



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 17, 2025

Susanne Meyer Brown  
City Attorney  
City of Concord  
1950 Parkside Drive  
Concord, CA 94519

Re: Your Request for Informal Assistance  
**Our File No. I-25-004**

Dear Ms. Brown:

This letter responds to your request for advice regarding Section 84308 of the Political Reform Act (the “Act”).<sup>1</sup> Because your question is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

Note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Under the Act, do governmental decisions amending the City’s Residential Tenant Protection Program Ordinance, including annual reviews of rent increase caps and the potential exemption of single-family homes from certain provisions of the Ordinance, constitute proceedings subject to Section 84308?

### CONCLUSION

It is possible that a governmental decision amending the Ordinance could qualify as an entitlement for use proceeding depending on various factors, including whether the decision targets a small number of affected individuals. In general, however, broad amendments of the Ordinance affecting many and diverse interests, including annual reviews and changes to the rent increase cap

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

and the potential exemption of single-family homes from certain provisions of the Ordinance, do not qualify entitlement for use proceedings for purposes of Section 84308.

### **FACTS AS PRESENTED BY REQUESTER**

The City of Concord has an ordinance establishing a Residential Tenant Protection Program (“Ordinance”). The Ordinance was introduced on February 13, 2024, adopted on March 5, 2024, and (due to an unsuccessful referendum signature-gathering effort) became effective on April 19, 2024.

The Ordinance reflects a policy decision of the Council to offer residential tenant protections and was initiated by the Council after years of discussion, significant public outreach and participation including a community survey, mailers, door knockers, two community meetings, and ten Council meetings from January 17, 2023 through May 14, 2024, as well as a failed referendum.

The Ordinance includes registration requirements and just cause for eviction provisions that apply to multifamily units and single-family homes/condominiums for rent in the City; requires relocation payments in different amounts for multifamily units versus single-family homes/condominiums; and obligates landlords to offer written leases of varying timeframes and provide or record certain written notices (e.g. notices of tenant rights under the Ordinance, notices to comply with the Ellis Act).

The annual rent increase caps in the Ordinance only apply to multifamily units. The Ordinance at Section 19.40.040(c) further provides that “[t]he annual allowable rent increase amount shall be reviewed annually by the City Council.” While the Council will annually review the Ordinance and rent increases to make adjustments to the larger policy issues as they deem appropriate, the Ordinance provides for rent appeals to an independent hearing officer rather than to the City Council. Accordingly, the Council will not be involved in the individualized application and enforcement actions taken under the Ordinance.

As referenced above, all landlords subject to the Ordinance must register their properties with the City’s rent registry program. Registration does not affect whether or not landlords may rent out their properties or operate a rental business, but rather is a mechanism whereby the City gathers rental information and charges fees to (partially) cover Ordinance implementation costs. Non-registration prohibits landlords from raising their rents and triggers late fees and penalties until compliance occurs. Importantly, failure to register rental properties does not dictate whether landlords may operate a rental business. Implementation of the Ordinance, including the registration process, has been expressly delegated to City staff, without appeal rights to the City Council.

Similarly, the failure of a landlord to comply with other aspects of the Ordinance does not affect their ability to operate a rental business, it merely serves as a tenant defense in the event of a dispute.

Councilmember Pablo Benavente was elected to the City Council in 2024, resigned from his position on an unrelated advisory committee, and was sworn in to the City Council on December 10, 2024. Prior to his election, Councilmember Benavente had no City role with any oversight or connection to the Ordinance. During his campaign, Councilmember Benavente’s platform included

potential revisions to the Ordinance to exclude single-family homes/condominiums from just cause for eviction provisions and/or adjust the annual allowable rent increase amount for multifamily units.

On Friday, December 13, 2024, Councilmember Benavente met with the Concord City Manager to discuss the Ordinance.<sup>3</sup> A potential date for the City Council's annual review of the allowable rent increase was communicated to Councilmember Benavente and he was advised to review his list of campaign contributions in the event they could be perceived to trigger a Section 84308 violation should he propose or participate in Ordinance amendment decisions.

Councilmember Benavente accepted four separate contributions in the amount of \$999 each (one October 2, 2024, two on October 3, 2024, and one October 4, 2024) from employees/owners of a property management company, and a contribution from the California Real Estate Political Action Committee (\$1,000 on October 16, 2024) (collectively, referred to herein as "contributors"). Councilmember Benavente discussed the Ordinance with each of the property management company representatives; those conversations addressed various issue, such as raising rent caps, exempting single-family homes, and one contributor's desire to have the Ordinance repealed. Councilmember Benavente's discussion with the California Real Estate Political Action Committee focused on homeless issues.

