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May 17, 2016

Abel Guillén
City Councilmember
One Frank Ogawa Plaza, 2nd Floor
Oakland, CA 94612

Re: Fair Political Practices Commission Advice Letter on the Oakland Renter Protection Act

Dear Councilmember Abel Guillén:

Public Advocates writes this letter on behalf of the Protect Oakland Renters coalition regarding the letter you received from the Fair Political Practices Commission (FPPC) on April 27 in response to your request for advice regarding the proposed Oakland Renter Protection Act (attached). We are concerned that the FPPC's letter may be flawed in a number of significant ways, including an inaccurate factual basis and an incomplete analysis under applicable state law and regulations, described below.

We strongly recommend that you request that the FPPC reconsider its advice and issue you a new letter in light of new facts and information and the need for a complete analysis under state law¹ and FPPC Regulations.²

Oakland's housing and displacement crisis requires strong leadership. Your decision about whether to recuse yourself from a decision that would give Oakland residents the opportunity to vote on such a critical issue should be informed by a full, accurate analysis of any potential conflict of interest.

1. Inaccurate factual basis

The FPPC's analysis appears to incorrectly conclude that your property would be affected by limits on allowed rent increases and other rent restrictions.³ The letter states that you own a condominium that was built in 2006, which would make it exempt both from current rent

¹ Cal. Gov't Code §§ 87100-87105.

² 2 CCR §§ 18109-18997, available at <http://www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html>.

³ See FPPC Advice Letter 3 ("Obviously, laws that would limit the amount of rent you can collect for your property will financially affect you....").

restrictions and from those in the Oakland Renter Protection Act. In Oakland, units built after 1983 are exempt from rent restrictions.⁴ The Oakland Renter Protection Act would not change this exemption.⁵

2. Foreseeable effect analysis

Because the FPPC's conclusions are based in part on an inaccurate understanding of the existing and proposed law, it does not include an accurate analysis of whether the Oakland Renter Protection Act "will have a reasonably foreseeable financial effect" on your financial interest.⁶ Because rent restrictions will not impact your condominium (because it was built after 1983), a new analysis of foreseeability is required and is likely to result in a different conclusion.

In addition, while the FPPC's letter correctly notes that the Oakland Renter Protection Act would "[r]equire owners who want to move into rental property to make payment to tenants,"⁷ it does not conduct an adequate foreseeability analysis. For example, part of this analysis should determine whether it is *foreseeable*, not simply a theoretical possibility,⁸ that you will choose to move into the condominium at a time when it is occupied by tenants, thereby requiring you to make relocation payments.

3. Effect on the public generally analysis

The FPPC letter does not include the required analysis of whether any financial effect on your financial interest would be "distinguishable from the effect on the public generally," an essential part of the determination of whether you have a "disqualifying financial interest."⁹

A "financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if ... 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."¹⁰ The regulation goes on to define a "significant segment of the public" as at least 25 percent of (1) all businesses or non-profit entities within the jurisdiction; (2) all real property, commercial real property, or residential real property within the jurisdiction; or (3) all individuals within the jurisdiction.¹¹

Because the Oakland Renter Protection Act would extend "just cause" eviction protections to all rental properties (except two-unit buildings where one unit is owner-occupied),¹² it seems likely that more than 25 percent of properties and individuals would be affected. Moreover, it is likely that nearly all residents in Oakland would be affected as either tenants who would benefit from additional protections, landlords, or homeowners who might someday rent out their units.

⁴ Oakland Municipal Code § 8.22.030(A)(5).

⁵ See Oakland Renter Protection Act section 2.

⁶ 2 CCR § 18700(a). See also Cal. Gov't Code § 87103.

⁷ FPPC Advice Letter 2. See Oakland Renter Protection Act sections 12 (amending Oakland Municipal Code §§ 8.22.360(A)(6)-(8)) and section 13 (amending Oakland Municipal Code § 8.22.450(B)).

⁸ 2 CCR § 18701(b).

⁹ *Id.* at § 18700(a). See also Cal. Gov't Code § 87103.

¹⁰ *Id.* at § 18703(a).

¹¹ *Id.* at § 18703(b).

¹² Oakland Renter Protection Act section 11 (repealing Oakland Municipal Code § 8.22.350(H)).

We hope you will seriously consider requesting that the FPPC issue a new advice letter that fully and accurately analyzes the Oakland Renter Protection Act as it relates to your particular property and to the Oakland public generally. Oakland residents need your leadership to help keep this city diverse and inclusive. The Oakland Renter Protection Act provides an important opportunity to help do just that.

For formal legal assistance, we would be glad to refer you to an attorney who specializes in this area of law.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Zisser". The signature is fluid and cursive, with a large loop at the end.

David Zisser
Staff Attorney

cc: Interested parties