



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 23, 2023

Zaynah N. Moussa  
Vernon City Attorney  
4305 Santa Fe Avenue  
Vernon, CA 90058

Re: Your Request for Advice  
**Our File No. A-23-010**

Dear Ms. Moussa:

This letter responds to your request for advice on behalf of Vernon Mayor Pro Tempore Crystal Larios, City Councilmember Melissa Ybarra, and Vernon Housing Commissioner Marlene Ybarra regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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.

## QUESTIONS

1. Under the Act, may Mayor Pro Tempore Larios and Councilmember Melissa Ybarra take part in Council actions and other decisions regarding Project Westside or related zoning decisions given their respective interests in real properties within the boundaries of the Project area? If there is conflict, would the public generally exception apply?

2. Under the Act, may Housing Commissioner Marlene Ybarra take part in Housing Commission decisions or recommendations regarding Project Westside or related zoning decisions given her interest in real property within the boundaries of the Project area? If there is conflict, would the public generally exception apply?

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<sup>1</sup> 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.

## CONCLUSIONS

1. Under the Act's conflict of interest provisions, Mayor Pro Tempore Larios has a potentially disqualifying financial interest in governmental decisions related to the proposed zoning changes along Santa Fe Avenue. However, the public generally exception applies to Mayor Pro Tempore Larios economic interests and she is not prohibited from taking part in decisions to approve these changes. The Act prohibits Councilmember Melissa Ybarra from taking part in those decisions because they would have a reasonably foreseeable material financial effect on her interests. The public generally exception does not apply to Councilmember Melissa Ybarra.

2. The Act prohibits Housing Commissioner Marlene Ybarra from taking part in Housing Commission decisions because they would have a reasonably foreseeable material financial effect on her interests. The public generally exception does not apply to Housing Commissioner Marlene Ybarra.<sup>2</sup>

## FACTS AS PRESENTED BY REQUESTER

The City of Vernon is a primarily industrial city and is actively exploring opportunities to expand its residential population. Project Westside proposes to make changes to the City's zoning code to allow for residential development, as well as mixed use and additional retail development along the City's Santa Fe Avenue Corridor. Zoning code changes would also allow residential development of legal non-conforming residential properties throughout the City. The zoning changes, if adopted, would significantly increase residential housing and could have foreseeable impacts on real property within the Project Westside area such as potential increased traffic, decreased parking, and potential impacts on property values. The areas subject to the zoning changes are along Santa Fe Avenue and existing legal non-conforming residential properties in five clusters throughout Vernon.

Project Westside is in the early stages with City staff and consultants undertaking necessary study and analysis, including environmental review, and no action items have come before the City Council as it relates to approving or establishing Project Westside. It is envisioned that decisions will be in front of the Council in early 2023. Mayor Pro Tempore Larios, Councilmember Melissa Ybarra, and Housing Commissioner Marlene Ybarra all have interests in property in the Project Westside area within 500 feet of the Santa Fe Avenue Corridor.

Mayor Pro Tem Crystal Larios is a leaseholder of a residential property in one of the legal non-conforming residential clusters and within 200 feet of the Santa Fe Avenue corridor, an area subject to the zoning changes to allow residential development.

City Councilmember Melissa Ybarra, along with members of her immediate family, own two residential properties and one parking lot within 400 feet of the Santa Fe Avenue corridor. The

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<sup>2</sup> Note that in addition to being prohibited from taking part in decision before the Housing Commission, Housing Commissioner Marlene Ybarra is also prohibited from appearing before or comminating with any City officer or employer for the purpose of influencing a decision involving Project Westside. However, to the extent the decision is no longer subject to the review of the Housing Commission, it may be possible for Housing Commissioner Marlene Ybarra to take part in a decision before the City Council. If Housing Commissioner Marlene Ybarra seeks to take part in a decision before the City Council, she may wish to seek additional advice.

Ybarra residential properties are in one of the legal non-conforming residential clusters. Marlene Ybarra, Councilmember Melissa Ybarra's sister, is an appointed Member of the Vernon Housing Commission (VHC) and jointly owns the same real property as Melissa Ybarra.

The VHC is a seven-member body that oversees management of City-owned housing stock and related matters including leasing, rent setting, and maintenance. The VHC does not have jurisdiction over the City's zoning or specific plan amendments but is routinely asked to review and provide recommendations to the Vernon City Council on decisions related to housing, including the City's housing element, Project Westside, and the related zoning changes.

Approximately 40% of the City's population lives in City-owned housing, with 33 percent of housing units owned and operated by the City. The City has approximately 222 residents in a mix of single-family homes and apartments, including City-owned rental housing as well as rental housing owned by a third-party developer. All City-owned housing is currently zoned as a legal non-conforming residential use that would be subject to the proposed zoning changes. The rental housing owned by a third-party developer is the only residential use in the City that is currently in conformance with the zoning code.

Several other elected and appointed City officials also live within the Project Westside area, but aside from Mayor Pro Tem Larios, they are renters on month-to-month lease terms. Members of the Ybarra family are the only current Vernon residents who own residential property.

