

OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND

June 20, 2016

**REPORT TO THE CITY OF OAKLAND: ASSESSING THE POTENTIAL
FOR CONFLICTS REGARDING CONSIDERATION OF PROPOSED
TENANT PROTECTION MEASURES**



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Attachment

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TENANT PROTECTION MEASURES**

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INTRODUCTION

The Oakland City Council will consider various proposals to change aspects of the City's existing laws governing the landlord-tenant relationship. Questions have arisen regarding when public officials such as Council members and City staff must refrain from making, participating in or influencing the Council's decisions because they have a potential conflict of interest under the state Political Reform Act. This report provides general guidance regarding the circumstances in which public officials may have a potential conflict of interest and duty to recuse themselves from various possible decisions. These are complex and fact-specific determinations, however, and this memorandum should not be considered binding legal advice for any particular individual or decision. Rather, this memorandum identifies the property interests that may create a potential conflict of interest for City officials regarding various proposals.

We first summarize briefly the existing tenant protection ordinances and the proposals for change. We then summarize the conflict of interest laws and the factors to consider in applying them to the various types of financial interests at stake for City officials and employees. Finally, we look at a number of possible decisions combined with possible financial interests and discuss whether each could give rise to a possible conflict.

LEGAL FRAMEWORK

I. Summary of Existing Tenant Protection Laws and Proposed Changes

The City of Oakland has an existing Residential Rent Adjustment Program ("rent control ordinance") that, among other things, limits the amount by which a landlord can increase rents and requires landlords to provide relocation assistance payments in certain circumstances. (Oakland Mun. Code, ch. 8.22, art. I.) The ordinance generally applies to most residential rental properties constructed prior to January 1, 1983.¹ (*Id.*, § 8.22.030.) Current proposals would lower the maximum allowable annual rent increases, and eliminate the provisions that allow for greater rent increases to cover the costs of substantially improved properties.

State law, known as the Costa-Hawkins Rental Housing Act, prohibits cities from imposing rent control laws on (1) properties constructed on or after February 1, 1995, (2) all units exempt from local rent control laws as of February 1, 1995, and (3) all single family homes or homes that are separate from the title of any other dwelling unit (*e.g.*, a condominium unit). (Civ. Code, § 1954.52(a).) The latter provisions relating to single family homes and specified condominiums were phased in for cities like Oakland, which had an existing rent control law in effect when Costa-Hawkins was enacted in 1995. (*Id.*, § 1954.52(a)(3)(C).) The Act also provides that, regardless of local rent control laws, property owners may generally establish their

¹ The ordinance exempts certain narrow categories of properties built before January 1, 1983, including dwelling units subsidized by a governmental unit, agency or authority. (Oakland Mun. Code, § 8.22.030.) This memorandum addresses only the main exemptions in the ordinance. Public officials should consider whether other exemptions apply to their individual circumstances when considering whether they have a disqualifying conflict of interest.

own initial rental rates for new tenancies,² but local rent control laws can continue to regulate subsequent rental increases. (*Id.*, § 1954.53(a).)

Oakland also has a Just Cause for Eviction Ordinance (the “just cause ordinance”) that was enacted by an initiative measure. (Oakland Mun. Code, ch. 8.22, art. II.) It limits a landlord’s ability to evict a tenant without cause. It applies to most types of rental properties constructed on or before October 15, 1980, except owner-occupied duplexes and triplexes.³ (*Id.*, § 8.22.350(H).) Current proposals would eliminate the exemption from the just cause ordinance for newly constructed units; eliminate the exemption for owner-occupied triplexes; eliminate certain existing grounds for tenant eviction; and change compensatory relocation payments for tenants covered by just cause who are evicted without cause.

II. The Political Reform Act

The Political Reform Act, Government Code section 87100 et seq., prohibits public officials from making, participating in or influencing a decision that has a reasonably foreseeable material financial effect on one or more of their financial interests, or the financial interests of an immediate family member. In the context of the landlord-tenant relationship, the types of financial interests that come into play could include the following:

- (1) Interest in Real Property: real property in which the public official has an interest of \$2,000 or more (Gov. Code, § 87103(b));
- (2) Interest in Source of Income: source of income (here, rental income) of \$500 or more within previous year (*id.*, § 87103(c));
- (3) Interest in Business Entity: business entity (if public official holds properties as a business) in which public official has an investment worth \$2,000 or more (*id.*, § 87103(a)), or any business entity in which the public official is a director, officer, partner, trustee, employee or holds any position of management (*id.*, § 87103(d));
- (4) Interest in Personal Finances: public officials have a financial interest in their personal finances, including their housing and other expenses,

