



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

July 22, 2025

Hans Buder
City Council Member
City of Carmel-by-the-Sea
P.O. Box CC
Carmel-by-the-Sea, CA 93921

Re: Your Request for Formal Advice
Our File No. A-25-104

Dear Mr. Buder:

This letter responds to your request for advice regarding Section 84308 of the Political Reform Act (the “Act”).¹

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 Section 84308 of the Act, may you take part in governmental decisions involving the appeal of an approved mixed-use development project, given that one of the appellants initially contributed \$1,000 to your campaign committee within the preceding 12 months, but you recently returned \$501 to that appellant prior to taking part in the appeal proceeding?

CONCLUSION

Yes, under Section 84308, you are permitted to take part in the proceeding because you returned the portion of the contribution exceeding \$500 prior to taking part in the proceeding.

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.

However, you must still disclose your return of the contribution consistent with the requirements of Regulation 18438.8, as discussed below.

FACTS AS PRESENTED BY REQUESTER

You were elected to the Carmel-by-the-Sea City Council in November 2024. During the campaign, on October 8, 2024, Rich Pepe, a local business owner, hosted a campaign event for you at one of his restaurants in downtown Carmel (Little Napoli). He donated food and beverages for the event valued at \$1,000, which you included in your Form 460 for the relevant period.

There is a proposed mixed-use development that was recently approved by the Carmel-by-the-Sea Planning Commission (on 4/9/2025), but which was subsequently appealed to the City Council (filed 4/23/2025) by a group of 11 local citizens. Rich Pepe is one of the 11 appellants.

The executive summary from the staff report states:

The applicant is proposing the construction of a new approximately 12,900 square foot mixed-use development spread across 2 new buildings, with an approximately 850 square foot utility basement. The new development is proposed to have 8 apartments, approximately 5,100 square feet of new commercial square footage split between 6 commercial units, and will have 12 on-site parking spaces utilizing 5 parking lifts (5 lift spaces = 10 parking space + 2 non-lift spaces).

The project is also partially located on the Northern California Savings & Loan Complex site, a site listed in the Carmel Inventory of Historic Resources. The Northern California Saving & Loan Community Room is located on Lot 6 of the project site and is proposed to remain with no alterations proposed to the building or ornamented concrete wall surrounding the building. The project was previously determined to be consistent with the Secretary of Interior's Standards by the City Council, Carmel-by-the-Sea Municipal Code (CMC) section 2.04.160, provided certain conditions of approval are met.

The appellants provided the following rationale for their appeal:

1. Project is not categorically exempt from CEQA as exceptions to the Categorical Exemption exist.
2. Appeal of approval of DR 23-140 is based on improper application of the term "structure" and "interaccessibility" which results in a structure with more than 10,000 sf of floor area; improper landscaping, parking and open space requirements.
3. Appeal of approval of UP 21-113 based on usage of in-lieu parking fees and failure to meet the zoning standards and general plan.
4. Appeal of finding that Project now addresses the conditions of approval set by the City Council in Resolution 2023-099.

Mr. Pepe owns several restaurants in town, including Vino Napoli, a wine bar at the northeast corner of Seventh Avenue and Dolores Street. Mr. Pepe is also a co-owner of the building

at the northeast corner of 7th and Dolores that houses Vino Napoli. The proposed mixed-use development is 1/3 to 1/2 of a block directly to the south of Vino Napoli – approximately 150 feet.

In a follow-up email and phone call, you stated that, subsequent to your initial request for advice, you sent a \$501 check to Mr. Pepe from your committee before terminating the committee.

ANALYSIS

One of the Act's findings and declarations is that "public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b), emphasis added.) To this end, the Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that state and local government officers are not biased by significant campaign contributions from contributors who might appear before them in a proceeding involving a license, permit, or entitlement for use (an "entitlement for use proceeding").

Relevant here, Section 84308 places two restrictions on officers. First, officers are prohibited from soliciting, directing, or accepting contributions of more than \$500 from a party, participant, or their agent while an entitlement for use proceeding is pending before the officer's agency, and for 12 months thereafter. (Section 84308(b).) Second, if an officer has received such a contribution in the preceding 12 months, the officer must disclose this fact on the record and recuse themselves from the proceeding. (Section 84308(c).)

If an officer receives a contribution that would otherwise require disqualification under Section 84308, and returns the contribution within 30 days from the time the officer makes any decision, or knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, whichever comes last, the officer shall be permitted to participate in the proceeding. (Section 84308(d)(1).) The return of a contribution pursuant to Section 84308(d)(1) must be disclosed, either orally or in writing, on the public record at the beginning of the public meeting held within 60 days of return of the contribution or, if no public meeting is held within that time, written disclosure shall be entered into the agency's official records within 60 days of return of the contribution. (Regulation 18438.8(a)(2).)

Section 84308 defines the term "party" as "any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use." (Section 84308(a)(1).)

As one of the appellants, Mr. Pepe qualifies as a "party" to the proceeding. Consequently, the Levine Act requires you to disclose your receipt of a \$1,000 contribution from him and recuse yourself from the proceeding, unless you return the portion of the contribution exceeding \$500, which you are permitted to do within 30 days after making a decision in the proceeding. Having already returned \$501 to Mr. Pepe, you have no longer received a contribution exceeding \$500. Consequently, under Section 84308, you may take part in the proceeding. You must also confirm return of the contribution per Regulation 18438.8(a)(2), as stated above.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

KMC:aja