



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 22, 2023

Michael Gates
City Attorney
City of Huntington Beach
P.O. Box 190
2000 Main Street
Huntington Beach, California 92648

Re: Your Request for Advice
Our File No. A-23-020

Dear Mr. Gates:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

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.

QUESTION

Does City of Huntington Beach City Councilmember, Casey McKeon, have a conflict of interest in a decision to approve the City’s Housing Element Update Project (“Project”) as a result of owning real property more than 500 but less than 1,000 feet from the parcels included in the Project?

CONCLUSION

No. Councilmember McKeon is not disqualified from taking part in the decision related to the Housing Element Project because it is not reasonably foreseeable the decision will have a

¹ 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.

material financial effect on his interests in real property or rental business. Based on the information provided, there are no facts to indicate the Project would impact the development or income producing potential of his property, the use of the property, the market value, or the character of the property as the zoning and character of the property at issue will remain largely unchanged. Furthermore, there is no indication that the Councilmember will lose or gain any revenue from the Project and will not incur costs due to the Project.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Huntington Beach (“City”). You are seeking advice on behalf of City Councilmember, Casey McKeon. Councilmember McKeon owns a rental property more than 500 feet but less than 1,000 feet from parcels included in the City’s Housing Element Update Project (“Project”), and you are seeking advice on whether this constitutes a conflict of interest under The Act.

The Project relates to the State 6th Cycle Regional Housing Needs Assessment (RHNA). The Project includes a two-part approval process: (1) a General Plan Amendment to adopt a Housing Element, which includes a sites inventory, mandated by State Housing Element law that demonstrates the City can accommodate the City’s RHNA of 13,368 residential units through zoning (“Housing Element”), and (2) Zoning Map Amendments and Zone Text Amendments to create multiple affordable housing overlays. The Housing Element sites inventory identifies more than 300 parcels with potential to accommodate the City’s entire RHNA plus a buffer (approximately 7,000 additional dwelling units).

One such overlay is the Beach and Edinger Corridors Specific Plan Overlay (“BECSP”). The BECSP is a form-based code that allows mixed use development and there is not a maximum density development standard. The BECSP does not confer any additional land uses nor does it allow for additional density over the base zoning district. It would allow multi-family residential uses by-right (not subject to a discretionary hearing process) on designated sites provided that a minimum number of 20 percent of the units are affordable to lower income households. No development project is proposed as part of the Project.

Several parcels identified in the Housing Element sites inventory are located within 1,000 feet of Councilmember McKeon’s property. Half of the parcels are considered buffer sites and are not included in the BECSP Overlay proposed at this time. The remaining parcels designated with the BECSP that are within 1,000 feet of the Councilmember’s property are already zoned for multi-family residential uses because of their existing underlying mixed use Specific Plan zoning designation. The BECSP would not change the existing permitted residential density or increase the maximum residential capacity of these parcels.

ANALYSIS

As a public official, Councilmember McKeon is subject to the Act’s conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use the official’s position to influence a governmental decision in which he has a financial interest. A public official has a “financial interest” in a governmental decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of

the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including:

- Any real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more. (Section 87103(b)).
- An interest in a source of income, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- A business entity interest, where an official has a direct or indirect investment of \$2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

Councilmember McKeon's financial interests relevant to this analysis are his interest in the real property he owns within 1,000 feet of the Project site, his business entity as a landlord of the rental property withing 1,000 feet of the Project, and the source of income he receives through his business as a landlord including the business and tenants.²

The standard for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is "explicitly involved" as a named party in, or the subject of, the decision. An interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). Where, as here, the official's financial interest is not explicitly involved as a named party or subject of the decision, the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

Real Property Interest

Regulation 18702.2(a)(8) is the applicable materiality standard regarding an official's real property parcel that is located within 500 to 1,000 feet from property involved in a decision. Under Regulation 18702.2(a)(8)(A)-(E), a decision's effect on an official's real property interest is material if the decision would change the parcel's development potential, income producing potential, highest and best use, or character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value.

Here, Councilmember McKeon's property is a rental property within 1,000 feet of the proposed Project. The zoning and allowable density for the area identified in BECSP will remain unchanged. There will be little to no change in the way that the Councilmember will be able to use

² In regards to tenants, no specific tenant has been identified and no facts were provided in relation to this specific conflicts questions that would warrant an analysis of this interest. However, to the extent the decision may implicate a tenant (other than by affect the Councilmember's rental property), Councilmember McKeon should seek additional advice.

his property. Due to the unchanged zoning and allowable density within the area there are no facts to indicate a change in the development potential, highest and best use, or character of the property. There are no facts to suggest that the Project will impact the amount of rent the Councilmember is able to collect from his tenant, therefore there is no impact on the income producing potential of the property. Furthermore, as the density and zoning of the area will remain unchanged it is unlikely there will be a change in market value of the property.

Given the above facts, it is not reasonably foreseeable that the decision will have a material financial effect on the Councilmember's property that would give rise to a conflict of interest in this case.

Business Entity and Source of Income Analysis

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business as either a business entity or source of income is material if the business will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Under Regulation 18702.1, the Act provides that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income, is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.
- The official knows or has reason to know that the entity has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

Here, Councilmember McKeon receives income through his business as the owner of rental property. You did not state the amount of income that the Councilmember receives by renting his property, but it appears that the amount is more than \$500 in the span of 12 months. However, you have also stated that the zoning and density in the area will remain the same and there are no other indications that the character of the Councilmember's property will change or that the decision would impact the rent charged or the Councilmember's ability to collect rent in a similar manner that he has done in the past. There are also no facts to indicate that gross revenue of Councilmember McKeon's rental business would increase or decrease by five percent of \$1,000,000 or that the Project would result in the Councilmember incurring any additional expenses. Based on the information provided, it is not reasonably foreseeable that the decision will have a material financial effect on the Councilmember's rental business as either a business entity or source of income.

Accordingly, based on the facts provided, the Councilmember is not prohibited from taking part in the discussions and decisions related to the Project.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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