² This is called “vacancy decontrol,” and there are significant exceptions. If the owner terminated the tenancy with a 30-day or 60-day notice pursuant to Civil Code section 1946.1 or terminated based on a change in the terms of the tenancy, initial rental rates are still subject to local rent control rules. Other exceptions include when the owner fails to renew a government contract limiting the rent in that unit, or allows serious health or safety violations to persist for more than 60 days. (Civ. Code, § 1954.53(a) & (f).)

³ The ordinance exempts certain other narrow categories of properties built on or before October 15, 1980, including units in a hospital, skilled nursing facility, or health facility. (Oakland Mun. Code, § 8.22.350.) This memorandum addresses only the main exemptions in the ordinance. Public officials should consider whether other exemptions apply to their individual circumstances when considering whether they have a disqualifying conflict of interest.

income, assets, or liabilities, as well as those of their immediate family (*id.*, § 87103; Cal. Code Regs., tit. 2, §§ 18700(c)(6), 18702.5).

When a public official has one of these types of financial interests that could be affected by a government decision he or she is involved in, the official has to determine whether the effect on his or her financial interest is (1) foreseeable; (2) material; and (3) different from the decision's effect on the "public generally." (Gov. Code, §§ 87100, 87103.)

A. Foreseeability and Materiality of Financial Effect

If a financial interest is "explicitly involved" in the decision, such as when the financial interest is a named party or the subject of a governmental decision, foreseeability is presumed. (Cal. Code Regs., tit. 2, § 18701(a).) Otherwise, a financial effect is considered foreseeable when it "can be recognized as a realistic possibility and more than hypothetical or theoretical" (*Id.*, § 18701(b).)

1. Ownership of Real Property

A financial interest based on the ownership of real property (and not a leasehold) is the subject of a government decision, and thus explicitly involved, when the decision would "affect[] a real property interest as described in Regulation 18702.2(a)(1)-(6)." (*Id.*, § 18701(a).) That regulation declares a financial effect on a real property interest other than a leasehold is material when it "[i]nvolves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, that real property." (*Id.*, § 18702.2(a)(5).) Thus, decisions changing the restrictions placed on rental properties would have a presumptively foreseeable and material financial effect on public officials who own rental property that would be affected by the decision, and would be disqualifying unless the effect is the same as the effect on the "public generally."

2. Renting or Subletting

The test is different for leaseholders who rent and sublet properties.⁴ (*See* Cal. Code Regs., tit. 2, § 18702.2(b).) A financial effect on a leasehold interest is foreseeable when it "can be recognized as a realistic possibility and more than hypothetical or theoretical" (*Id.*, § 18701(b).) A financial effect on leaseholds is considered material if it would change the termination date of a lease, increase or decrease the potential rental value of the property, change the official's actual or legally allowable use of the real property, or impact the official's use and enjoyment of the real property. (*Id.*, § 18702.2(b).) Decisions affecting the amount of rent increase allowed, for example, likely would have a foreseeable material financial effect on public officials who rent the property in which they live, or who sublease their rental property to someone else, if those properties would be affected by the decision.

⁴ Under FPPC Regulation 18233, leasehold interests do not include interests of tenants in periodic tenancies of one month or less.

3. Source of Income

A financial effect on a source of income, such as a person who pays rent to a public official/landlord, is considered material when the source of income “will receive a measurable financial benefit or loss from the decision.” (*Id.*, §§ 18702.3(a)(2), 18702.5(a).) In addition, the effect is considered material if the decision would have an effect on a source of income’s leasehold interest, as defined in FPPC Regulation 18702.2(b). Here again, decisions that affect the maximum allowable rental increase, for example, would be presumptively foreseeable and material for public officials who rent their property to others and whose rental property would be affected by the decision.

