



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 24, 2023

Veronica Ramirez
City Attorney
Redwood City
1017 Middlefield Road
Redwood City, CA 94063

Re: Your Request for Advice
Our File No. A-23-070

Dear Ms. Ramirez:

This letter responds to your request for advice on behalf of Redwood City Councilmember Chris Sturken regarding the conflict of interest provisions of the Political Reform Act and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

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.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the San Mateo County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Does Councilmember Sturken have a conflict of interest under the Act in City Council decisions related to planning approvals for the General Plan and Downtown Precise Plan ("DTPP") amendments resulting from his year-to-year tenancy in his primary residence?

2. Does Councilmember Sturken have a conflict of interest under the Act in City Council decisions related to decisions to issue land use entitlements to a DTPP redevelopment project located at 651 El Camino Real?

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.

3. Will Councilmember Sturken have a conflict of interest under Section 1090 or the Act in any City Council decisions related to the making of, and approval of, a development agreement with the applicants for the aforementioned redevelopment project at 651 El Camino Real?

CONCLUSIONS

1. No. Councilmember Sturken does not have a conflict of interest in City Council decisions related to planning approvals for the General Plan and DTPP amendments resulting from his year-to-year tenancy in his primary residence.

2. Councilmember Sturken has a potentially disqualifying financial interest in governmental decisions that involve issuing land use entitlements to a DTPP redevelopment project located at 651 El Camino Real, which include a site located less than 1,000 feet from his leased residence. However, the public generally exception applies, and he may take part in these decisions.

3. No. Based on the facts presented, Section 1090 does not apply to Councilmember Sturken for purposes of decisions involving a development agreement with the applicants for the Gatekeeper Project at 651 El Camino Real.

FACTS AS PRESENTED BY REQUESTER

Background

In 2011, the City Council adopted the DTPP, a specific plan that regulates redevelopment of the City's Downtown. The DTPP allows for streamlined development project analysis and public review by setting overall development caps ("Maximum Allowable Development" or "MAD caps") for office, residential, retail, and hotel development. The MAD caps for office space and residential uses specified in the DTPP and General Plan are almost met. As a result, any project proposing to exceed those caps has had to request both a General Plan and DTPP amendment the past few years.

In 2020 and 2021, given the large number of projects requesting such amendments, the City Council used a "Gatekeeper" process to evaluate pending General Plan and DTPP amendment requests. The City Council analyzed a variety of conceptual land use redevelopment projects in the Downtown against its Strategic Plan and Priorities. The Council authorized the six Gatekeeper Projects (five of which are within the existing DTPP boundary and one of which, 651 El Camino Real, is located just outside the current boundary) to formally submit applications to initiate the General Plan and DTPP amendment process and obtain any necessary discretionary approvals.

Each Gatekeeper Project generally involves a proposal to redevelop land Downtown that is currently improved with one or two-story commercial development and replace it with a mixed-use development consisting of commercial office, retail and residential (including affordable) development up to approximately 10-stories tall and provide various community benefits (such as additional affordable housing, community/recreational space, etc.). The individual DTPP Gatekeeper Projects are located at: 1) 651 El Camino Real; 2) 901-999 El Camino Real/Caltrain Property; 3) 2300 Broadway / 609 Price; 4) 603 Jefferson / 750 Bradford; 5) 1900 Broadway; and

6) 601 Allerton Street. Applications for the individual Gatekeeper Projects are in various stages of planning, revision, and submission. None have been deemed complete.

The Council also directed staff to return with updates to the DTPP and General Plan to update certain land uses, circulation, parking, and other policies in anticipation of substantial mixed-use redevelopment Downtown.

Current Projects

On or about May 8, 2023, and June 2023, the City Council will consider adopting DTPP Plan Wide amendments that revise certain development standards within the DTPP and make corresponding General Plan revisions (collectively, the “DTPP Plan Wide Amendments”).² The proposed DTPP Plan Wide Amendments will also require the applicant of any project seeking a General Plan Amendment to negotiate a Development Agreement with the City. The purpose of these DTPP Plan Wide Amendments is to make policy changes at the General Plan and specific plan (DTPP) level in advance of the consideration of the six Gatekeeper Projects to ensure those projects conform to the City’s vision for development in Downtown. While the Plan Wide Amendments do not propose significant changes to the MAD Caps³ or an extension of the DTPP boundary, the environmental impacts of doing so are being studied.⁴

Assuming the Council adopts the DTPP Plan Wide Amendments, each individual Gatekeeper Project is expected to finalize their redevelopment application and request General Plan and DTPP amendments to change the MAD caps (and/or extend the DTPP boundary for 651 El Camino Real) and negotiate a Development Agreement as part of its project-level land use approvals. The Development Agreement is expected to establish an agreement between the City and the applicant identifying the time period for vested rights in a specific development proposal, specifying the phasing of the mixed-use and affordable development over time, and establishing commitments to certain community benefits. You also note that Plan Wide Amendments and Draft Subsequent EIR will not guarantee approval and/or development of any particular project in the Downtown.

² The Plan Wide Amendments consist of amendments to the DTPP and the Redwood City General Plan, to revise certain development standards, guidelines and policies, including, but not necessarily limited to, those with respect to permitted or conditionally permitted land uses (including allowing Research and Development Laboratory space as a conditional use); streets and circulation (including pedestrian, bicycle, and vehicular circulation); building placement; building height and massing (including allowing the development of recreational rooftop structures within existing height limitations); parking requirements; historical resources; and open space.

³ The DTPP Plan Wide Amendments only propose an increase of 80,000 square feet in the office development cap to be reserved specifically for small office projects of 20,000 net new square feet or less.

