SMCLC

Santa Monica Coalition for a Livable City

January 12, 2026

VIA EMAIL

Heidi von Tongeln
Interim City Attorney
City of Santa Monica

RE: Second Request to Investigate and Determine When Councilmember Zwick's Conflict of Interest Arose in relation to Council Agenda Item 10A(2) Before Voting on the Item; and Zwick Disqualification as to Agenda Items 16(A)1 and 16(A)5

Dear Ms. Von Tongeln,

The Santa Monica Coalition for a Livable City ("SMCLC") again formally requests that the City Attorney's office investigate the conflict of interest involving Councilmember Zwick's pivotal role in crafting an emergency pilot housing ordinance ("emergency ordinance") between June and August 2025, due to documents you turned over to the FPPC on November 10 for its conflicts review. The facts giving rise to Councilmember Zwick's conflict of interest are briefly described below and also detailed in Exhibit "A".

In addition, SMCLC requests that the City Attorney advice Councilmember Zwick that he may not legally participate in any way, whether privately (Brown Act group), or publicly on Council Agenda Items 10(A)2 or 16(A)1-WSCCOG or 16(A)5-SCAG regarding Councilmember appointments to these organizations at tomorrow's Council meeting based upon the FPPC conflicts ruling discussed below.

Councilmember Zwick's actions to enact the emergency ordinance while negotiating for a job as a housing lobbyist with the Housing Authority Coalition ("HAC") created a conflict of interest.

The City's documents, and the two related Council meetings videos, establish that as of June 2025, Zwick was communicating with HAC's executive director about future employment with HAC while he was discussing the emergency ordinance with City staff and two other Councilmembers to be agendized for Council discussion on June 10. The HAC employment negotiations continued until August 15, when Zwick secured a formal job offer from HAC's executive director, which he accepted with alacrity. Only three days earlier - on August 12 - Zwick participated fully in the Council action to enact the emergency ordinance without revealing any conflict of interest or recusing himself.

It is undisputed that: 1) Councilmember Zwick took these actions without recusing himself; 2) he did not acknowledge that he was negotiating employment with HAC at the August 12 Council meeting when HAC's executive director appeared before the Council to lobby for the emergency ordinance's adoption; and 3) only three days later HAC's executive director sent Zwick a written job offer, requiring turnaround acceptance and was promptly accepted.

The conflicts issue regarding this emergency ordinance has not been disclosed or determined as it must be before the Council can vote on the matter.

There is no legitimate basis for the City Attorney's continuing failure to review and publicly report on this serious conflicts issue. The City Council cannot amend the emergency ordinance on Tuesday as though no conflict exists: The proper remedy will depend on whether the emergency ordinance itself is legally infirm because of Zwick's involvement and failure to disclose his communications with HAC in that time period.

Here are the reasons that no vote can be taken on Tuesday and the ethics review must commence now:

1) The FPPC conflicts opinion disqualifying Councilmember Zwick from any participation in future housing-related actions also gave guidance to the City to review whether his past housing-related actions "while negotiating prospective employment" should also be determined for a possible conflict of interest.
2) The City appears to be following the FPPC's advice only as to *some* past housing-related actions on which Zwick voted, including remedies such as rescinding emergency ordinances and requiring full planning commission/public review process. (See Agenda item 11(C) and accompanying staff report).
3) The City has no grounds to disregard the FPPC's advice as to the very impactful and controversial emergency ordinance that Zwick championed in the same time period that enacted sweeping changes to the City's housing production. Staff's recommendation to recast the emergency ordinance as though no conflict exists at this Tuesday's Council meeting is fatally flawed.
4) Likewise, the City Attorney has failed to consider Zwick's existing conflict, made no determination as to whether his conflict requires that the ordinance be rescinded and reintroduced, and has not explained why it has been specifically excluded as part of the conflicts reviews or remedies that were conducted for the other housing-related actions involving Zwick which are the subject of Council Agenda Item 11(C).
5) While the law firm representing Cypress Equity – the developer who benefited hugely from the adoption of the "emergency" housing ordinance - is threatening to sue the City unless the City "permanently codif[ies]" the previous ordinance without changes, the City Attorney cannot cede her legal and ethical obligations to independently review this serious conflict issue because of a developer threat. She must determine the conflicts issue as to the emergency ordinance and advise the Council and the public as to the proper legal remedy along with the remainder of the Zwick conflict housing-related actions on the agenda.
6) This emergency ordinance involves a major housing policy that generated a high level of public concern. Acting as though the "emergency" ordinance can be readopted as though no conflict exists would render any subsequent ordinance legally infirm and would also erode the public's confidence as to whether the City will uphold the required ethical standards for its public officials once a developer threatens the City with a lawsuit.