4. Interest in Business Entity

A public official has a financial interest in any business entity in which he or she has a direct or indirect investment of \$2,000 or more. This includes an investment in one or more rental properties or an entity created to hold one or more rental properties. Regulation 18702.1(b) provides that the reasonably foreseeable financial effect of a governmental decision on a business entity in which an official has an interest is material “if a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in the price of the business entity’s publicly traded stock, or the value of a privately-held business entity.” For example, the regulation at subdivision (b)(1) provides that a decision that will “authorize, prohibit, regulate or otherwise establish conditions for an activity in which the business entity is engaged” would materially affect the business.⁵ Decisions affecting maximum allowable rents, or changing the grounds on which a tenant could be evicted, would be presumptively foreseeable and material for public officials who own business entities that lease the property to others if the property would be affected by the decision.

5. Personal Finances

A public official has a financial interest in his or her personal finances. (Cal. Code Regs., tit. 2, § 18702.5.) This would include, for example, rent payments if the public official is a tenant. Under FPPC Regulation 18702.5, however, “[i]f the governmental decision affects a business entity or real property in which the official has a financial interest, this regulation does not apply and materiality is determined under Regulation 18702.1 or 18702.2.” Thus public officials who are landlords or tenants do not have to address the personal financial effects of a decision affecting their rental property.

⁵ Regulation 18702.2(a)(8) provides that an effect on real property is material if the decision would change the income producing potential of the parcel of real property. However, if the real property contains a business entity, including rental property, and the nature of the business entity remains unchanged, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead. Thus, in this situation, we would not analyze materiality under Regulation 18702.2.

B. No Financial Effect

Note that for each of these categories, however, the decision would have no financial effect on a public official if it will not apply to his or her particular circumstances. For example, a public official whose property is exempt from rent control already under local and/or state law would not have any of his or her financial interests affected by a decision to change the maximum allowable rents for properties that are covered by rent control.

C. No Conflict if Effect on Public Official Is Indistinguishable From Effect on Public Generally

Moreover, even if a governmental decision would have a foreseeable, material financial effect on a public official's financial interest, the official does not have a conflict of interest if the effect on his or her financial interest is indistinguishable from its effect on the "public generally." As stated in FPPC Regulation 18703:

A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.

(Cal. Code Regs., tit. 2, § 18703(a).)

The test for determining whether a significant segment of the public would be affected depends on the type of financial interest affected. For interests in real property, "a significant segment" is at least 25 percent of "[a]ll real property, commercial real property, or residential real property within the official's jurisdiction." (*Id.*, § 18703(b).)⁶

We have been informed that the Housing Development Coordinator for the City of Oakland, based on Census data from 2000, has determined that the total number of residential units in the City built prior to 1979 is 135,865, and that the total number of residential units in 2015 was 171,138 (based on CA DOF "E-5 City/County Population and Housing Estimates"). The difference between 2015 and 1979 is 35,273 (20.6% of the total units in 2015). That means at least 79 percent of all residential properties in Oakland were built before 1980, which

⁶ Note that the FPPC substantially rewrote its regulations governing the "public generally" exception in 2015, and in so doing, significantly changed its approach to that exception. There has been very little written guidance to date about how the regulations will be applied, and none about how they will be applied to the types of situations analyzed in this memorandum. We have discussed these issues informally with FPPC staff, and this memorandum provides our best sense of how the FPPC would approach the questions posed. Until there is written guidance, however, the views expressed in this memorandum are preliminary only, and should not be relied upon as definitive statements of the law.

constitutes a “significant segment” of the public within the meaning of the public generally exception.

According to a May 5, 2016 “Informational Report to the Oakland Renters Act” from the Oakland City Administrator,⁷ there are 87,404 units currently covered by the just cause ordinance, which constitutes 51% of the 171,138 residential properties in Oakland. The City Administrator also reports that there are 63,981 units currently covered by the rent control ordinance, which constitutes 37% of Oakland’s residential properties. Thus, Oakland residents subject to the just cause ordinance and Oakland residents subject to the rent control ordinance each constitute a “significant segment” of the public for these purposes.

Subparagraph (c) of section 18703 lists examples of situations where an effect on a public official’s financial interest is “disproportionate” and thus unique, such as when a public official has multiple interests in similar properties or when the decision would lead to a disproportionate effect on the income producing potential of a public official’s real property.

According to the FPPC, when analyzing whether public officials who own rental properties can participate in decisions regarding rent control or just cause evictions, the “public generally” exception is applicable whenever such measures would apply to at least 25 percent of the residential properties in the jurisdiction, and the decision does not have a unique effect on that official. In such situations, there is no need to consider the effect of the decision on a public official’s business interest or on the tenant as a source of income; the exception applies regardless and the official does not have a conflict.

