



## FAIR POLITICAL PRACTICES COMMISSION

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March 2, 2009

Jill D.S. Maland  
Deputy City Attorney  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

**Re: Your Request for Advice  
Our File No. A-09-027**

Dear Ms. Maland:

This letter responds to your request for advice on behalf of Chula Vista City Councilmembers Steve Castaneda and John McCann regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Also, please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090. Finally, please note that the Commission does not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

### QUESTION

May Councilmembers Castaneda and McCann participate in a governmental decision to appropriate an additional \$2.8 million in HUD funds to the city's Neighborhood Stabilization Program?

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## CONCLUSION

The council members may participate in the governmental decision.

## FACTS

The City of Chula Vista is a charter city governed by a city council consisting of four council members and a mayor, elected from the city at-large. The city charter provides for the approval of resolutions and ordinances by the affirmative votes of at least three members unless another provision of the charter provides otherwise. The charter provides that appropriations made after the adoption of the budget require the affirmative votes of at least four members.

On May 6, 2008, the city council approved the Fiscal Year 2008/2009 Annual Action Plan for three Federal Grant Programs and authorized its submittal to the Department of Housing and Urban Development (HUD). The plan is developed annually and describes the city's spending priorities. It serves as the local guide for three of HUD's grant programs that support activities to benefit lower income households (Community Development Block Grant (CDBG), HOME Investment Partnership, and Emergency Shelter Grant).

In September 2008, HUD notified the city that in addition to the annual CDBG entitlement, the city is eligible to receive approximately \$2.8 million in one-time CDBG funds through the new Neighborhood Stabilization Program (NSP). The purpose of the NSP program is to assist cities dealing with the negative effects of abandoned and foreclosed properties. The NSP funds may be used to purchase foreclosed or abandoned homes/properties, rehabilitate, redevelop, resell, and/or rent these homes to help stabilize neighboring homes and neighborhoods.

The city applied for this additional HUD funding, and based on current Geographic Information Systems information and estimates by the San Diego Association of Governments, the city's housing staff identified three neighborhoods as neighborhoods having the greatest need for the NSP funds. These areas are:

- Northwest Target Neighborhood (encompassing approximately 3,945 property owners)
- Southwest Target Neighborhood (encompassing approximately 4,843 property owners)
- Eastern Target Neighborhood (encompassing approximately 8,492 property owners)

HUD approved the amendment and city staff must now seek city council approval to appropriate the \$2.8 million in additional HUD funds to the city's NSP. At this time, the city will not determine specifically where the funds will be spent. You stated that once the money is appropriated it may be used to provide assistance to all three neighborhoods, any two of the neighborhoods, or it could all go to one of the three neighborhoods.

The vote to appropriate the funds will require four votes. Councilmember Castaneda owns his primary residence that is located within 500 feet of the Northwest Target Neighborhood, and Councilmember McCann owns a residential rental property that is located in the Southwest Target Neighborhood. You stated, in response to a request for additional information, that it could not be determined at this time if any properties near the council members' properties was abandoned or in the process of foreclosure and would be eligible for the NSP funds.

### ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials "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.

The Commission has adopted an eight-step standard analysis to decide whether an official has a disqualifying conflict of interest. (Regulation 18700(b)(1)-(8).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests. (Section 87103.)

#### **Steps One and Two: Are the council members public officials, who will be making, participating in making, or influencing a governmental decision?**

City council members are public officials under the Act. (*See* Section 84048(a).) The council members will be voting on appropriating HUD funds to the city's Neighborhood Stabilization Program and will therefore be making governmental decisions.<sup>2</sup> (Regulation 18702.1(a).)

#### **Step Three: Do the council members have an economic interest in the decision at issue?**

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, distinguishable from its effect on the public generally, on the official, a member

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<sup>2</sup> When a public official who holds an office specified in Section 87200 has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

of his or her immediate family, or on any one of five enumerated economic interests. (Section 87103; Regulation 18700(a).) The applicable economic interests include:

1. An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).) An interest in any *business entity* in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).) For purposes of Section 87103, "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." A public official's "immediate family" includes only the official's spouse and dependent children. (Section 82029.)