Conclusion:

Given all this, and the lack of any conflicts investigation or transparency as to the emergency ordinance's infirmity, Council item 10(A)2 must be taken off calendar until the City, including the City Manager, the City Council, and the public receive a conflicts determination by the City Attorney and a recommendation as to the proper remedy based on that determination.

In addition, the City Attorney must enforce the FPPC opinion that disqualifies Councilmember Zwick from any participation in Council Agenda Items 16(A)1 and 16(A)5 regarding Councilmember appointments to these two important organizations that consider local and regional housing issues, with SCAG determining the RHNA allocations for Santa Monica.

Sincerely,

Victor Fresco
Diana Gordon

Co-Chairs, SMCLC
Cc: City Council
City Manager
Santa Monica Neighborhood Associations

Exhibit “A”

November – December 2025

SMCLC’s Request for an investigation/determination/remedy regarding Councilmember Zwick’s conflict of interest as to the emergency pilot housing ordinance.

On December 1, SMCLC advised the City Attorney and the City Council that Ms.von Tongeln’s November 10 letter to the FPPC and exhibits concerning Councilmember Zwick’s potential future conflicts of interest raised additional questions as to significant actions he previously took in June and August to enact a controversial emergency pilot housing ordinance when he was in communications with HAC over prospective employment. https://smclc.net/PDF/SMCLCsQsforJZ120125.pdf

Our letter: A) sought a determination as to when in June those communications began relative to his sponsorship of that emergency ordinance, B) provided specific facts as to his leadership role in requesting its enactment, and C) detailed the closeness in time between his subsequent Council vote on August 12, 2025, and his HAC written employment offer only three days later. There is no dispute that Zwick was negotiating employment with HAC at the time.

The FPPC’s advice to the City to review Councilmember Zwick’s past actions in the time period when he was negotiating with HAC for employment.

In December, the FPPC issued its ruling that Zwick is prohibited from participating in any way in long-range and short-range planning decisions, related to zoning and housing policy as well as distinct development projects.

While the FPPC could not advise the City as to past conflict conduct involving Councilmember Zwick, it cautioned that it was up to the City to determine whether he may have engaged in conflicted housing production activities “while negotiating prospective employment:”

> “Because we only advise as to future conduct, this letter should not be construed as assistance on any conduct that may have already taken place, including any prior involvement in the housing production decisions the official may have engaged in while negotiating prospective employment. (See Section 87407 and Regulations 18329(c)(4)(A) and 18747.)” (FPPC Opinion Letter December 8, 2025, to Heidi von Tolgeln)

Councilmember Zwick was heavily involved between June - August 2025 in an emergency housing ordinance pilot program allowing market-rate housing projects and off-site affordable housing with incentives for housing production

June 10, 2025 Council Agenda item 16(B) (Requesting a pilot market-rate housing ordinance that led to the adoption of the emergency ordinance)

Councilmember Zwick brought this item forward at the June 10 Council meeting. He introduced the item, spoke passionately about the many reasons to enact such an ordinance, spoke at length during the ensuing discussion, was complimented by Councilmember Tsorosis for taking the lead and having done the previous hard work with staff to bring the item forward and successfully moved the item for a 6/1 vote for staff to prepare an emergency ordinance. (6.10.25 Council Agenda Item 16(B) minutes and webcast).

August 12, 2025 Council Agenda Item 10(B) (Enactment of the pilot market-rate housing program ordinance with incentives for housing production)

Members of the public spoke, including HAC’s executive director, who lobbied for the emergency ordinance. Councilmember Zwick did not disclose he was on the verge of receiving an employment offer from HAC’s executive director and Zwick did not recuse himself.

He participated in the lengthy Council discussion over the benefits of such an emergency ordinance, said he'd talked to profit and non-profit developers about getting affordable housing built, that he was confident that wherever off-site affordable housing would go in Santa Monica it would offer an incredible opportunity, that he didn't see any downside – only an economic upside, mused as to whether enough housing would be built under the emergency ordinance but supported it as the "best chance" to see if housing gets built, made the motion and voted to approve the emergency ordinance. (8.12.25 Council Agenda Item10(B) minutes and webcast).

To date, the City Attorney has not investigated Councilmember Zwick's conflict with respect to the emergency ordinance or responded to SMCLC's request for an investigation.

The staff report for Tuesday's Council meeting on January 12 does not include any mention of a possible conflict involving Councilmember Zwick with respect to Agenda Item 10(A)2. It recommends the Council vote to amend the ordinance as a "non-emergency" ordinance without further explanation.

As to the remaining prior housing-related actions taken when Councilmember Zwick's conflict arose, the staff report does recommend ratification or rescission to cure the defective enactments.

Agenda Item 10(A)2 must be included in a full conflicts review alongside the other affected housing-related actions because Councilmember Zwick's conflict arose before the emergency ordinance was adopted as occurred with the rest of these items.

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