



## FAIR POLITICAL PRACTICES COMMISSION

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April 8, 2003

J. Christine Dietrick  
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**Re: Your Request for Informal Assistance  
Our File No. I-02-325**

Dear Ms. Dietrick:

This letter is in response to your request for follow-up advice on behalf of Mayor Rudolph R. Natoli, and Councilmembers Benito Joseph Crescione and William Rabenaldt regarding the conclusions reached in *Hunt* Advice Letter, No. A-02-073 on the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note, our response is based on the facts presented. The Commission does not act as a finder of fact in its advice-giving capacity (*In re Oglesby* (1975) 1 FPPC Ops. 71), and our advice is applicable only to the extent that facts provided to us are correct and that all of the material facts have been disclosed.

### QUESTION

May Mayor Natoli and Councilmembers Crescione and Rabenaldt participate in city council decisions concerning the Downtown Specific Plan (the "Plan") by applying the "public generally" exception, when a prior advice letter found each public official to have a conflict of interest?

### CONCLUSION

The public officials may participate in city council decisions concerning the Plan so long as a significant segment of the population in the city with the same economic interest is affected in substantially the same manner as discussed below.

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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

You ask whether the “public generally” exception applies to three Pismo Beach public officials. Mayor Rudolph R. Natoli’s conflict of interest is as a result of property located within the designated area of the Plan, from which he derives rental income. The fair market value of the property is between \$100,000 and \$1,000,000. Councilmember Benito Joseph Crescione is the owner of a vacant lot which is not a source of income for him, also located within the designated area of the Plan. The fair market value of the lot is over \$100,000. There are 4,658 lots in Pismo Beach, 594 of which are located in the designated area of the Plan.

Councilmember William Rabenaldt’s conflict of interest is a result of his sole ownership of a beach cycle rental business (located on property which he rents month-to-month), which is a source of income for him. The business is located within the boundaries of the Plan and has a value of over \$100,000. There are a total of 451 businesses in Pismo Beach, 138 of which (approximately 30.6%) are located within the designated area of the Plan.

Additional information supplied by your office on January 9, 2003, in response to our request, concluded that the population of the City of Pismo Beach is 8,551.

## ANALYSIS

In the previous letter, we advised that an official has a conflict of interest in a decision in which he has a reasonably foreseeable material financial interest. You ask if the “public generally” exception applies, which would then allow those same officials to vote on the Plan despite their financial interests.

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 official’s economic interests, then the official may participate in the decision.

Regulation 18707(b), summarized below, describes the steps used to apply the “public generally” exception:

- (1) Identify each economic interest that is materially affected by the governmental decision.
- (2) Determine the applicable “significant segment” rule for each economic interest identified in Step One.
- (3) Determine if the significant segment is affected by the governmental decision as set forth in the applicable “significant segment” rule.

- (4) Determine if the economic interest identified in Step One is affected by the governmental decision in “substantially the same manner” as other economic interests in the applicable significant segment.

Regulation 18707.1 contains the requirements for steps 2, 3 and 4 above, which includes:

“(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official’s economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

“(b) Significant Segments and Indistinguishable Effects.

“(1) Significant Segment. The governmental decision will affect a ‘significant segment’ of the public generally if any of the following are affected as set forth below:

“(A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:

“(i) Ten percent or more of the population in the jurisdiction of the official’s agency or the district the official represents; or

“(ii) 5,000 individuals who are residents of the jurisdiction.

“(B) Real Property. For decisions that affect a public official’s real property interest, the decision also affects:

“(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.

“(C) Business Entities. For decisions that affect a business entity in which a public official has an economic interest the decision also affects 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the

official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

¶...¶

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

### Significant Segment<sup>2</sup>

#### Mayor Natoli

Our prior letter concluded that Mayor Natoli has economic interests in the ownership of his real property which he rents or leases to a tenant who is a source of income to him.<sup>3</sup>

#### 1) **Interest in Real Property (18707.1(b)(1)(B))**

Regulation 18707.1(b)(1)(B) is the standard used when the decision affects an official’s real property. As stated above, to qualify as a significant segment under regulation 18707.1(b)(1)(B), the decision has to also affect 10% “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.”

According to the facts you provided, there are 4,658 lots in the jurisdiction and 594 will be affected by the decision. Therefore, assuming each lot is owned by different owners, the percentage of property owners affected by the decision is 13%. Since this number is greater than the required 10%, the decision also affects a significant segment of the real property owners in the jurisdiction.

Since Mayor Natoli rents his property to an individual, he may qualify under the more specific public generally rule, regulation 18707.9. Regulation 18707.9(a) is applicable to public officials who own three or fewer residential property units. The benefit of applying this regulation is that the effect on the official who owns three or less

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<sup>2</sup> Please note that the public generally tests can also be applied using the numbers applicable to the district which the official represents as well as the jurisdiction. The numbers you provided for this analysis apply to the jurisdiction. The district numbers would be smaller and could possibly lead to a different result.

