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March 9, 2012

Via U.S. Mail

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

Re: Our Client: City of Fountain Valley
Issue: Support for Revision to Regulation 18705.5 / Statement of Disagreement with Warning Letters for Larry Crandall and Steve Nagel (FPPC Case No. 11/1041)

Dear Mr. Morazzini:

The City of Fountain Valley (“City”) supports the revision to Regulation 18705.5 (the “Regulation”) proposed by the cities of Anaheim, Dana Point, Irvine, La Palma, Newport Beach, San Clemente, Villa Park, and Yorba Linda and filed by Ash Pirayou of Rutan & Tucker. The City also asks that a copy of this letter be placed in your files of Council Members Larry Crandall and Steve Nagel who have decided not to fight the warning letter due to the expense and trouble of further proceedings but who, along with the entire City Council, believe that the Regulation goes beyond the authority of the FPPC and is unworkable.


The Fountain Valley City Council has unanimously passed the attached Resolution supporting the amendment of the Regulation for the reasons set forth therein. Those reasons include that the current Regulation goes beyond the authority of the FPPC in that it is contrary to a voter-enacted statute, Government Code section 82030, which provides a clear and unequivocal exemption. The current law also is cumbersome in that it makes for an awkward appointment process since the person who would be the prospective appointee would need to step out before he could advise if he would be interested in serving. The process is especially unworkable if more than one council member might be interested in serving.

For these and the reasons stated in the accompanying Resolution, we join with the other cities who are urging a revision of the Regulation. We are encouraged by the interview in the Daily Journal that the Chairwoman intends to concentrate on serious violations of the CPRA, and we believe the revision to the Regulation would eliminate a technical violation that should not exist.

Therefore, we ask that the Commission consider these comments, that the Enforcement Division place a copy of this letter in the files of Larry Crandall and Steve Nagel, and that the same be posted along with the warning letter the FPPC intends to post. Alternatively, we believe that if the Regulation is revised to eliminate this violation, the warning letters should also be rescinded.

Sincerely,

HARPER & BURNS LLP



Alan R. Burns
City Attorney
City of Fountain Valley

ARB:lk

Enclosure: Fountain Valley Resolution No. 9354

cc: **Via U.S. Mail only**
Gary S. Winuk, Chief
Enforcement Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, California 95814-2329

Via Electronic Mail only
City Council
City Manager

Ash Pirayou, Esq.
Rutan & Tucker
apirayou@rutan.com

RESOLUTION NO. 9354

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF FOUNTAIN VALLEY 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) business entities or real property in which the public official has a financial interest; or (3) 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, Sanitation District, Public Cable Television Authority, 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 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 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

WHEREAS, in adopting the Regulation, the FPPC has, notwithstanding Government Code Section 82030'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 by the City Council of the City of Fountain Valley as follows:

1. That the City Council supports the Petition filed 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.

Adopted this 6th day of March, 2012.

ATTEST:

Kathleen Heard
for Kathy Bailor
City Clerk

John Collins
John Collins
Mayor

APPROVED AS TO FORM:

Alan Burns
Alan Burns
City Attorney

The Foregoing instrument is a full, true and correct copy of the original on file in this office

Attest: *Kathleen Heard*
Kathleen Heard
Deputy City Clerk
City Clerk or Deputy City Clerk
City of Fountain Valley

1 **REVISIONS TO 18705.5**

2 (Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of
3 Regulations.)

4 **§ 18705.5. Materiality Standard: Economic Interest in Personal Finances.**

5 (a) A reasonably foreseeable financial effect on a public official's or his or her
6 immediate family's personal finances is material if it is at least \$250 in any 12-month period.
7 When determining whether a governmental decision has a material financial effect on a public
8 official's economic interest in his or her personal finances, neither a financial effect on the value of
9 real property owned directly or indirectly by the official, nor a financial effect on the gross
10 revenues, expenses, or value of assets and liabilities of a business entity in which the official has a
11 direct or indirect investment interest shall be considered.

12 (b) The financial effects of a decision which affects only the salary, per diem, or
13 reimbursement for expenses the public official or a member of his or her immediate family
14 receives from a federal, state, or local government agency shall not be deemed material, unless the
15 decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take
16 disciplinary action with financial sanction against the official or a member of his or her immediate
17 family, or to set a salary for the official or a member of his or her immediate family which is
18 different from salaries paid to other employees of the government agency in the same job
19 classification or position, or when the member of the public official's immediate family is the only
20 person in the job classification or position.

21 (c) Notwithstanding subsection (b), pursuant to Government Code Section 82030(b)(2)
22 and California Code of Regulations, Title 2, section 18232, a public official may make, participate
23 in making, or use his/her official position to influence or attempt to influence, a government
24 decision of his/her appointment to a committee, board, or commission of a public agency,
25 including, but not limited to, a special district, a joint powers agency or authority, a joint powers
26 insurance agency or authority, or a metropolitan planning organization, because such government
27 decision is not deemed to have a material financial effect on the public official's economic
28 interests in his/her personal finances.

VOTE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF FOUNTAIN VALLEY)

I, Kathleen Heard, Deputy City Clerk of the City of Fountain Valley, do hereby certify that the foregoing Resolution was adopted at the Council meeting held on March 6, 2012 by the following vote, to wit:

AYES: NAGEL, COLLINS, MCCURDY, VO, CRANDALL
ABSENT: NONE
NOES: NONE


Kathleen Heard, Deputy City Clerk