect their own interests, the regulation does not allow members of a single industry to be considered a significant segment of the public.” *In re Ferraro* (1978) 4 F.P.P.C. Ops 62. When a governmental decision will affect an entire industry in substantially the same manner as it will effect a public official’s economic interest, the industry is considered to constitute a significant segment *if* that industry is a “predominant industry” in the jurisdiction or district. (Regulation 18707.3.) Regulation 18707.3 does not establish any specific criteria for determining when an industry, trade, or profession is predominant in a given jurisdiction. We rely on the well-settled interpretation that the “predominant industry” variation of the public generally exception is to be construed narrowly. (*Woods* Advice Letter, No. A-94-164.) Originally, the term “predominant” was meant to apply to a situation where a local economy is based on one industry, so that almost any public official would have an economic tie to that industry, trade, or profession. (*Ibid.*) For example, in the *Krauel* Advice Letter, No. A-88-061, we advised that the real estate business, while the third most numerous type of business in the jurisdiction-in-question, was not the basis of the local economy, and therefore the “predominant industry” variation on the public generally exception did not apply.

18707.4 can apply to appointed members of redevelopment project area committees. (*Spriggs* Advice Letter, No. I-96-031; *Eiser* Advice Letter, No. I-95-075.) From the facts you have provided, it is unclear whether Regulation 18707.4 is relevant to any of the members; in any event, please note this provision.

H. The “legally required participation” rule.

If more than one member turns out to be disqualified, and the committee is unable to reach a quorum, the “legally required participation” rule may apply. (Section 87101; Regulation 18708.) Section 87101 permits an official who is otherwise disqualified from making a governmental decision to participate in the decision when the official's participation is legally required. The rule does not apply when there is an alternative source of decision making consistent with the statute authorizing the decision. (Regulation 18708, copy enclosed.) Thus, it only applies when it is legally impossible for the decision to be made without the participation of the disqualified official. Consequently, it does not apply when the disqualified official's vote is merely needed to break a tie or when a quorum can be convened of other members of the city council who are not disqualified, whether or not such other members are actually present at the time of the disqualification.

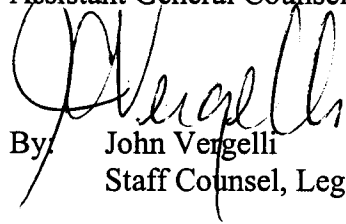
Under this rule, not all officials who are disqualified may participate. The legally required participation rule is construed narrowly. (Regulation 18708(c).) Consequently, the rule only allows the participation of the fewest number of disqualified persons necessary to constitute a quorum. (*In re Hudson* (1978) 4 FPPC Ops. 13.) The best random method of selecting which disqualified member should participate is by lot. Other means of random selection that are impartial and equitable may also be used. Whatever method is used, all disqualified officials must participate in the random selection and all must be equally likely to be chosen. (*Heisinger* Advice Letter, No. A-95-333.)

Once it is determined which disqualified official will participate in a decision, that official is selected for the duration of the proceedings in all related matters unless an official previously disqualified no longer has a financial interest in the decision. A disqualified official who participates under the authority of Section 87101 may participate fully in the matter, including taking part in deliberations and voting in open sessions of the body and in such closed sessions as are required by law. However, the reinstated official may not attempt to influence the outcome of the matter “behind the scenes” by engaging in private discussions with other members or staff. (Regulation 18708(b)(4); *Grunwald* Advice Letter, No. A-95-184.)

If you have any other questions regarding this matter, please contact me at
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Sincerely,

Luisa Menchaca
Assistant General Counsel



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