

Date: February 17, 2020

RE: Public Concern regarding Conflicts of Interest – Both the actual and the appearance of same

Honorable Mayor and Members of the Alameda City Council;

There have been concerns expressed frequently over the past severable years regarding the City's growing unfunded pension liability and the City's continuing inability to acquire and reserve sufficient funds to optimally maintain its infrastructure and level of public services. And I, as a long time resident of the City, would add my concerns to those expressed by countless fellow residents including several former and current members of the Council.

As a voter in the City I seek to elect officials who have demonstrated a track record of fiscal responsibility towards the City and who have honored their fiduciary obligation to maintain the City's financial health. I believe that the public consensus would be to include as part of this responsibility the optimal negotiation, to the City's benefit, with the many people, companies, corporations, and unions that provide materials and services for the City. This would include negotiations with the City's employees and their representative unions and other organizations.

As you are undoubtedly aware, the people of the State of California have taken this fiduciary responsibility very seriously, especially as it applies to elected, appointed, and employed officials. And to codify this concern the voters passed Proposition 9 establishing the Political Reform Act of 1974. This Act established laws and regulations intended to prohibit not only actual conflicts of interest but also the **appearance** of such conflicts.

The following is taken from the State's Fair Political Practice Commission's published guidelines regarding conflicts of interest. (Emphasis added.) :

"It is universally recognized that certain elected public officials, such as **city councilmembers**, city managers and city attorneys, must refrain from decision-making where a conflict of interest exists. These persons hold high-level positions of trust in government. However, the Act's conflict of interest prohibition reaches much further than high-level state and local officials. The Act's conflict of interest disclosure and **disqualification rules** apply to thousands of local and state public employees and officials working throughout California.

"The Public: The Act **relies** on individual citizens to monitor the decision-making of their elected and appointed representatives to identify whether they have a conflict of interest with respect to a specific decision. Much of the enforcement of the Act's conflict of interest provisions is based on citizen complaints.

". . . In fact, preventing conflicts of interest was of such vital importance to the voters that the Act not only prohibits actual bias in decision-making but also "seeks to forestall ... the appearance of possible improprieties.""

Note that the Act relies on the public's being able to **monitor** the decision making process. It would require a real stretch of the imagination to believe that such monitoring can be satisfactorily and

responsibly accomplished when such decisions are virtually always made in sessions closed to public observation and scrutiny.

On researching this issue I learned that in order for a transfer of money to be considered when evaluating its potential for creating a conflict of interest it must amount to a total of \$500 or more and have been paid to the official during the twelve months preceding the date the decision is made. In such cases it would require the recipient to refrain from engaging in any decision making process involving the donor. Unfortunately, the Fair Political Practices Commission has determined that the payment would have to be made to the recipient for his/her personal use. The effect of this questionable and possibly arbitrary interpretation of the ACT is that under the FPPC guidelines campaign contributions are not currently subject to The Act. Note, however, that the City's Conflict of Interest Code doesn't make this distinction. It says only that: "A city council member or the mayor has a conflict of interest when he or she has a **substantial financial interest** in an official action*. And in this regard, I believe that most voters would consider donations of thousands of dollars to an elections campaign to represent a *significant financial interest*.

To my mind and those of many of my acquaintances, the failure of the FPPC to include campaign contributions under The Act is based on an arguably absurd distinction being made **by them** between the corrosive effect of money and other assets given to candidates directly and those given to them through their election campaign committees. I would argue, however, that regardless of the path followed by the payment the recipient candidate has benefited personally and can be expected to show at least some **bias** in favor of the source of the funds received.

Regardless of what the regulations may or may not require, it would seem prudent, if not mandatory, for the City Council, as a fiduciary body responsible for maintaining the integrity of the City's resources and confidence in the political processes, to demand the highest standard of behavior from its members. The Council should take this responsibility seriously and prohibit not only the glaringly obvious conflicts of interest related to the actions of its members, but also any **appearance** of such conflicts. And to this end, as the FPPC requires for proven cases of conflict of interest, the Council should, require and insist that members should **recuse** themselves from participation in any and all negotiations involving their campaign donors and associated organizations whether there is an actual conflict as defined by the regulations or only the appearance of such conflicts.

I would encourage the Council to immediately adopt a policy to require such recusal and to consider putting forth a **charter amendment** to make recusal in such cases mandatory. In addition, steps should be taken to **prohibit** candidates from accepting donations of \$500 or more from anyone who does business with the City, including public employees and their unions.

I am making these recommendations with the expectation that the Council will consider them conscientiously and honestly and take appropriate action to insure the continued integrity of the City's political and financial processes and trust in its elected officials. I am also suggesting that the City refine its Conflict of Interest Code to specifically include election campaign donations as cause for mandatory recusal from participation in decisions related to donors as required by the Political Practices Act of 1974 and to prohibit accepting any donations over \$500 from public employees and their unions.

Respectfully,

Jay Garfinkle

***2.26.020 City council members or mayor – Conflict of interest.** A city council member or the mayor has a conflict of interest when he or she has a substantial financial interest in an official action.