Furthermore, the “public generally” exception would apply to an official whose financial interest is a leasehold interest in his or her personal residence, and the decision will affect all renters of residential property in the jurisdiction. (Cal. Code Regs., tit. 2, § 18703(e)(4).)

Below, we analyze a number of potential situations and opine on whether they may give rise to a conflict of interest. We reiterate that these are general conclusions only and the personal circumstances of any public official must always be considered before making a conclusive determination.

D. Public Official’s “Participation” in Decision

It is important to bear in mind that the FPPC construes “participation” in a decision quite broadly. FPPC Regulation 18704 (b) states that a public official participates in a governmental decision when he or she “provides information, an opinion, or a recommendation” This has been construed by FPPC advice letters to include even preliminary discussions among council members, or between council members and staff. (*See Cibula Adv. Ltr.*, FPPC No. I-04-260 (Dec. 31, 2004), 2004 Cal. Fair-Pract. LEXIS 217, at *4 [“essentially all actions you take as a county supervisor may be considered regulated conduct”

⁷ This report may be found on the City’s website at <<https://oakland.legistar.com/LegislationDetail.aspx?ID=2675181&GUID=06B0B7B4-8057-47FB-AC50-1A06DA804892&Options=&Search>> by following the link at “2. View Report”.

and county supervisor participates in governmental decision “when participating in a discussion” or “meeting with county staff”]; *see also English Adv. Ltr.*, FPPC No. A-90-378 (June 22, 1990), 1990 Cal. Fair-Pract. LEXIS 462, at *5 [participation “is interpreted very broadly” by FPPC.] However, under the exception provided in FPPC Regulation 18704(d)(4), a public official may communicate with the press or the general public about the various proposals without participating in a governmental decision. (*See Curry Adv. Ltr.*, FPPC No. A-88-158 (May 10, 1988), 1988 Cal. Fair-Pract. LEXIS 425, at *11-12.)

ANALYSIS

I. Public Officials Who Own and Rent to Others, or Who Lease and Sublet to Others, Single Family Properties, Condominiums, or a Non-Owner Occupied Duplex or Triplex Built Prior to October 15, 1980

The first scenario to consider is a public official who owns and rents to others, or who leases and then sublets⁸ to others, a single-family property, condominium, or duplex or triplex where he or she does not reside in one of the units. Because in this scenario we assume the property was built prior to October 1980, it is covered by the rent control ordinance, to the extent that the ordinance is not exempted or narrowed by application of the Costa-Hawkins Act and to the extent none of the ordinance’s own exemptions apply. It also likely is covered by the just cause ordinance, unless one of its exceptions applies. As to currently circulating proposals:

**A proposal to remove the existing exemption from the just cause ordinance for owner-occupied triplexes* would have no effect on an official who does not own or lease such a property. He or she would not have a conflict with respect to this decision and may participate.

**A proposal to remove the existing exemption from the just cause ordinance for units built after October 1980* would have no effect on officials who own units built prior to that date. He or she would not have a conflict and may participate in this decision.

**A proposal to change the grounds on which a tenant can be evicted, or to require relocation payments to tenants covered by just cause who are evicted without fault under certain circumstances, or to change the amount of those payments,* might have a foreseeable material financial effect on a number of the public official’s financial interests. However, the effect on a public official’s real property interest would likely be indistinguishable from its effect on the public generally. Based on information we received from the City, 51 percent of all residential real property in Oakland is subject to the just cause ordinance. Thus, a significant segment of residential properties in Oakland would be affected by this decision. Unless there are

⁸ The rent control ordinance defines an “owner” as “any owner, lessor or landlord . . . of a covered unit that is leased or rented to another . . .” (Oakland Mun. Code, § 8.22.020), and the Just Cause For Eviction Ordinance defines a “landlord” as “an owner of record, or lessor or sublessor of an owner of record, or any other person or entity entitled either to receive rent for the use or occupancy of any rental unit . . .” (*Id.*, § 8.22.340.) Thus, a public official who sublets a unit would be treated the same as a public official who owns and rents a unit, under both ordinances.

facts indicating that a public official's real property interest would be affected in a "unique" way when compared to the significant segment as a whole, a public official does not have a conflict in this situation and he or she may participate in the decision.

