



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807  
(916) 322-5660 • Fax (916) 322-0886

July 3, 2002

Frederick G. Soley, City Attorney  
City of Vallejo  
555 Santa Clara Street  
Post Office Box 3068  
Vallejo, CA 94590-5934

**Re: Your Request for Advice  
Our File No. A-01-306**

Dear Mr. Soley:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> This is a follow-up to advice provided to you in *Soley*, Advice Letter No. A-01-181. We do not interpret your letter to constitute a request for reconsideration of that advice but rather a further elaboration on the facts relating to the possible application of the "public generally" exception in the context of conflicts of interest analysis.

### QUESTION

Does the "public generally" exception apply such that various members of the Vallejo City Council participate in decisions regarding adoption of a Residential Rental Inspection Program?

### CONCLUSION

The members of the council may participate in decisions regarding the residential rental inspection program if their real property interests will not be affected in a manner different from the public generally.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## FACTS

This inquiry focuses on the "public generally" exception with regard to our response in *Soley* Advice Letter No. A-01-081. You have provided the following new information.

The board of realtors shows the total number of residences in the City of Vallejo to be 33,153. This number consists of the sum of single family detached properties (28,428), single family attached (condominiums) (2,855), and multiple family properties (2 or more units) (1,870). The total number of properties with absentee owners (owner has a different address than the property) comes to 6,934. This number consists of the sum of single family detached properties with absentee owners (4,320), single family attached properties with absentee owners (1,249) and multiple family properties with absentee owners (1,365). The percentage of properties owned by absentee owners or landlords out of all residential properties is 20.9 percent.

You do not have a figure for the average number of residential properties in Vallejo owned by each absentee owner or landlord.

## ANALYSIS

Our previous advice to you contained in the *Soley* Advice Letter, *supra*, sets forth the eight-step conflict of interest analysis as applied in the situation you pose. Because your question addresses only one aspect of that analysis (the possible application of step seven, the "public generally" exception), we do not repeat that analysis here. To summarize, our advice concluded that some members of the council have a conflict of interest with respect to adoption of the inspection program. We advised also at that time that it was possible these officials *might* be able to participate if an exception applied. You have provided additional information regarding application of the "public generally" exception and we consider that information below.

### *The "Public Generally" Exception*

Under the "public generally" exception, an official may still participate in a decision if the financial effect of the decision on the official's economic interest is indistinguishable from the decision's effect on the public generally. (Section 87103; Regulation 18707(a).) This "public generally" exception is codified in Regulations 18707-18707.9. Pursuant to these provisions, if a "significant segment" of the jurisdiction is affected by the governmental decision in substantially the same manner as it would affect the public official, then the official may participate in the decision.

For decisions affecting a public official's real property interest, the general rule provided by Regulation 18707.1 provides that a "significant segment" is comprised of:

"(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or

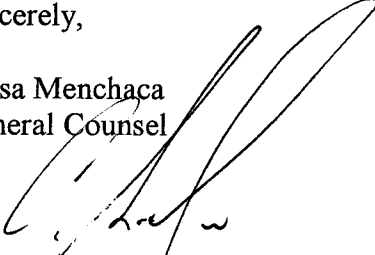
(ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency." (Reg. 18707.1, subd. (b)(1)(B).)

According to the figures you provide, more than 10% of all property homeowners in the city will be affected by the rental ordinance. If it is true that the homeowners will be affected in substantially the same manner as the public officials' properties, then under the facts you provide the exception would apply and the council members could participate. This determination ultimately must be made by the individual council members, however, since the Commission does not act as a finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71; § 83114.) The effect on officials who own three or less residential property units is deemed to be indistinguishable. (Reg. 18707.9, subd. (a).) However, for those council members who own more than three residential property units (not including his or her home), the council member must satisfy the requirements of regulation 18707.9, subdivision (b). It is possible that those particular officials may therefore not participate in the decision unless the provisions of subdivision (b) of that regulation apply. A copy of regulation 18707.9 is enclosed.

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

Sincerely,

Luisa Menchaca  
General Counsel

  
By: C. Scott Tocher  
Counsel, Legal Division

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Enclosure

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