## ANALYSIS

The Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that officers of government agencies are not biased by contributors or potential contributors of significant campaign contributions who might appear before them in a proceeding involving a license, permit, or entitlement for use. Section 84308 is aimed not only at actual corruption or bias but also at the appearance of corruption or bias that may occur if a public officer were to solicit or accept contributions from a party, participant, or their respective agent while a proceeding is pending before the public officer's agency or has recently concluded.

Section 84308(c)(1) provides:

Before rendering any decision in a proceeding involving a license, permit, or other entitlement for use, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than five hundred dollars (\$500) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use if the officer has willfully or knowingly received a contribution in an amount of more than five hundred dollars (\$500) within the preceding 12 months from a party or a party's agent, or from any participant or a

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<sup>3</sup> Beyond these facts, we are unaware of the substance of the conversation Councilmember Benavente had with the City Manager regarding the Ordinance. If the conversation included discussion of changes targeting a small number of affected individuals, it is possible that a violation of Section 84308 may have already occurred. However, we are unable to provide advice regarding past conduct. Our analysis here is limited to general assistance regarding when a future proceeding may constitute an "entitlement for use proceeding" under Section 84308.

participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

Section 84308's restrictions and requirements only apply in the context of a "proceeding involving a license, permit, or other entitlement for use." With limited exceptions not relevant here, Section 84308 defines "[l]icense, permit, or other entitlement for use" to mean "all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises." Regulation 18438.2 further defines the phrase "proceeding involving a license, permit, or other entitlement for use" to mean:

...any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use, that does not solely involve purely ministerial decisions and is:

- (1) Applied for by the party;
- (2) Formally or informally requested by the party; or
- (3) A contract between the agency and the party or a franchise granted by the agency to the party, other than a contract that is competitively bid, a labor contract, or a personal employment contract.

(Regulation 18438.2(a).)

Additionally, in *City of Agoura Hills v. Local Agency Formation Com.* (1988) 198 Cal.App. 3d 480, the California Court of Appeal explained, "[Section] 84308 does not cover proceedings in which general policy decisions or rules are made or where the interests affected are many and diverse." (*Id.* at pp. 497-498, citing *Fallon* Advice Letter, No. A-85-050.) Also, we have previously cautioned that the mere classification of an action as a "rulemaking proceeding" does not inherently indicate the proceeding will fall outside the scope of Section 84308.<sup>4</sup> (See, e.g., *Bakker* Advice Letter, No. A-24-004; *Waldman* Advice Letter, No. I-08-005; *Dorsey* Advice Letter, No. I-06-128, citing *Quadri* Advice Letter, No. A-02-096.)

Recently, in the *Burt* Advice Letter, No. A-24-110, we advised that city council decisions relating to street closures in a certain area of the city, impacting businesses and their ability to offer outdoor dining options, did not qualify as an "entitlement for use proceeding." We explained that the decisions were not initiated by a party, did not involve contracts with a party, and were intended to benefit the community at large. Further, the decisions would impact an estimated 80-110 businesses with varying opinions on the street closures. Also, in the *Bakker* Advice Letter, No. A-24-004, we advised that a city's amendment of a downtown specific plan to eliminate minimum

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<sup>4</sup> Relatedly, a currently proposed amendment to Regulation 18438.2 would further specify that a "proceeding involving a license, permit or other entitlement for use" may include "any proceeding to grant, deny, revoke, restrict, or modify, a license, permit or other entitlement for use," that is non-ministerial and is "[a]n action, initiated by a state or local agency, that implicates or targets a party, or limited number of parties . . . ." (See Proposed Amendment to Regulation 18438.2, January 2025 Commission Meeting Agenda.)

parking requirements and modify parking regulations did not qualify as an “entitlement for use proceeding” for similar reasons.

Given the various possible decisions that could be made in amending the Ordinance, we cannot feasibly advise that all decisions would or would not qualify as entitlement for use proceedings for purposes of Section 84308. For example, if an Ordinance amendment targeted the property rights of a limited number of parties—that is, far less than the number of landlords and tenants generally affected by the Ordinance—the governmental decision could qualify as an entitlement for use proceeding. In general, however, decisions broadly amending the Ordinance, including annual reviews of the rent increase cap included in the Ordinance and the exemption of single-family homes from just cause for eviction provisions, would not qualify as entitlement for use proceedings. Although individual constituents may support such decisions, the decisions would not be initiated by those constituents, nor would they involve contracts between the City and certain parties or be directed at a limited number of parties. Rather, such decisions are general rulemaking proceedings impacting many diverse interests, including many landlords and tenants in the jurisdiction. As such, Section 84308 would not be implicated and Councilmember Benavente could take part in those decisions, despite having received contributions from persons interested in and potentially affected by those decisions.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Senior Counsel, Legal Division

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