⁴ The Draft Subsequent EIR for the DTPP Plan Wide Amendments evaluates development of additional office development of 1,087,100 square feet (total of 1,167,100 square feet including the 80,000 square feet for small offices) within the DTPP area. The Draft Subsequent EIR also evaluates an additional 830 residential units would be developed within the DTPP area.

Relevant Facts Regarding Councilmember Sturken

Councilmember Sturken has a year-to-year tenancy in his primary residence located on Warren Street in Redwood City. This residence is located 872 feet from the current DTPP boundary and 581 feet from one of the Gatekeeper projects located at 651 El Camino Real (which aligns with the proposed DTPP boundary extension). That Gatekeeper project is located in the middle of a city block which is internally separated by the Caltrain railroad tracks. The project site is currently improved with a veteran's center. Hopkins Avenue, which abuts the home at 1011 Warren Street and forms the northern boundary of the block in which 651 El Camino Real is located, is not a through street because of the railroad tracks. The railroad tracks form a physical barrier between these two sites. To travel from 1011 Warren Street to 651 El Camino Real, you would need to go three blocks in either a northwestern or southeastern direction to get to a through street at Whipple or Brewster Ave to be able to access El Camino Real. There is also no direct viewshed from the Council Member's residence to the 651 El Camino Real site. The properties on El Camino Real are largely commercial, whereas the properties surrounding Councilmember Sturken's home are primarily single and multi-family residential.

As to the application of the public generally exception, you state that City staff has determined that approximately 776 housing units of the 4,964 housing units in District 2 are within 1,000 feet of the 651 El Camino Real Gatekeeper Project. This is approximately 16% of the housing units within District 2. Further, you state that, as a tenant, Councilmember Sturken has no ability to use his rental home to produce income. The separation caused by the railroad tracks also isolates and protects the Council Member's residential neighborhood from the construction and redevelopment such that it does not appear that the project's externalities would impact the homes on the eastern side of the tracks differently than other housing units. Furthermore, Councilmember Sturken's landlord could only raise his rent in accordance with AB 1482 (Tenant Protection Act of 2019) and not as a result of any nearby development (e.g., 651 El Camino Real).

ANALYSIS*The Act*

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 public 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 a specified economic interest, including an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) Pertinent to these facts, Councilmember Sturken has a real property interest in his leased residence.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the

official's agency." It further provides that a financial 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 financial interest. This also includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

Where an official's economic interest is not explicitly involved in the governmental decision, as here, 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.

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).)

General Plan DTPP Plan Wide Amendments

With respect to the Council's decisions related to the General Plan and DTPP Plan Wide Amendments, the facts presented provide no indication that decisions relating to those decisions have the potential to change the termination date of Councilmember Sturken's lease, alter the rental value of the property, change the actual or legally allowable use, or impact use and enjoyment. Acting on these Plan Wide Amendments and Draft Subsequent EIR will not guarantee approval and/or development of any particular project in the Downtown. Further, any project-level approvals and redevelopment would be several years away (given the need to seek project level entitlements, including an amendment to the DTPP to increase the office MAD cap), making the potential effect of the current decisions on a year-to-year leasehold interest speculative at this point.

Land Use Entitlements for Gatekeeper Project at 651 El Camino Real

With respect to the subsequent decisions to extend the DTPP boundary around the properties from 651 – 699 El Camino Real and issue land use entitlements to a DTPP redevelopment project located at 651 El Camino Real would not have the potential to change the termination date of

Councilmember Sturken's lease, change the actual or legally allowable use of the property. However, as your facts suggest, a decision relating to the redevelopment of the single-story veteran's center into an up to 8-story residential facility with a new veteran's center could enhance the residential and community spaces in the vicinity of Councilmember Sturken's rental home. While these sites are located within 1,000 feet, the construction, associated traffic, and noise involved in the redevelopment effort could potentially affect Councilmember Sturken's residence. This would impact the use and enjoyment of the rental property, as well as its potential rental value. Thus, Councilmember Sturken has a potentially disqualifying financial interest in the decisions and is prohibited from taking part in any decisions related to a DTPP redevelopment project located at 651 El Camino Real, 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).)

With respect to the decision at issue, the "significant segment of the public" is 15 percent of the residences within the City or the City Council district the Councilmember represents. (Regulation 18703(d).) You note that there are approximately 776 housing units of the 4,964 housing units in District 2 within 1,000 feet of the 651 El Camino Real Gatekeeper Project. This is approximately 16% and exceeds the 15% threshold.

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.

None of your facts suggest that there would be a unique effect on Councilmember Sturken's interest in his leased residence in comparison to other housing units within the significant segment identified. Based on the facts provided, the "public generally" exception applies, and the Act does not prohibit the Councilmember from taking part in the decisions.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Here, the decision at issue involves a development agreement with the applicants for the aforementioned redevelopment project at 651 El Camino Real. In this case, Section 1090 applies to all councilmembers, as a development agreement constitutes a contract for purposes of Section 1090. (78 Cal.Op.Atty.Gen. 230, 235 (1995).) However, the pertinent issue is whether Councilmember Sturken will have a prohibitory financial interest in a development agreement for purposes of Section 1090.

Previously, for purposes of a highway project, we have found that an official does not have an interest in a contract involving the highway project under Section 1090 merely because the official has a property or a business adjacent to or in close proximity to the project. (*Bordson* Advice Letter, No. A-17-059.) Likewise, here, the close proximity of Councilmember Sturken's leased real property to the Gatekeeper Project at 651 El Camino Real would not alone establish a financial interest under Section 1090 with respect to any contract relating to the future development of the site in question. Barring additional facts to the contrary, Councilmember Sturken does not

have a financial interest in this decision for purposes of Section 1090, and it does not prohibit the City from entering into development agreements relating to the Gatekeeper Project at 651 El Camino Real.

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

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