



City Council Staff Report

DATE: August 1, 2022

AGENDA ITEM NO:

TO: The Honorable Mayor and City Council
FROM: Karl H. Berger, City Attorney
SUBJECT: Supplemental Staff Report regarding Item No. 2-A addressing Letter dated August 1, 2022 and received at 4:25 p.m.

EXECUTIVE SUMMARY:

At 4:25 p.m. today, I received the attached letter from Ms. Suzanne Jiminez sent on behalf of the SEIU-UHW regarding Council Member Yvonne Yiu. As you will read, Ms. Jiminez makes various assertions – based upon newspaper information – to conclude that Council Member Yiu has a legal conflict of interest regarding Agenda Item No. 2-A and must recuse herself from the discussion and vote.

This matter was first presented to the City Council on July 6, 2022. SEIU-UHW had more than a month to contact the City regarding any potential conflict of interest. Yet Ms. Jiminez chose to send a letter two hours before the City Council meeting regarding the matter. This ensures that there is insufficient time for my office – or the City itself – to verify any of the information contained in the letter or comprehensively analyze whether Ms. Jiminez’s assertions are accurate.

Based upon the information that is available to me at the time of writing this Staff Report, however, it does not appear that Council Member Yiu has a legal conflict of interest that requires a recusal. My conclusion regarding this matter is given from the perspective of the City of Monterey Park only; as the City Attorney, I may only provide the City Council advice regarding the prudence of moving forward with Agenda Item No. 2-A. Here, the information provided in Ms. Jiminez’s untimely letter are unproven; the City Council must take action tonight regarding Item No. 2-A under California law; and the information that is available demonstrates that Council Member Yiu may legally participate in the vote.

BACKGROUND:

At the outset, while the City Attorney’s office may advise public officials regarding potential conflicts of interest, it cannot act as an official’s personal attorney on ethics matters. The City Attorney’s office represents the City of Monterey Park and not individual council members in their personal capacity.

Moreover, the City Attorney’s opinion regarding conflict laws will not protect a public official from civil or criminal proceedings by the Fair Political Practices Commission (“FPPC”) should an official’s actions constitute a violation of the Political Reform Act

(“PRA”). An FPPC opinion that sanctions a public official’s actions is the only true legal protection an official can obtain. Accordingly, this Staff Report only provides the City Council advice regarding whether Council Member Yiu may participate in tonight’s meeting based upon the facts available to me.

The PRA states that “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use her [or her] official position to influence a governmental decision in which he [or her] knows or has reason to know he [or she] has a financial interest.”¹

Under the PRA, a public official participates in making a decision when he or she influences the decision-making process in any manner including, without limitation, proffering advice or making recommendations to a legislative body regarding a matter.² With certain exceptions,³ officials must refrain from participating in the decision-making process when it is reasonably foreseeable that the decision will have a material effect on the official’s economic interests distinguishable from that of the general public.⁴

For this matter, I must rely upon Council Member’s Form 700 that was filed March 21, 2022 (the “Form 700”). The Form 700 lists “Network Medical Management” (“NMM”) as the employer of Council Member Yiu’s spouse. Based upon publicly available materials (obtained solely from internet searches), NMM is based in Alhambra. According to various websites, NMM supplies administrative services to various medical and physician groups, i.e., it provides professional services. Its annual revenue is listed as approximately \$170M. While Ms. Jiminez’s letter alleges that Council Member’s source of income, i.e., NMM, will be affected by any decision regarding Agenda Item No. 2-A, that letter does not even identify NMM as being a source of income to Council Member Yiu.

The FPPC’s regulations⁵ provides that Council Member Yiu would have a legal conflict of interest exists if a decision would have a “reasonably foreseeable financial effect” on her “financial interest in a source of income.” Here, a “reasonably foreseeable financial effect” would occur if NMM may either experience an increase or decrease of annual gross income equal to or more than \$1M; or if it may experience additional, or fewer, expenses of \$250K.⁶

While public information does show that NMM is a subsidiary of Apollo Med, there is no reasonable basis – at the time of this writing – to conclude that a decision regarding Agent Item No. 2-A will affect NMM’s gross annual income or its expenses. Based upon

¹ Gov’t. Code § 87100.

² 2 Cal. Code Regs. (“FPPC Regs.”) § 18700.

³ Gov’t. Code § 87101; FPPC Regs. § 18705.

⁴ Gov’t. Code § 87103.