In addition to the 26 City owned residential units (consisting of 18 single family homes and eight apartments), there are three privately owned residential units (one duplex and one single family) on adjacent lots that are not currently zoned residential that would be impacted by the zoning change. The Ybarras have an ownership interest and reside in these three units. There are no other existing residential units that are not already zoned residential. There are a total of 78 housing units in the City. Of the 78 housing units in the City, 13 housing units are located in the Project Westside within 500 feet of the Santa Fe Avenue Corridor. Additionally, all of the properties along all of Santa Fe Avenue would be zoned to allow for residential uses. Currently there are no residential uses along Santa Fe Avenue.

## ANALYSIS

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 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 the official's immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests is "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103(b).)

Mayor Pro Tem Larios has a real property interest in her leased residence. Councilmember Melissa Ybarra and Housing Commissioner Marlene Ybarra have economic interests in their two residential properties and parking lot. These interests are all located within the boundaries of the Project Westside Area.

### *Foreseeability and Materiality*

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. An interest in real property is the subject of the decision and explicitly involved in the decision anytime the decision affects the property as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Pursuant to Regulations 18701(a) and 18702.2(a)(1)-(6), an interest in real property is explicitly involved in the decision and the effect of the decision on the interest is both foreseeable and material if the decision:

- (1) Involves the adoption of or amendment to a development plan or criteria applying to the parcel.

Here, Councilmember Melissa Ybarra and Housing Commissioner Marlene Ybarra have economic interests in their two residential properties and parking lot. These properties are all located within the boundaries of the Project Westside Area, and decisions for the Project Westside Project area, including related zoning decisions, would at a minimum involve amending the development plan of the area in which the parcels are included. As such, the effect of these decisions on Councilmember Melissa Ybarra and Housing Commissioner Marlene Ybarra's property interests is both foreseeable and material, and they are precluded for participating in these decisions, unless an exception applies.

For Mayor Pro Tem Lario, we examine the standards relevant to her leasehold interest in the residential property subject to the zoning change. Where an official's economic interest is not explicitly involved in the governmental decision, as is the case with Mayor Pro Tem Larios' interest in her leased residence, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

### *Mayor Pro Tem Larios-Leasehold*

The reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

(Regulation 18702.2(c).)

Project Westside proposes to make changes to the City's zoning code to allow for residential development, as well as mixed use and additional retail development along the City's Santa Fe Avenue Corridor. Zoning code changes would also allow residential development of legal non-conforming residential properties throughout the City. The zoning changes, if adopted, would significantly increase residential housing and, you have stated, could have foreseeable impacts on real property within the Project Westside area such as potential increased traffic, decreased parking, and potential impacts on property values. At a minimum, Project Westside would likely impact the potential rental value of Mayor Pro Tem Larios's leased property and, accordingly, the Act prohibits her from taking part in Project Westside decisions unless an exception applies.

#### *Public Generally Exception*

A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public is:

- (1) At least 25 percent of:
  - (i) All businesses or non-profit entities within the official's jurisdiction;
  - (ii) All real property, commercial real property, or residential real property within the official's jurisdiction; or
  - (iii) All individuals within the official's jurisdiction.
  
- (2) At least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence.

(Regulation 18703(b).)

Regulation 18703(c) provides that a "unique effect" on a public official's financial interest exists if a decision will have a disproportionate effect on:

- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- (2) The official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
- (3) The official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.
- (4) The official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

(5) A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.

(6) The official's personal finances or those of his or her immediate family.

*Mayor Pro Tem Larios*

Of the 78 housing units in the City, 13 housing units are located in the Project Westside within 500 feet of the Santa Fe Avenue Corridor. As such, the facts indicate that a significant segment, at least 15 percent of the City's residential properties, are in the Project Westside area within 500 feet of the Santa Fe Avenue Corridor. Further, as to a "unique effect," there is no indication from the facts provided that there is a disproportionate financial effect on Mayor Pro Tem Larios' residence located within 200 feet in comparison other properties within 500 feet of the Santa Fe Avenue Corridor. Therefore, Mayor Pro Tem Larios has established that the financial effect on her financial interest is indistinguishable from its effect on the public generally and she is not barred from participation under the Act.

*Councilmember Melissa Ybarra and Housing Commissioner Marlene Ybarra*

There are three privately owned residential units on adjacent lots that not currently zoned residential that would be impacted by the zoning change. The Ybarras have a joint ownership interest in these three units, and are the only current Vernon residents who own residential property. In addition, they also own a parking lot in the Project Westside area within 400 feet of the Santa Fe Avenue Corridor. Since their interests are not limited solely to their primary residences a "significant segment of the public" to include at least 25 percent of all residential real property within the official's jurisdiction. As discussed above, there are 13 housing units are located in the Project Westside area within 500 feet of the Santa Fe Avenue Corridor. At least 25 percent of residences must be affected by the decision for the "significant segment" prong of the "public generally" analysis to be met. Additionally, a decision will have a "unique effect" on a public official's financial interest the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest. Councilmember Melissa Ybarra and Housing Commissioner Marlene Ybarra would be uniquely affected by the decision due to their multiple interests. This standard is not met, and the exception does not apply.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division