2. An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)

3. Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)

4. Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)

5. A public official also 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 also known as the "personal financial effects" rule." (Section 87103, Regulation 18703.5.)

You have indicated that both council members have an economic interest in real property. While you have not stated the value of their respective interests, for purposes of our analysis we will assume that each has an interest worth \$2,000 or more. In addition, Councilmember McCann's real property that is in question is a rental property and we assume that he has a source of income that rents the property. However, you have not provided information about Councilmember McCann's source of income so we do not further analyze this economic interest and, therefore, do not offer conflict-of-interest advice in relation to that economic interest.

**Step Four: Are the council members' economic interests directly or indirectly involved in the decision?**

In order to determine if a governmental decision's reasonably foreseeable, financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision. (Regulation 18704(a).) For a governmental decision that affects real property interests, Regulation 18704.2 applies.

Real property in which a public official has an economic interest is directly involved in a governmental decision when (among other circumstances) the real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. Each council member owns property either in, or within 500 feet of, the neighborhoods for which the HUD funding is being sought. Consequently, the properties are directly involved in the decisions.

**Step Five: What is the applicable materiality standard?**

For real property directly involved in a governmental decision, any financial effect on the property, even "one penny," is presumed to be material. (Regulation 18705.2(a)(1).) This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property. (*Ibid.*)

**Step Six: Is a material financial effect reasonably foreseeable?**

A material financial effect on an economic interest is "reasonably foreseeable" if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) An effect need not be certain to be considered "reasonably foreseeable," but it must be more than a mere possibility. (*In re Thorner, supra*, 1 FPPC Ops. 198.) On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. Consequently, the question before us becomes whether it is substantially likely that the city's decision to approve the HUD funding will have any financial effect on the fair market value of the officials' respective properties.

Regulation 18706(b) provides factors that should be considered in determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest.<sup>3</sup> One factor, relevant to this inquiry, is the extent to which the occurrence of the material financial effect is *contingent upon other intervening events*. In this case you noted that there are a variety of contingencies.

(1) The city has designated three neighborhoods that may benefit from the funds. However, none of the three specific neighborhoods is guaranteed to receive funds. You noted that the city could still decide at a later time which of the areas will benefit from the funds.

(2) You also noted that, unlike the funding of the redevelopment of an area, where the result will be to increase the property values and improve the business climate within the project area (See e.g., *In re Ogelsby* (1975) 1 FPPC Ops. 71), the use of the funds in this case is to purchase a limited number of foreclosed or abandoned homes/properties, rehabilitate, redevelop, resell, and/or rent these homes to help stabilize neighboring homes and neighborhoods. We

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<sup>3</sup> These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines

assume that neither council members' property would fall into this category. Moreover, you have provided no facts to suggest that any abandoned or foreclosed properties are located in proximity to the officials' properties.

Thus, at this preliminary stage, it does not appear foreseeable that the decision to appropriate the HUD funds will have a material financial effect on either council member. Please note that this conclusion is limited to appropriating the HUD funds to the NSP program. Any future decisions on how to use the funds would have to be reanalyzed as a new advice request.

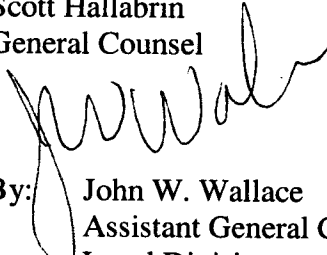
**Steps Seven and Eight: Exceptions**

Since it appears the decisions will not have a material financial effect on the council members' property, we have not gone on to discuss the exceptions to the conflict of interest rules.

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

Sincerely,

Scott Hallabrin  
General Counsel

  
By: John W. Wallace  
Assistant General Counsel  
Legal Division