**A proposal to remove the existing exemption from the rent control ordinance for owner-occupied triplexes would not have any effect on a single family property, a condominium, or a duplex or triplex that is not owner-occupied. Public officials holding this type of interest do not have a conflict and may participate in the decision.*

**A proposal to lower the annual maximum rent increase on properties covered by the existing rent control ordinance, which applies to some properties built prior to October 15, 1980, would have a foreseeable material financial effect on an official's financial interests if the official's property is currently subject to Oakland's rent control measure. Based on information we received from the City, 37 percent of all residential real property in Oakland is subject to the rent control ordinance. Thus, a significant segment of residential properties in Oakland would be affected by this decision, and the public generally exception should apply, absent unique circumstances that apply to a particular public official.*

In addition, this decision would have no effect on an official whose property is not currently subject to Oakland's rent control ordinance. He or she would not have a conflict and may participate in this decision.

**A proposal to eliminate the current ability of an owner or landlord to pass through up to one-half of the rent program fee to tenants. The fee applies to residential rental units that are subject to the rent control ordinance, the just cause ordinance, or both. This would have a foreseeable material financial effect on real property owners, on public officials who have leasehold interests and sublet their properties, on public officials with a financial interest in a business entity, and on tenants who are sources of income to the public official.*

Here again, however, absent unusual circumstances for a particular individual, the public generally exception would apply because a significant segment of all residential properties in Oakland would be affected. Thus public officials under this scenario would not have a conflict with respect to this decision and may participate.

II. Public Officials Who Own and Rent to Others, or Who Lease and Sublet to Others, Single Family Properties, Condominiums, or a Non-Owner Occupied Duplex or Triplex Built Between October 16, 1980 and December 31, 1982

Public officials who own and rent, or lease and sublet, rental property built between October 16, 1980 and December 31, 1982 may be currently subject to the rent control ordinance, to the extent that application of the ordinance to their property has not been exempted or narrowed by the Costa-Hawkins Act and to the extent none of the ordinance's own exemptions apply. Such officials are not, however, subject to the just cause ordinance. A number of proposals are under consideration that could affect these officials.

**A proposal to remove the existing exemption from the just cause ordinance for owner-occupied triplexes. This would have no impact on officials who own and rent a single-*

family property, a condominium, or a duplex or triplex that is not owner-occupied, so public officials holding these types of interest do not have a conflict and may participate in the decision. Moreover, properties built after October 1, 1980 are exempt from just cause. Therefore, this proposal would have no impact on owner-occupied triplexes unless it is combined with a proposal to change the effective date of just cause.

**A proposal to remove the existing exemption from the just cause ordinance for units built after October 15, 1980 would have a foreseeable material financial effect on a public official who owns and rents, or leases and sublets, rental property built between October 16, 1980 and December 31, 1982 because it would make the just cause ordinance applicable to such units. The effect on a public official's real property interest would likely be distinguishable from its impact on the public generally because less than 25 percent of Oakland residential properties would be affected. Public officials with this type of interest likely would have a conflict that would require them to recuse themselves from participation in the decision.*

**A proposal to lower the annual maximum rent increase on properties covered by the existing rent control ordinance would have a foreseeable material financial effect on an official only if his or her property is subject to the rent control ordinance. If it has been exempted by operation of the Costa-Hawkins Act or the ordinance's own exceptions, the official has no conflict. If it has not been exempted, the official may have a conflict. However, for the reasons already described, the public generally exception should apply absent unique circumstances applicable to the official.*

**A proposal to eliminate the current ability of an owner or landlord to pass through up to one-half of the rent program fee to tenants. The rent program fee is imposed on landlords who are subject to the rent control ordinance, the just cause ordinance, or both. For the properties at issue here, however, all are exempt from just cause, but at least some would be subject to rent control. With respect to those officials, the public generally exception would apply because a significant segment of all residential properties in Oakland would be affected either because the rent control ordinance, the just cause ordinance, or both ordinances apply to them.*

III. Public Officials Who Own and Rent to Others, or Who Lease and Sublet to Others, Single Family Properties, Condominiums, or a Non-Owner Occupied Duplex or Triplex Built After December 31, 1982

Public officials who own and rent, or lease and sublet, rental property built on or after January 1, 1983 are not covered by the existing rent control law or the just cause ordinance. A number of proposals are under consideration that could affect these public officials.

