

**[NOTE: In 2014, the California Fair Political Practices Commission amended Regulation 18706 to state that an outcome is “reasonably foreseeable” if it is a “realistic possibility.” An outcome need not be “substantially likely” to be considered “reasonably foreseeable.”]**

March 16, 2004

SDEC Formal Advice Letter No. FA04-01

Advice Provided to:

Jeff Gattas  
Office of Deputy Mayor Toni Atkins  
202 “C” Street, 10th Floor  
San Diego, CA 92101

Re: Request for Advice Regarding Disqualification from Municipal Decisions Involving Residential Rental Property

Dear Mr. Gattas:

This advisory opinion is in response to your request to the City of San Diego Ethics Commission for an advisory opinion concerning whether or not Deputy Mayor Toni Atkins may participate in a municipal decision concerning a proposed Tenants’ Right to Know (Cause Eviction) Ordinance, in light of the fact that she rents residential property within the City of San Diego. Your question and the Commission’s response are detailed below.

### **QUESTION**

Is Deputy Mayor Atkins prohibited from participating in the municipal decision regarding the proposed Tenants’ Right to Know ordinance under SDMC section 27.3561 or any other provision of City or State law?

### **SHORT ANSWER**

Deputy Mayor Atkins has a financial interest in the subject ordinance if it is substantially likely that her personal finances will change by \$250 in a 12-month period as a result of the enactment of the ordinance. Notwithstanding that interest, however, the “public generally” exception allows the Deputy Mayor to participate in the municipal decision because a significant number of renters in the City are affected by the decision in substantially the same manner as the decision affects the Deputy Mayor.

### **BACKGROUND**

According to the information you provided, the City is meeting today to discuss a proposed Tenants’ Right to Know Ordinance. This ordinance affects all renters of residential property whose tenancy period exceeds twenty-four months. The proposed ordinance would require a

lessor to provide written notice stating the grounds upon which the lessor seeks to recover possession, and would require the lessor to prove such grounds at a trial or other hearing, should the lessor's statement be disputed.

According to the information you provided, Deputy Mayors Atkins rents a residential property within the City of San Diego.

### **ANALYSIS AND CONCLUSION**

Issues surrounding the Tenants' Right to Know Ordinance were the subject of a prior Ethics Commission advice letter, FA03-10, dated October 17, 2003 (and supplemented November 14, 2003). That advice letter concerned the ability of the Mayor to participate in the same municipal decision. The Mayor has an ownership interest in two rental properties in the City of San Diego. The prior advice letter concluded that any financial effect of the decision on the Mayor's property interests was presumed not to be material. That letter also concluded that even if that presumption was rebutted, the "public generally" exception would still allow the Mayor to participate in the municipal decision if a significant number of lessors of residential property in the City are affected by the decision in substantially the same manner as the decision affects the Mayor.

Some of the laws applicable to the Mayor, as an owner of rental property, also apply to City Officials in their capacity as renters. The Mayor's situation, however, is different from that of a renter because the renters generally do not have an ownership interest in the properties being rented. According to California Code of Regulations section 18703.2, "a public official has an economic interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more in fair market value." It is assumed, for the sake of this advice letter, that Deputy Mayor Atkins has no such interest in the real property she is renting. For this reason, unlike the circumstances described in the advice letter to the Mayor, Deputy Mayor Atkins does not have a real property interest that is subject to a disqualification analysis.

As a renter, however, Deputy Mayor Atkins does have an interest in the amount of rent she pays to reside in a rental unit. According to California Code of Regulations section 18703.5, "a public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing." Further, "a public official or his or her immediate family is deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family." Cal. Code Regs. tit. 2 § 18704.5. Whether or not Deputy Mayor Atkins's financial interest is "material" is determined by section 18705.5(a), which states that "a reasonably foreseeable financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period." Under these regulations, therefore, Deputy Mayor Atkins will have a potentially disqualifying financial interest in the subject ordinance if it is reasonably foreseeable, i.e., if it is substantially

likely, that her personal finances will change by \$250 in a 12-month period as a result of the enactment of the ordinance. Cal. Code Regs. tit.2 § 18706.

Although the above analysis suggests that Deputy Mayor Atkins could have a disqualifying interest, there exists a “public generally” exception that is applicable. Under the “public generally” exception, a City Official may participate in a municipal decision if the financial effect of the decision on the City Official’s economic interests is indistinguishable from the public generally. Cal. Code Regs. tit. 2, § 18707. In order for the exception to apply, a “significant segment” of the jurisdiction must be affected by the municipal decision in substantially the same manner as the City Official. For decisions that affect the personal expenses of a public official, the exception will apply if 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.”

You supplied our office with City Planning Department data indicating that rental units constituted fifty percent of residential occupancies in the City of San Diego in the year 2002. Moreover, according to U.S Census Bureau data for the year 2000, there were 227,411 renter-occupied housing units in the City of San Diego. Based on these figures, the “public generally” exception applies to Deputy Mayor Atkins and to any other City Official with regard to the renting of real property in the City of San Diego.

#### CITY OF SAN DIEGO ETHICS COMMISSION

By  
Stacey Fulhorst  
Executive Director

SF/s