<sup>3</sup> When an individual or group rents or leases property, they are considered a business entity under the Act.

residential property units (not including his or her own home), is deemed to be indistinguishable. (*Soley Advice Letter*, No. A-01-306.) Therefore, if Mayor Natoli meets these requirements, then his economic interest in his real property meets the “public generally” exception.

## 2) Source of Income (18707.1(b)(1)(A))

Regulation 18707.1(b)(1)(A) is the standard used when the decision affects a public official’s source of income. As stated above, to qualify as a significant segment under regulation 18707.1(b)(1)(A), the decision has to also affect 10% “or more of the population in the jurisdiction of the official’s agency or the district the official represents; or (ii) 5,000 individuals who are residents of the jurisdiction.”

According to the facts you provided, the jurisdiction has a population of 8,551. The number of people affected by the decision has not been supplied, but if 855 individuals were affected by the Plan decision, then this would be 10% of the jurisdiction. To determine the number of individuals affected by the Plan, the most recent census numbers per household for your jurisdiction can be used. For example, if we assume 2.3 persons per household in your jurisdiction, then the number of lots affected multiplied by 2.3 would give an approximate number of individuals affected by the Plan decision. If 2.3 per household were the correct number for your jurisdiction, then approximately 1,366 (594 x 2.3) individuals in your jurisdiction would be affected by the Plan decision.

As to the tenant who is source of income to Mayor Natoli, you have provided new facts which were not included in the analysis of the earlier letter. Your new facts indicate that the source of income (i.e., the renter) is an individual and not a business as was assumed in the first letter. For indirectly involved sources of income who are individuals, regulation 18705.3(b)(3) states that the effect of a decision is material if either of the following applies:

“(A) The decision will affect the individual’s income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

“(B) The decision will affect the individual’s real property interest in a manner that is considered material under Title 2, California Code of Regulations, sections 18705.2(b).”<sup>4</sup>

If the individual renter meets the appropriate threshold of regulation 18705.3(b)(3) given above, then he or she is an economic interest of Mayor Natoli’s and a public generally analysis would be necessary to determine if Mayor Natoli could vote

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<sup>4</sup> Regulation 18705.2(b)(2) provides the materiality standard for interests in real property that are leaseholds. The financial effect of a governmental decision on a leasehold is presumed not to be material. This is a rebuttable presumption. See the enclosed regulation 18705.2 for circumstances which would rebut the presumption if this subdivision applies. However, if the tenant has a month-to-month lease, he or she does not have a real property interest in the leased area and only subdivision (A) is applicable.

on the Plan. For instance, if the tenant rents month-to-month, then he or she would apply the test of subdivision (A). The decision on the Plan would need to affect his or her income, investments, assets or liabilities by at least \$1,000 to cause a conflict of interest for Mayor Natoli. If the tenant does not meet the stated materiality threshold, then the public generally analysis would be unnecessary since Mayor Natalie would not have an economic interest in his tenant. But if the threshold were met, Mayor Natoli would need to apply the "public generally" exception to participate in the Plan decisions.

### **3) Business Interest – Residential property rental (18707.1(b)(1)(C))**

Regulation 18707.1(b)(1)(C) is the standard used when the decision affects an official's business interest. To qualify as a significant segment under regulation 18707.1(b)(1)(C), the decision has to also affect "2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession."

According to the facts you provided, there are 451 business owners in the jurisdiction and 138 will be affected by the decision. Therefore, the decision affects almost 31% of business owners in the jurisdiction. Since this number is greater than the required 25% of business owners in the jurisdiction, the decision also affects a significant segment in the jurisdiction.

### **Councilmember Crescione**

#### **1) Real Property Interest – vacant lot (18707.1(b)(1)(B))**

Regulation 18707.1(b)(1)(B) is also the standard used when the decision affects Councilmember Crescione's real property. As stated above, to qualify as a significant segment under regulation 18707.1(b)(1)(B), the decision has to also affect 10% "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."

According to the facts you provided, there are 4,658 lots in the jurisdiction and 594 will be affected by the decision. Therefore, roughly 13% of the property owners in the jurisdiction would be affected by the decision. Since this number is greater than the required 10% of property owners in the jurisdiction, the decision also affects a significant segment of the real property owners in the jurisdiction. If the effect is substantially similar to the effect on the council member (as discussed below), the exception applies.

**Councilmember Rabenaldt****1) Business Interest – bicycle rental business (18707.1(b)(1)(C))<sup>5</sup>**

Regulation 18707.1(b)(1)(C), as discussed above, is the standard used when the decision affects an official's business interest. To qualify as a significant segment under regulation 18707.1(b)(1)(C), the decision has to also affect "2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession."

According to the facts you provided, there are 451 business owners in the jurisdiction and 138 will be affected by the decision. Therefore, the decision affects almost 31% of business owners in the jurisdiction. Since this number is greater than the required 25% of business owners in the jurisdiction, the decision also affects a significant segment in the jurisdiction.