**A proposal to remove the existing exemption from the just cause ordinance for owner-occupied triplexes. This would have no impact on officials who own and rent other types of property, including a single-family residence, a condominium, or a duplex or triplex that is not owner-occupied, or an owner-occupied duplex. Public officials with those interests do not have a conflict and may participate in the decision.*

**A proposal to remove the existing exemption from the just cause ordinance for units built after October 1980.* This would have a foreseeable material financial effect on public officials with real property interests of the type described above, which currently are not subject to the just cause ordinance, because it would change the restrictions placed on those properties. The effect on a public official's real property interest likely would be distinguishable from its impact on the public generally because fewer than 25 percent of residential properties were constructed after 1980. Thus a public official with one of these interests would have a conflict and would be required to recuse his or herself from this decision.

**A proposal to require landlords subject to the just cause ordinance to make compensatory payments when they execute a no-fault eviction.* Rental units constructed on or after January 1, 1983 are not currently subject to just cause, so public officials who own or lease such a unit do not have a conflict and may participate in the decision.

**A proposal to limit the bases on which a landlord subject to the just cause ordinance can evict a tenant* similarly will have no financial impact on public officials who own or lease rental properties constructed on or after January 1, 1983 because those properties are not currently subject to the just cause ordinance. Public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to remove the existing exemption from the rent control ordinance for owner-occupied triplexes* would have no financial effect on these officials because their properties are not subject to the rent control ordinance in any event by virtue of having been constructed on or after January 1, 1983.

**A proposal to limit the maximum annual rent increase for units covered by rent control* would have no financial impact on public officials who own or lease residential property constructed on or after January 1, 1983 because such properties are not covered by Oakland's rent control law.

**A proposal to prohibit a landlord from passing through to tenants any portion of the rent program fee* would have no financial impact on public officials who own or lease residential property constructed on and after January 1, 1983. This fee currently applies to residential rental units that are subject to the rent control ordinance, the just cause ordinance, or both. The proposal would have no financial effect on public officials who own or lease rental property constructed after January 1, 1983, because they currently are not subject to either of those laws. Public officials holding this type of interest do not have a conflict and may participate in this decision.

IV. Public Officials Who Own and Rent an Owner-Occupied Triplex Built Prior to October 15, 1980

Owner occupied triplexes built prior to October 15, 1980 currently are exempt from the rent control ordinance and the just cause ordinance.

**A proposal to repeal the exemption from just cause for such units.* This provision would directly affect public officials who have interests in owner-occupied triplexes

built prior to October 1980, because they currently are exempt from just cause. For those who own such properties, the financial effect on their real property interests would be foreseeable and material. It is unlikely that the public generally exception would apply; although we do not know exactly how many owner-occupied triplexes there are in Oakland, it seems implausible that there are enough to constitute 25 percent of all residential real properties in the city. Thus, public officials would have a conflict in this situation and would be required to recuse themselves from participation in the decision.

**A proposal to remove the exemption from the just cause ordinance for rental units constructed on or after October 16, 1980.* This decision would have no financial effect on public officials who own triplexes constructed before that date, and therefore they do not have a conflict and may participate in the decision.

**Proposals to require that landlords subject to the just cause ordinance make compensatory payments to tenants when they execute no-fault eviction, or to limit the bases on which a landlord subject to just cause can evict a tenant.* Owner-occupied triplexes currently are exempt from the just cause ordinance, so public officials holding this type of interest do not have a conflict and may participate in these decisions.

**A proposal to repeal the exemption from the rent control ordinance for owner-occupied triplexes.* This proposal could directly affect public officials who have interests in owner-occupied triplexes built prior to 1983. For those who own such properties, the financial effect on their real property interests would be foreseeable and material if the properties have not been exempted from rent control by operation of Costa-Hawkins. It is unlikely that the public generally exception would apply, because the number of owner-occupied triplexes is unlikely to constitute 25 percent of the residential properties in Oakland. Thus, a public official could have a conflict in this situation requiring him or her to recuse themselves from participation in the decision.

**A proposal to limit the maximum allowable rent increase for units covered by the rent control ordinance.* Currently, owner-occupied triplexes are exempt from the rent control ordinance, so public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to prohibit owners or landlord from passing through any portion of the rent program fee to tenants.* The fee applies to residential rental units that are subject to the just cause ordinance, the rent control ordinance, or both. Owner-occupied triplexes currently are exempt from both ordinances, so public officials holding this type of interest do not have a conflict and may participate in this decision.

