

RESOLUTION NUMBER 6233

**A RESOLUTION OF THE SEAL BEACH CITY COUNCIL
SUPPORTING THE PETITION TO AMEND TITLE 2, CALIFORNIA
CODE OF REGULATIONS SECTION 18705.5**

WHEREAS, Government Code Section 87100 of the Political Reform Act of 1974 (Government Code Sections 81000 through 91014) prohibits a public official from making or participating in the making of a decision which could have a reasonably foreseeable financial effect on the public official's "financial interest"; and

WHEREAS, Government Code Section 87102.5(b)(2) states that a "financial interest" means "an interest defined in Section 87103"; and

WHEREAS, Government Code Section 87103 provides that a public official generally has a financial interest in a decision within the meaning of Government Code Section 87100 if it is reasonably foreseeable that it will have a material financial effect on: (1) the public official, which includes income to the public official; (2) on business entities or real property in which the public official has a financial interest; or (3) on any of the public official's sources of gifts and sources of income; and

WHEREAS, Government Code Section 82030 defines "income" as "a payment received, including but not limited to "any salary, wage, advance, dividend, interest...reimbursement for expenses, per diem," etc.; and

WHEREAS, notwithstanding the above, Government Code Section 82030(b) provides that "income" does not include "salary or reimbursement for expenses or per diem...or other similar benefit payments received from a state, local or federal government agency...;"

WHEREAS, pursuant to state law the City Council is required to appoint, from among the members of the City Council, one of its members to sit on various regional boards of public agencies in Orange County, such as the Vector Control District, Orange County Sanitation District, and others; and

WHEREAS, council members who are appointed to these boards typically receive a per diem for each meeting of the board that they attend and thus, are receiving a "per diem" or "salary" from a local government agency, which pursuant to Government Code Section 82030 is not considered "income" and thus, not a "financial interest"; and

WHEREAS, the amount that council members receive for serving on these public agency boards is governed by state law and within state law parameters is determined by the boards of these public agencies, not by the City Council; and

WHEREAS, the Fair Political Practices Commission ("FPPC") is authorized pursuant to Government Code Section 83112 to adopt, amend and rescind rules and regulations to carry out the purposes of the Political Reform Act on the condition that such rules and regulations **are consistent** with the Political Reform Act; and

WHEREAS, the FPPC has adopted a regulation, Title II, California Code of Regulations, Section 18705.5 (the "Regulation"), which it has interpreted to preclude a council member from voting on his or her appointment to a local agency board if it is reasonably foreseeable that a council member could receive \$250 or more during a 12-month period from that appointment; and

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WHEREAS, in adopting the Regulation, the FPPC has, notwithstanding the Government Code's express language to the contrary, made the receipt of salary and per diem from a local government agency a financial interest and thus, voting on appointments to a local government agency that provides a salary or per diem, a violation of the Political Reform Act; and

WHEREAS, the FPPC's apparently contradictory Regulation has resulted in the entrapment of large numbers of even the most conscientious public officials; and

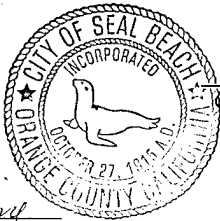
WHEREAS, the Regulation does nothing to further the primary purposes of the Political Reform Act which are to insure a better informed electorate or to prevent corruption of the political process, the two primary goals of the Political Reform Act.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Seal Beach hereby resolves as follows:

1. That the City Council supports the Petition filed by Ash Pirayou of the law firm of Rutan & Tucker on behalf of the cities of Anaheim, Dana Point, Irvine, La Palma, Newport Beach, San Clemente, Villa Park, and Yorba Linda.
2. That a certified copy of this Resolution be forward to the Fair Political Practices Commission, along with the formal letter of support executed by the City Attorney, a copy of which is attached hereto as Exhibit "A", and incorporated herein by this reference.

PASSED, APPROVED and ADOPTED by the Seal Beach City Council at a regular meeting held on the 12th day of March, 2012 by the following vote:

AYES: Council Members Devatin, Lovitt, Miller, Shanks, Steen
 NOES: Council Members None
 ABSENT: Council Members None
 ABSTAIN: Council Members None



[Signature]
 Mayor

ATTEST:
[Signature]
 City Clerk

STATE OF CALIFORNIA }
 COUNTY OF ORANGE } SS
 CITY OF SEAL BEACH }

I, Linda Devine, City Clerk of the City of Seal Beach, do hereby certify that the foregoing resolution is the original copy of Resolution Number 6233 on file in the office of the City Clerk, passed, approved, and adopted by the Seal Beach City Council at a regular meeting held on the 12th day of March, 2012.

[Signature]
 City Clerk

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AARON C. O'DELL
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March 12, 2012

VIA U.S. MAIL

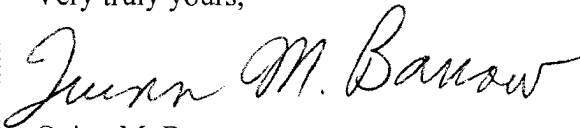
Zachery P. Morazzini, Esq.
General Counsel
Fair Political Practices Commission
428 J Street
Suite 620
Sacramento, California 95814-2329

Re: Petition to Amend Regulation 18705.5

Dear Mr. Morazzini:

I am the City Attorney for the City of Seal Beach. Enclosed is Resolution No. 6233 adopted by the Seal Beach City Council supporting the above-referenced petition filed by Ash Pirayou of Rutan & Tucker on behalf of several cities. In addition, I concur in all of the points made in Orange City Attorney Dave DeBerry's letter of support. Please call with any questions.

Very truly yours,



Quinn M. Barrow
City Attorney for the City of Seal Beach

Enclosure

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