



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 4, 2025

Rebecca Moon
Sunnyvale City Attorney
456 West Olive Ave
Sunnyvale, CA 94088-3707

Re: Your Request for Informal Assistance
Our File No. I-25-008

Dear Ms. Moon:

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

Does Section 84308 apply to “routine approval of contractor payments” approved by the City Manager on the City Council’s consent calendar so that they are an “entitlement for use proceeding” as defined by Section 84308?

CONCLUSION

So long as the City Council has no discretion as to whether the payments are made or as to the amount of the payments, the action to approve payments on the consent calendar meets the definition of a “ministerial” action and would not be subject to Section 84308.

FACTS AS PRESENTED BY REQUESTER

The Sunnyvale City Charter, Section 802(6) states that one of the duties of the City Manager is to “[s]ubmit to the City Council, at each meeting for its approval, the list of all claims and bills approved for payment by him/her.” This requirement goes back to Sunnyvale’s original Charter

¹ 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.

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

from 1949. Under Sunnyvale Municipal Code, Section 2.08.040(c), “The city manager shall: (1) Be the awarding authority for every procurement of goods and/or services for which the cost to the city is two hundred fifty thousand dollars or less in any one transaction” and (d) “The city council shall be the awarding authority for every procurement of goods and/or services for which the cost to the city is greater than two hundred fifty thousand dollars in any one transaction.”

Staff regularly includes an item on the City Council’s consent calendar titled “Approve the List(s) of Claims and Bills Approved for Payment by the City Manager”—for example, the most recent staff report included 123 pages of payments to various vendors, contractors, consultants, and even retirees who receive health insurance reimbursements from the city as part of their vested retirement benefits.

All of the payments on the list of claims and bills were approved by the City Manager either (a) pursuant to his delegated authority of up to \$250,000 or (b) pursuant to a contract over \$250,000 that was previously approved by the City Council, or other action by City Council (e.g. approving retirement benefits). There is no process by which the City Council could reverse any of these payments.

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 the appearance of corruption or bias. Thus, Section 84308 prohibits an officer of an agency from soliciting, directing, or accepting contributions of more than \$500 from a party, participant, or from any participant or a participant’s agent while the proceeding is pending and for the following 12 months. (Section 84308(b).)³ And, if the officer has received such a contribution in the preceding 12 months, the officer must disclose this on the record and not participate in the proceeding.⁴

At issue is whether the City Council’s approval of payments on the list of claims and bills approved by the City Manager would be subject to Section 84308. Section 84308 (a)(5)(A) defines “license, permit, or other entitlement for use,” in relevant part, to include “all contracts” while subdivision (a)(5)(B) excludes from this definition several categories of contracts, including competitively bid contracts, labor contracts, and contracts between two or more agencies. Of significance here, we also note that recent legislation also amended Section 84308 to exclude for this definition contracts valued under fifty thousand dollars. (Section 84308 (a)(5)(B)(iv).) Regulation 18438.2(a) states that a “proceeding involving a license, permit or other entitlement for use” means any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other

³ Section 84308(d)(2) provides that an officer who accepts, solicits, or directs a contribution under such circumstances may cure the violation by returning the contribution or excess amount within 30 days, but only if the officer did not knowingly and willfully accept, solicit or direct the prohibited contribution.

⁴ Section 84308(d)(1) provides that an officer may participate in the proceeding if the contribution is returned within 30 days of when the officer knew or should have known about the contribution and the proceeding.

entitlement for use, that does not solely involve purely ministerial decisions, and includes, in relevant part, a “contract between the agency and the party.”

For purposes of Section 84308, Council approval of payments already made by the City Manager, pursuant to the City Manager’s independent authority, as a consent item will meet the definition of a “ministerial” action, so long as the official has no discretion as to whether the payments will be made and the amount that will be paid. Under Regulation 18704(d)(1), an official is not “making or participating in making a government decision” if the official’s actions are solely ministerial, secretarial, manual, or clerical. Previously, the Commission has advised that in a situation in which a public official has “little discretion” and there are “clear objective criteria” for a decision,” the officer would be making a ministerial decision . . .” (*Greenwald* Advice Letter, No. I-93-220.) The exception for ministerial actions is not specifically defined in the Act and has been narrowly construed. (*Torrance* Advice Letter, No. A-94-043.) “Ministerial” actions include those that do not involve discretion as to the results or performance or are pursuant to a clear objective. (*Id.*)

In the *Smith* Advice Letter, No. A-93-215, we advised that a city councilmember with a financial interest in a utility company could vote to approve payment of the city’s monthly utility bills if the city council had no discretion as to whether or how much will be paid, as such action would be deemed a ministerial act. If there is a dispute over whether or how much will be paid, the action is not ministerial, and the official would be prohibited from participation. Likewise, in the *Brady* Advice Letter, No. A-22-118 we addressed a warrant action that was a consent item for approval of payments already made by the city, including those made under a preexisting contract with a waste-hauling service provider, met the definition of a ministerial action, as long as the councilmember had no discretion as to whether the payment was made or as to the amount of the payment.

Here, the City Council will be considering items on the consent calendar, to approve payments made by the City Manager. All of the payments on the list of claims and bills were approved by the City Manager under authority delegated under the City Charter or through obligations previously authorized by the City Council, and there is no process by which the City Council could reverse any of these payments. Based on these facts, the approval of payments already made by the City Manager as a consent item is an action that meets the definition of a “ministerial” and would not be subject to Section 84308.

If you have other questions on this matter, please contact me at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

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By: Zachary W. Norton
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