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MEMORANDUM OF LAW

DATE: February 12, 2004

TO: Councilmember Scott Peters

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Related to Evans School and Francis Parker Middle/Upper Schools

INTRODUCTION

You have asked the City Attorney's Office to determine whether a conflict of interest would be created by your participation in Council decisions involving Evans School and Francis Parker Middle/Upper School. Because you do not have any financial interest which would be affected by Council decisions related to these schools, you do not have a conflict of interest which would legally disqualify you from participating in those decisions.

BACKGROUND

You have children who attend Evans School and Francis Parker Middle/Upper School, and have provided financial support to both schools. The financial support has consisted of tuition payments and donations to the foundations of both schools. These two private schools are located in the City of San Diego, and may have future expansion or development plans which would be the subject of land use decisions by the City Council, although no specific City Council actions regarding the schools are currently pending. No member of your family receives income from either school, and you do not have any real property interests within 500 feet of either school, or any other financial interest that would be affected by the Council's land use decisions related to the schools.

ANALYSIS

I. Political Reform Act of 1974

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000-91015. The Act was adopted to ensure that public officials perform their duties in an impartial manner, free from bias caused by their financial interests. Cal. Gov't Code § 81001. Although this matter is also governed by the City of San Diego Ethics Ordinance, codified at San Diego Municipal Code sections 27.3501–27.3595, the disqualification requirements under the Ethics Ordinance are identical to the requirements of the Act, for purposes of this memorandum, and therefore will not be discussed separately. San Diego Municipal Code § 27.3561.

A public official has a financial interest in a decision 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 his or her immediate family, or on any of five economic interests delineated in California Government Code section 87103. Those five interests are investments in business entities; interests in real property, income received in the previous twelve months, positions in business entities, and gifts received in the previous twelve months. Investments, income, and gifts must meet threshold dollar values set by the Act before they become potential sources of disqualification. Cal. Gov't Code § 87103.

You are a public official within the meaning of the Act, and Council land use decisions related to the Evans School and Francis Parker Middle/Upper School are governmental decisions within the meaning of the Act. However, from the facts provided, it does not appear that you have any financial interests which would be affected by a Council decision regarding the schools. You and your family members receive no income from the schools, and they have not been a source of gifts to you. Finally, from the facts presented, it does not appear that you have any other economic interest, such as an investment interest or a real property interest within 500 feet of either school, which would potentially be materially affected by Council land use decisions related to the schools¹. Therefore, you have no economic interest in the schools that would be disqualifying under California Government Code section 87103, and you are not disqualified under the Act from participating in discussions and voting on land use decisions involving the schools.

¹There is a legal presumption that if real property owned by a public official is more than 500 feet from the boundary of a property that is the subject of a governmental decision, the decision will have no material financial effect on the official's real property. Cal. Code Regs. tit. 2, §§ 18704.2, 18705.2. That presumption can be rebutted by a showing of specific circumstances that make it reasonably foreseeable that the decision will have a material financial effect on the official's real property, such as effects on traffic, noise, view, or other similar effects on a neighborhood. Cal. Code Regs. tit. 2, § 18705.2(b)(1).

II. Council Policy 000-04

San Diego City Council Policy 000-04 [Policy] states in pertinent part:

No elected official, officer, appointee or employee of The City of San Diego shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence or judgment or action in the performance of such duties.

Under this Policy, when a Councilmember has an interest in a matter, whether that interest is financial or personal, it is within a Councilmember's own discretion to determine if that interest in a matter makes participation in a decision on that matter "incompatible with the proper discharge of his or her official duties." If you determine that your participation in a decision regarding Evans School or Francis Parker Middle/Upper School would be inappropriate under this Policy, you may choose to abstain from participating in the item. It should be emphasized, however, that this result is not required under the law, and is a matter for your own discretion.

CONCLUSION

You and your family have no financial interest in the Evans School or Francis Parker Middle/Upper School, and no other financial interest that would be potentially affected by decisions regarding the schools. Therefore, your participation in any discussion and votes on such Council decisions does not present a conflict of interest. If you have any further questions, please feel free to contact me.

CASEY GWINN, City Attorney

By

Lisa A. Foster
Deputy City Attorney

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