

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	_____
CM	<u> X </u>
CA	<u> X </u>

DATE: MARCH 6, 2012

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: A. PATRICK MUNOZ, CITY ATTORNEY

SUBJECT: CONSIDERATION OF A RESOLUTION OF SUPPORT FOR PETITION TO THE FAIR POLITICAL PRACTICES COMMISSION TO AMEND REGULATION 18705.5

RECOMMENDED ACTION:

That the City Council adopt a Resolution supporting a Petition to amend Regulation 18705.5 entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT SUPPORTING THE PETITION TO AMEND TITLE 2, CALIFORNIA CODE OF REGULATIONS SECTION 18705.5.

DISCUSSION:

Fair Political Practices Commission Regulation 18705.5 deems a decision to appoint an official to a local agency which pays at least \$250 in a 12-month period a conflict of interest for the official if he or she is voting on the decision to appoint himself or herself.

This means that if the City Council takes action to appoint a member of the Council to an agency which pays at least \$250 in a 12-month period, that Council Member must recuse himself or herself from participating in the decision to appoint himself or herself.

The Cities of Anaheim, Dana Point, Irvine, La Palma, Newport Beach, San Clemente, Villa Park and Yorba Linda ("the Requesting Cities") have asked the Fair Political Practices Commission ("FPPC") to amend the regulation. The Requesting Cities' Petition is scheduled to be heard by the FPPC at its March 15, 2012 meeting.

The Requesting Cities have asked a number of cities to formally support their request for amendment. City Staff is requesting that the City Council formally express its support for the Petition through the adoption of the attached Resolution.

FISCAL IMPACT:

None.

NOTIFICATION/FOLLOW-UP:

Fair Political Practices Commission.

ALTERNATIVE ACTIONS:

- 1. Other Council-directed action.

ACTION DOCUMENT:

PAGE NO.

A. [Resolution Of The City Council Of The City Of Dana Point Supporting The Petition To Amend Title 2, California Code Of Regulations Section 18705.5](#) 3

ACTION DOCUMENT A**RESOLUTION NO. 12-03-06-XX****A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF DANA POINT SUPPORTING THE
PETITION TO AMEND TITLE 2, CALIFORNIA
CODE OF REGULATIONS SECTION 18705.5.**

WHEREAS, the staff of the Fair Political Practices Commission ("FPPC") recently issued a new interpretation of Regulation Section 18705.5, which interpretation prohibits Council Members throughout the State of California from participating in decisions regarding their appointment to governmental boards, committees, and commissions that pay \$250 or more in a 12-month period; and

WHEREAS, as set forth herein, the FPPC's Regulation and staff interpretation is inconsistent with state statutory law that specifically excludes from the definition of income any salary, reimbursement, or other benefits received from a local, state, or federal governmental agency; and

WHEREAS, the FPPC's Regulation and staff interpretation is contrary to sound public policy and good government principles relating to multi-jurisdictional governmental bodies; and

WHEREAS, Government Code Section 87100 of the Political Reform Act of 1974 (Government Code Sections 81000 through 91014) prohibits a public official from making or participating in the making of a decision which could have a reasonably foreseeable financial effect on the public official's "financial interest"; and

WHEREAS, Government Code Section 87102.5(b)(2) states that a "financial interest" means "an interest defined in Section 87103;" and

WHEREAS, Government Code Section 87103 provides that a public official generally has a financial interest in a decision within the meaning of Government Code Section 87100 if it is reasonably foreseeable that it will have a material financial effect on: (1) the public official, which includes income to the public official; (2) on business entities or real property in which the public official has a financial interests; or (3) on any of the public official's sources of gifts and sources of income; and

WHEREAS, Government Code Section 82030 defines "income" as "a payment received, including but not limited to "any salary, wage, advance, dividend, interest . . . reimbursement for expenses, per diem," etc.; and

WHEREAS, notwithstanding the above, Government Code Section 82030(b) provides that "income" does not include "salary or reimbursement for expenses or per

diem...or other similar benefit payments received from a state, local or federal government agency...;"

WHEREAS, pursuant to state law the City Council is required to appoint, from among the members of the City Council, one of its members to sit on various regional boards of public agencies in Orange County, such as the Vector Control District, Orange County Sanitation District, Transportation Corridor Agency and others; and

WHEREAS, Council Members who are appointed to these boards typically receive a per diem for each meeting of the board that they attend and thus, are receiving a "per diem" or "salary" from a local government agency, which pursuant to Government Code Section 82030 is not considered "income" and thus, not a "financial interest"; and

WHEREAS, the amount that Council Members receive for serving on these public agency boards is governed by state law and within state law parameters is determined by the boards of these public agencies, not by the City Council; and

WHEREAS, the FPPC is authorized pursuant to Government Code Section 83112 to adopt, amend and rescind rules and regulations to carry out the purposes of the Political Reform Act on the condition that such rules and regulations **are consistent** with the Political Reform Act; and

WHEREAS, the FPPC has adopted a regulation, Title II, California Code of Regulations, Section 18705.5 (the "Regulation"), which it has interpreted to preclude a Council Member from voting on his or her appointment to a local agency board if it is reasonably foreseeable that a Council Member could receive \$250 or more during a 12-month period from that appointment; and

WHEREAS, the City of Dana Point ("City") along with the cities of Anaheim, Newport Beach, Irvine, La Palma, San Clemente, Villa Park and Yorba Linda authorized counsel to submit a Petition to the FPPC asking for an amendment to Regulation Section 18705.5; and

WHEREAS, the cities' Petition is scheduled to be considered by the FPPC at its March 15, 2012 meeting; and

WHEREAS, the City desires to express its support for the Petition through the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Dana Point hereby resolves as follows:

Section 1: The City of Dana Point supports the Petition before the FPPC, and encourages the FPPC, to amend Regulation Section 18705.5 to be consistent with California Government Code Section 82030(b)(2).

Section 2: The City Council finds this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the Resolution.

Section 4: That a certified copy of this Resolution be forwarded to the Fair Political Practices Commission.

Adopted this 6th day of March, 2012.

Lara Anderson, Mayor

ATTEST:

Kathy M. Ward, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, Kathy M. Ward, City Clerk, of the City of Dana Point, do hereby certify that the foregoing is a true and correct copy of Resolution No. 12-03-06-xx adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 6th day of March, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Kathy M. Ward, City Clerk