



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 11, 2024

Quinn Barrow  
City Attorney  
City of Manhattan Beach  
350 South Grand Avenue 37th Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-24-106**

Dear Mr. Barrow:

This letter responds to your request for advice on behalf of Manhattan Beach City Councilmember David Lesser regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also 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, may Councilmember Lesser participate in gathering signatures for a petition to form a Proposed Anderson Street Assessment District for the purpose of placing overhead infrastructure underground, given that he owns property located in the proposed district?

### CONCLUSION

Yes, although Councilmember Lesser owns real property within the area of the proposed district, gathering signatures for a petition does not constitute taking part in a governmental decision under Regulation 18704.

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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.

## FACTS AS PRESENTED BY REQUESTER

“Utility Undergrounding” is the process of placing overhead utility infrastructure underground. The overhead infrastructure includes electric power, telephone and cable television wires, and related facilities such as electrical transformers. The City does not own, operate, or maintain any overhead utility infrastructure in Manhattan Beach. Instead, the utility infrastructure is owned and operated by Southern California Edison, Frontier (formerly owned and subject to potential reacquisition by Verizon), and Spectrum (formerly Time Warner and Adelphia) (collectively, “Utility Owners”).

Section 7.28 of the Manhattan Beach Municipal Code, adopted in 1968, authorizes property owners to form a Utility Undergrounding Assessment District (“Assessment District”) to provide funds for Utility Owners to remove their overhead utilities and infrastructure and place them underground. Rules governing the formation of Assessment Districts have evolved through City Council decisions over the past 44 years.

The City issued the brochure, “Utility Undergrounding in the City of Manhattan Beach Fact Booklet,” updated as of August 2023 (the “UUAD Fact Booklet”), with information about forming an Assessment District. The UUAD Fact Booklet indicates City property owners have proposed 16 Assessment Districts since the year 2000. Of the proposed Assessment Districts, several have been approved and completed, a number were dissolved prior to formation, and two are in process as of August 2024.

The steps to form an Assessment District are described in the City brochure, “Steps for Forming A Private Residential Underground Utility Assessment District,” updated as of November 2022 (the “UUAD Formation Brochure”). The UUAD Formation Brochure lists 20 “Actions” to establish an Assessment District.

Step number six of the 20 Actions required to form an Assessment District involves circulating a petition among property owners. At least 66 percent of the property owners in a proposed Assessment District must sign the petition within six months after the petition is issued by the City in order for the process to move forward. Signing a petition to form an Assessment District is not a vote and does not commit the property owner or the City to the initial estimated cost of Utility Undergrounding. “Later in the process, all of the affected property owners will be given a more exact estimate and will then have the opportunity to officially vote for or against the project.”

The City Council acts as a decision-maker at several steps in the Assessment District formation process. Council adopts Resolutions to approve an Assessment Engineer’s Report (Step 12), holds public hearings regarding the proposed project area (Step 13), and awards construction and bond sale contracts (Step 15).

As of July 2022, more than 40 property owners in 12 different neighborhoods had contacted the City to form new Assessment Districts. The level of interest exceeded City staff capacity to assist residents. In response, Council directed City staff to circulate surveys biennially to assess interest in Utility Undergrounding. Initial surveys were sent out in the fall of 2023 to property owners in neighborhoods that previously expressed interest in forming Assessment Districts (the “2023 Survey”).

The responses to the 2023 Survey reflected varying levels of support for Utility Undergrounding. A chart of the results shows support for Utility Undergrounding in potential districts ranged from 32 percent to 94 percent. In March 2024, Council adopted City staff recommendations and directed staff to prioritize potential Assessment Districts based on the level of support expressed in the 2023 Survey results.

### The Proposed Anderson Street District

The property owner residing at 222 Anderson Street, Stephen Samuelian, submitted a request to form an Assessment District on the 200 block of Anderson Street (the “Proposed Anderson Street District”) at least seven years ago. Anderson Street is three blocks in length and consists solely of single-family dwellings in a residential neighborhood. The proposed Anderson Street District would include 15 parcels.

Results from the 2023 Survey indicate property owners within the Proposed Anderson Street District expressed high support based on the responses received. The number of responses to the survey were small (nine of 15 parcels), but 71 percent expressed support for the proposed district.

### Councilmember Lesser’s Economic Interest

Councilmember Lesser and his wife reside (the “Councilmember’s Property”) within the Proposed Anderson Street District. Title to the Councilmember’s Property is held in the Councilmember and his wife’s revocable trust, the David and Elisabeth Lesser Family Trust.

Consistent with Section 87100 of the Act, Councilmember Lesser is recusing himself from City decision-making about the Proposed Anderson Street District. He is not making, participating in making, or otherwise using his official position to influence a governmental decision because the Councilmember’s Property is located within the proposed district.

The Fair Political Practices Commission (“FPPC”) Legal Division previously responded to a request from Councilmember Lesser for Formal Advice regarding utility undergrounding. In 2017, the Councilmember sought advice regarding his participation in City decisions concerning proposed Assessment Districts located two blocks to the south and west of the Councilmember’s Property. The FPPC Legal Division determined in *Barrow* Advice Letter, No. A-17-178, that Councilmember Lesser had a financial interest in the outcome of the decision pursuant to the Act and the Councilmember recused himself from Council discussions and decisions regarding the proposal.

The current request for advice relates solely to whether Councilmember Lesser may assist neighbors in gathering petition signatures to form the Proposed Anderson Street District. The property owner who initiated the Proposed Anderson Street District has asked Councilmember Lesser to assist him. Councilmember Lesser has deferred his reply to the neighbor’s request for assistance subject to a response to this request for Formal Advice.

## **ANALYSIS**

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to

influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) This includes “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).)

As mentioned above, the Act’s conflict of interest provisions apply only when a public official “make[s], participate[s] in making, or in any way attempts to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” (Section 87100; Regulation 18700(a). The Commission has defined “making,” “participating in making,” and “influencing” a governmental decision. (Regulation 18704.)

*Making a Governmental Decision:* A public official “makes a governmental decision” when the official, “authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency.” (Section 87100; Regulation 18704(a).)

*Participating in Making a Governmental Decision:* A public official “participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.” (Section 87100; Regulation 18704(b).)

*Influencing a Governmental Decision:* There are two rules that address whether a public official is using or attempting to use his or her official position to influence a governmental decision.

The first rule applies when the governmental decision is within or before the public official’s own agency or “an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision . . . .” In these cases, if the official “contacts or appears before” or otherwise attempts to influence, any member, officer, employee or consultant of the agency, then the official is attempting to influence a governmental decision. (Regulation 18704(c)(1).)

The second rule applies when the governmental decision is within or before an agency other than the public official’s own agency, or an agency appointed by or subject to the budgetary control of the public official’s agency. (Regulation 18704(c)(2).) Under this rule, the official cannot act or purport “to act within the official’s authority or on behalf of the official’s agency in making the contact” to influence a decision that will have a material financial effect on his or her interests.

Based on the above, the Act does not prohibit Councilmember Lesser from taking part in gathering signatures for the purpose of forming the proposed Assessment District. Councilmember Lesser’s real property is within the proposed Assessment District area, such that he would likely be prohibited from taking part in any City Council decisions related to the Assessment District. However, consistent with Regulation 18704, the mere gathering of signatures while acting in the

capacity of a private citizen does not constitute a governmental decision for purposes of the Act.  
(See *Fuentes* Advice Letter, No. A-18-171.)

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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