**2) Source of Income (18707.5)**

Regulation 18707.5 generally states that retail customers of a business will not be considered sources of income to a public official owning 10% or more of a business entity which engages in retail sales of goods or services to the public, if the retail customers as a whole comprise a significant segment of the public generally, and the effect of the governmental decision upon a particular retail customer is indistinguishable from the effect upon the entity's retail customers as a whole. (*Carlyle* Advice Letter, No. A-02-033.) If Councilmember Rabenaldt's pro rata share of the income from an individual customer equals or exceeds \$500 over the 12-month period preceding his voting on a Plan decision, that customer will be a source of income to him and should be listed among his economic interests. However, customers of this business will not be sources of income and an economic interest to him if, under the "public generally" exception, customers of the business comprise a significant segment of the public generally. (Regulation 18707.5.) (*McLaughlin* Advice Letter, No. A-02-045.)

According to the facts you provided, the jurisdiction has a population of 8,551. The number of customers has not been provided, but the business would have to have had at least 855 (8551/10, rounded down) customers during the preceding 12 months to qualify under this exception.

**Substantially the Same Manner**

After determining that a significant segment will be affected by a decision, it is next necessary to evaluate if the public official's economic interest will be affected in

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<sup>5</sup> Although Councilmember Rabenaldt's lease was identified in the original letter as an interest in real property, your additional facts indicate that he rents the property month-to-month, thus not qualifying the property as an economic interest of Councilmember Rabenaldt's. Therefore, a public generally analysis is unnecessary.

substantially the same manner as the rest of the segment. If the answer is “yes” as to each economic interest identified, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. (Regulation 18707(b)(4).) To assess whether a significant segment will be affected in *substantially the same manner*, all measurable effects from the decision must be identified.

Usually, a specific plan does not affect all properties within the specific plan area in the same manner. For instance, a specific plan could affect streets immediately adjacent to an official’s property while not extending to property at another location within the specific plan area. Thus, specific plan decisions could significantly affect the value of the official’s property while not affecting all the other properties in the specific plan area and, therefore, the official could not invoke the “public generally” exception.

The information that you have provided is insufficient to enable us to determine whether the effects on Councilmembers Rabenaldt and Crescione’s economic interests within the Plan area are substantially the same as the effects on the public generally. For example, Councilmember Crescione could have an unusually large parcel within the Plan area or Councilmember Rabenaldt’s business could be affected differently because of its type of business. These are only examples of the kinds of effects that would not be considered to be “substantially the same.” Whether or not each economic interest is affected in substantially the same manner is a question that each of the officials must answer if he wishes to be involved in a decision on the Plan that will have a reasonably foreseeable material financial effect on his economic interests.<sup>6</sup> Thus, if Mayor Natoli qualified for the exception under regulations 18707.9(a) and 18707.1(b)(1)(C) and it was not reasonably foreseeable that his tenant would incur a material financial effect, then Mayor Natoli would be allowed to participate and vote.

### Segmentation

If you find that the “public generally” exception does not apply in this case, the public official may still be able to participate in Plan decisions. We have previously advised that large and complex decisions may, under certain circumstances, be divided into separate decisions so that an official who has a disqualifying interest in one component of the decision may still participate as to other components in which the official has no financial interest. (*Merkuloff* Advice Letter, No. I-90-542.) Thus, if the Plan is segmented so that the various decisions are considered separately, the official may be able to participate in many of the decisions leading up to the adoption of the Plan. The following procedure should be used to permit the officials to participate in some of the decisions:

1. The decisions for which the official has a disqualifying financial interest must be segregated from the other decisions on the agenda;

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<sup>6</sup> We have enclosed advice letters on this topic for your guidance. (*Biggs* Advice Letter, No. A-02-102; *Troedsson* Advice Letter, A-01-172; *Lanzone* Advice Letter, No. A-93-135, copies enclosed.)

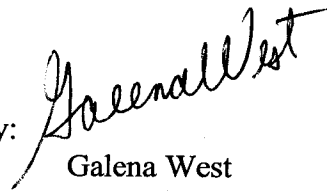
2. The decisions for which the official is disqualified should be considered first, and a final decision reached without his participation in any way;
3. Once a decision has been made on the portions of the Plan for which the official has a disqualifying interest, the official may participate in subsequent deliberations regarding other portions of the Plan, so long as (1) those deliberations do not result in a reopening or in any way affect the decision from which the official was disqualified, and (2) those decisions will not have a material financial effect on any of the official's economic interests. (*Huffaker* Advice Letter, A-86-343.)

Advice letters regarding segmentation of specific plans have been included for your reference as examples of how to apply the segmentation process. (*Talley* Advice Letter, No. A-96-123; *Miller* Advice Letter, No. A-94-204.) Also, a regulation regarding the segmentation process will be presented to the Commission at the June 2003 Commission meeting. Please go to our website at [www.fppc.ca.gov](http://www.fppc.ca.gov) for more information. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:



Galena West  
Counsel, Legal Division

Enclosures

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