V. Public Officials Who Own and Rent an Owner-Occupied Triplex Built Between October 16, 1980 and December 31, 1982

Owner occupied triplexes built between October 16, 1980 and December 31, 1982 are currently exempt from both the just cause ordinance and the rent control ordinance, provided that the owner has occupied one of the units continually for at least a year. A number of proposals currently under consideration could affect these public officials.

**A proposal to remove the existing exemption from the just cause ordinance for owner-occupied triplexes.* This decision would not impact public officials with owner-occupied triplexes that were built during this time period because the just cause ordinance has a blanket exemption for all properties built after October 15, 1980. Public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to remove the existing exemption from the just cause ordinance for units built after October 15, 1980* similarly would not impact public officials with owner-occupied triplexes built during this time period unless it were combined with a proposal to remove the exemption from just cause for owner-occupied triplexes. If it is not so combined, public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to remove the existing exemption from the rent control ordinance for owner-occupied triplexes.* It is beyond the scope of this memorandum to analyze how the Costa-Hawkins exemption for pre-existing local rent control ordinances works when those ordinances subsequently are amended to include a new category of properties. If such an amendment is allowable under Costa-Hawkins, then the proposal could have a foreseeable material financial effect on public officials with this type of real property interest because it would make the rent control ordinance applicable to such units. The public generally exception is unlikely to apply. Thus, public officials with this type of interest could have a conflict requiring recusal.

**A proposal to eliminate the current ability of an owner or landlord to pass through up to one half of the rent program fee to tenants.* The rent program fee applies to units subject to the rent control ordinance, the just cause ordinance, or both. The rental properties in this scenario, however, are not currently subject to either ordinance, so the proposal would have no effect on their financial interests, and they may participate in the decision.

VI. Public Officials Who Own and Rent an Owner-Occupied Triplex Built After December 31, 1982

Currently, owner-occupied triplexes built on or after January 1, 1983 are exempt from the just cause ordinance and the rent control ordinance.

**A proposal to remove the existing exemption from the just cause ordinance for owner-occupied triplexes.* Although this provision would remove the existing exemption from the just cause ordinance for owner-occupied triplexes, there also is a separate existing exemption for all rental units constructed after October 15, 1980. This proposal thus would not have a financial effect on public officials with owner-occupied triplexes built on or after January 1, 1983 unless it is combined with a proposal to change the effective date of just cause. In the absence of such a combination, public officials with this interest may participate in the decision.

**A proposal to repeal the exemption from just cause for buildings constructed after October 1980.* As discussed above, a separate provision of just cause exempts owner-occupied triplexes. Unless it too is changed, a proposal to apply just cause to newly constructed units would have no financial effect on owner-occupied triplexes constructed on or after

January 1, 1983, and a public official with such a triplex would not have a conflict, and could vote on the proposal.

**A proposal to require compensatory payments to tenants who are subject to no-fault evictions, or to change the grounds for evictions.* These proposals would change provisions of the just cause ordinance, which currently is not applicable to owner-occupied triplexes. Therefore public officials who have such a triplex would not have a conflict and could participate in the decision.

**A proposal to repeal the exemption from the rent control ordinance for owner-occupied triplexes.* Taken in isolation, this proposal would have no financial effect on public officials with owner-occupied properties constructed on or after January 1, 1983 because such units are exempt by virtue of their construction date. Public officials with such a property could participate in the decision.

**A proposal to repeal the existing cap on annual maximum allowable rent increases.* As discussed above, owner-occupied triplexes are currently exempt from the rent control ordinance. Public officials holding this type of interest do not have a conflict and may participate in the decision.

**Proposal to prohibit an owner or landlord from passing through to the tenant any portion of the rent program fee.* As previously noted, the rent program fee applies to residential rental units that are subject to the just cause ordinance, the rent control ordinance, or both. Owner-occupied triplexes are currently not subject to either ordinance. This proposal thus would have no financial impact on a public official owning an owner-occupied triplex, and he or she may participate in this decision.

VII. Public Officials Who Own and Rent an Owner-Occupied Duplex Built Prior to October 15, 1980

Owner-occupied duplexes built on or before October 15, 1980 currently are exempt from the just cause Ordinance and the rent control ordinance.