⁵ FPPC Regs. § 18702.3

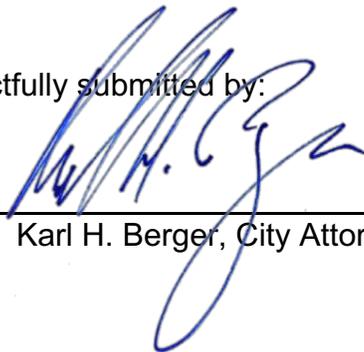
⁶ FPPC Regs. § 18702.1.

the available information, therefore, it appears Ms. Jiminez's assertions are speculative rather than foreseeable.

Beyond the scope of Ms. Jiminez's assertions, however, is the language of the initiative petition itself. Specifically, it does not appear that NMM is a "covered healthcare facility" that employs "healthcare workers" as defined in the proposed regulations.

Again, this staff report is being finalized at 5:15 p.m. There may be information that is publicly available which would change the observations in this Staff Report. For purposes of a City Council discussion and vote, however, there is no available information that would reasonably show that Council Member Yiu is legally prohibited from participating in the decision. Consequently, she is not legally required to recuse herself.

Respectfully submitted by:



Karl H. Berger, City Attorney

ATTACHMENT:

1. Letter dated August 1, 2022. Received by the City Attorney's office at 4:25 p.m.



August 1, 2022

Mr. Karl Berger, City Attorney
City of Monterey Park
320 West Newmark Ave.
Monterey Park, CA 91754

Dear Mr. Berger:

It has come to my attention that City Councilmember Yvonne Yiu, who represents District 2, has a conflict of interest in Agenda Item 2-A on tonight's City Council Agenda.¹ The Agenda Item is related to a proposed ballot initiative that the Council must decide whether to adopt or allow to go to the voters in the November 2022 election. The proposed initiative would raise the minimum wage to at least \$25 for all healthcare workers who work within the City's boundaries. Councilmember Yiu's husband, Dr. Albert Young, has a financial interest in the Advanced Healthcare Management Corporation ("AHMC"), which operates the Monterey Park Hospital. Therefore, Councilmember Yiu must recuse herself from tonight's vote on Agenda Item 2-A.

As you are aware, Government Code Section 87100 requires a public official to recuse themselves from any decision where it is reasonably foreseeable that the decision will materially affect the public official's financial interest. The financial interests of a public official's spouse are considered the financial interests of the public official for purposes of Section 87100.

Councilmember Yiu's spouse, Dr. Albert Young, is the Chief Administrative Officer of ApolloMed, a healthcare management company.² Therefore, he has a financial interest in ApolloMed and its subsidiaries and partners.³ ApolloMed has partnered with AHMC in a major project in Los Angeles with a value of over \$17 million.⁴ As joint owners of this project, the financial interests of AHMC are now linked to those of ApolloMed and any impact to AHMC's finances will directly affect those of ApolloMed as well. Further, the direction and control of both entities ApolloMed and AHMC, are the same. Linda Marsh, the Senior Executive Vice President of AHMC Healthcare Inc, is on the board of ApolloMed.⁵ Also, the chairman of the board of

¹ <https://www.montereypark.ca.gov/AgendaCenter/ViewFile/Agenda/08012022-2534>

² <https://www.apollomed.net/our-business/management-team>

³ See FPPC Regulation 18700.2

⁴ <https://www.apollomed.net/news-media/press-releases/detail/29/apollo-medical-holdings-announces-the-acquisition-of-a-50>

⁵ <https://www.apollomed.net/our-business/board-of-directors>

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ApolloMed, Dr Kenneth Sim, is the chairman of an AHMC hospital in northern California.⁶

Since the direction and control of both entities is shared, they are “otherwise related business entities” for purposes of Section 87100. Therefore, if a decision by the Monterey Park City Council materially affects either ApolloMed or AHMC, Councilmember Yiu must recuse herself from the decision. Here, the decision regarding the proposed initiative will raise the minimum wage for healthcare workers up to a minimum of \$25 per hour. This will no doubt have the effect of increasing the liabilities of AHMC’s Monterey Park Hospital in an amount greater than \$250,000. If a decision affects AHMC’s financial liabilities in an amount equal to or greater than \$250,000, then the effect of the decision is material and Councilmember Yiu must recuse herself.⁷

I respectfully request you take immediate action to remedy this situation. Thank you for your prompt attention to this matter.

Sincerely,

Suzanne Jimenez
Political Director
Executive Committee Member

Dave Regan - President
Stan Lyles - Vice President

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www.SEIU-UHW.org

⁶ https://www.einnews.com/pr_news/547050061/ahmc-healthcare-renovates-upgrades-california-hospital

⁷ See FPPC Regulations 18702.1 and 18702.3.