**A proposal to repeal the exemption from the just cause ordinance for owner-occupied triplexes or for buildings constructed on or after October 16, 1980.* Neither of these proposals would have any financial impact on a public official who owns a duplex built before October 15, 1980. The official can participate in the decision.

**Proposals to require compensatory payments to tenants who are subjected to no-fault evictions, or to change the allowable grounds for evictions.* Neither of these proposals would have a financial effect on an owner-occupied duplex because currently such properties are not subject to the just cause ordinance. Public officials with such property may participate in the decision.

**A proposal to remove the existing exemption from rent control for owner-occupied triplexes.* This would have no financial impact on a public official who owns an owner-occupied duplex, and he or she can participate in the decision.

**A proposal to limit the amount of annual allowable increases allowed for rent control units.* This would have no financial effect on public officials who own owner-occupied duplexes because such units are exempt from the rent control ordinance.

**A proposal to prohibit an owner or landlord from passing through the costs of the rent program fee to tenants.* Owner-occupied duplexes currently are not subject to the just cause or rent control ordinances, and do not pay the rental program fee. Public officials with such a property interest do not have a conflict and may participate in this decision.

VIII. Public Officials Who Own and Rent an Owner-Occupied Duplex Built Between October 16, 1980 and December 31, 1982

Owner-occupied duplexes built between October 16, 1980 and December 31, 1982 currently are exempt from both the just cause ordinance and the rent control ordinance.

**A proposal to remove the existing exemption from the just cause ordinance for owner-occupied triplexes* would have no effect on the owner of an owner-occupied duplex. Public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to remove the existing exemption from the just cause ordinance for units built after October 15, 1980* would have no effect on the owner of an owner-occupied duplex by itself because the existing exemption for owner-occupied duplexes would remain in place. Public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to remove the existing exemption from the rent control ordinance for owner-occupied triplexes* would have no effect because the exemption for owner-occupied duplexes would remain in place. Public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to eliminate the current ability of an owner or landlord to pass through up to one half of the rent program fee to tenants* would have no effect because owner-occupied duplexes are not subject to either the just cause ordinance or the rent control ordinance, and thus, the program fee does not apply to these properties. Public officials holding this type of interest do not have a conflict and may participate in the decision.

IX. Public Officials Who Own and Rent an Owner-Occupied Duplex Built After December 31, 1982

Owner-occupied duplexes built after January 1, 1983 currently are exempt from both the just cause and rent control ordinances.

**A proposal to repeal the exemption from the just cause ordinance for owner-occupied triplexes* would have no financial effect on a public official who owns an owner-occupied duplex, and he or she can participate in the decision.

**A proposal to repeal the exemption from just cause for residential units constructed on or after October 16, 1980.* By itself this would have no financial effect on public officials who own owner-occupied duplexes constructed after January 1983 because such units are subject to a separate exemption for owner-occupied duplexes and triplexes. Such public officials thus have no conflict and can participate in the decision.

**Proposals to require that landlords subject to the just cause ordinance make compensatory payments to tenants when they execute no-fault evictions, or to limit the bases on which evictions can occur.* Because owner-occupied duplexes currently are exempt from the just cause ordinance, public officials holding these types of interest do not have a conflict and may participate in the decision.

**A proposal to repeal the exemption from rent control for owner-occupied triplexes.* This proposal would have no financial effect on a public official who owns a duplex, and he or she can participate in the decision.

**A proposal to limit annual maximum increases for units subject to rent control.* Because owner-occupied duplexes are exempt from the rent control ordinance, public officials holding this type of interest do not have a conflict and may participate in the decision.

**A proposal to limit landlords' ability to pass through any portion of the rent program fee to tenants.* Owner-occupied duplexes currently are not subject to the just cause or rent control ordinances, and thus do not pay the rent program fee. Public officials holding this type of interest do not have a conflict and may participate in this decision.

CONCLUSION

As this memorandum demonstrates, determining whether a particular public official has a conflict of interest in a particular decision regarding proposals to change aspects of Oakland's renter protection ordinances is a complex and fact-specific endeavor. In addition, while not discussed in depth here, it is important to note that the FPPC's rules regarding segmentation of a decision may allow officials who have a conflict to abstain from one in a series of decisions, but then participate in later decisions. (Cal. Code Regs., tit. 2, § 18706.)

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