



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 17, 2023

Kevin G. Ennis  
City of Pasadena  
350 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-23-073**

Dear Mr. Ennis:

This letter responds to your request for advice on behalf of City of Pasadena (“City”) Mayor Victor Gordo 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. Does Mayor Gordo have a prohibitive financial interest under the Act in the City Council decisions to appoint individuals to the Pasadena Rental Housing Board (“PRHB”), where he and his spouse own several residential properties in the City?
2. Does Mayor Gordo have a prohibitive financial interest under the Act in the decision to approve the Advancement of Operating Funds for the operation of the PRHB?

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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. As long as (1) Mayor Gordo has no financial interest in any appointee, (2) there is no understanding between the official and an appointee as to how the appointee will vote, and (3) the potential appointee has not taken a position on the issue or expressed intentions as to how they might vote, it is not reasonably foreseeable that the decision will have a financial effect on his interests and Mayor Gordo will not have a prohibitive financial interest in the decisions.

2. As long as the above three factors are met in regard to the appointment of the PRHB members, Mayor Gordo's facts indicate it is not reasonably foreseeable that the Advancement of Operating Funds for the operation of the PRHB decision will have a material financial effect on his interests, and Mayor Gordo will not have a prohibitive financial interest in the decision.

## FACTS AS PRESENTED BY REQUESTER

Mayor Gordo is the directly elected Mayor of the City and is a member of, and the presiding official of, the Pasadena City Council. He was elected on November 3, 2020, assumed office on December 7, 2020, and began a four-year term of office on that date.

In his private capacity, he and his wife own several residential properties in the City. In addition to their personal residence, Mayor Gordo and his wife own three other residential properties in the City that have a combined total of six dwelling units. Each of these dwelling units are currently rented to separate tenants and each of the tenants are a source of income to him and his wife exceeding \$500 in a 12-month period.

### *Measure H*

On November 8, 2022, City voters approved rent control measure, Measure H. The new law took effect on December 22, 2022, and added new Article XVIII entitled "The Fair and Equitable Housing Charter Amendment" to the City's Charter.

Measure H established the Pasadena Rental Housing Board ("PRHB") The PRHB has the authority to implement the measure and operate independently of the City Council, City Manager and City Attorney. Once established, it will determine permissible rent adjustments, conduct investigations, adjudicate petitions, establish regulations, and impose landlord fees and penalties for noncompliance with Measure H.

Measure H contains provisions that are aimed at restraining the ability of the City Council, City Manager or City Attorney to affect the decisions of the PRHB. Decisions of the PRHB are not appealable to the City Council and are instead only subject to judicial review. Similarly, Measure H does not provide the City Council with the power to call up for review any PRHB decision or to overrule any decision of the PRHB. In addition, the PRHB may hire and seek advice from attorneys other than the City Attorney or members of the City Attorney's Office.

Measure H imposes limitations on subsequent rent increases. Landlords may set tenants' rent at the time of move-in. Thereafter, landlords cannot increase rents for covered units more than allowed by "Annual General Adjustments," that are to be set at 75% of the percentage increase in

the Consumer Price Index (“CPI”). Landlords may petition for a higher rent increase to ensure a “fair return.” Tenants may seek rent reductions due to inadequate housing services or maintenance.

Measure H imposes protections against evictions. Landlords may only terminate tenancies for just-cause conditions, such as nonpayment of rent, breach of lease, creating a nuisance and eight other conditions. Landlords must provide relocation assistance for four conditions, such as owner move-in and making necessary and substantial repairs.

Measure H exempts from its restrictions care facilities and subsidized housing units. In addition, the rent increase caps do not apply to multi-family rental units built after February 1, 1995, and most single-family homes and condominiums. However, the eviction protections do apply to those exempt units.

#### *Application of Measure H to Mayor Gordo’s Residential Rental Properties*

Of Mayor Gordo’s six residential rental units, one of them is a single-family residence and that residence would be exempt from the rent increase restrictions. The other five rental units would be subject to the rent increase restrictions. All six units would be subject to the eviction protection provisions contained in Measure H.

#### *Implementation of Measure H: Appointment of Members and Advancement of Operating Funds*

The City is beginning to implement Measure H. The City Clerk is tasked with setting up the PRHB by developing application materials, verifying eligibility of applicants, and forwarding applications to the City Council for consideration and appointment of PRHB members.

The PRHB will consist of eleven members. Seven of those members will represent Tenant District seats and four members will be “At-Large” members. The City Council will also appoint two alternative PRHB members. Applicants for the PRHB submit applications to the City, and the City Clerk distributes those applications to the City Council. The City Council then reviews the applications for nominations to the Tenant District seats and the “At-Large” seats. The City Council is scheduled to vote to make all the appointments to the PRHB before April 21, 2023, under the Measure H deadline. The PRHB sets the salary for its members pursuant to standards in Measure H. Once members of the PRHB are appointed, they may not be removed by the City Council but, instead, may only be removed pursuant to citizen recall petition procedures set forth in Measure H.

Other upcoming Measure H-related decisions to be made by the City Council include decisions to approve a budget allocation for the advancement of City funds for an initial operating budget for the PRHB’s staff and operations (“Advancement of Operating Funds”). The City is required under Measure H to advance necessary funds to ensure the effective implementation of the new law until the Rental Board has collected Rental Housing Fees sufficient to support the implementation. Measure H allows the PRHB to establish its own budget with the City Council’s approval of the Advancement of Operating Funds, and thereafter the PRHB makes its own expenditure decisions independent of City Council approval.

In response to our request for additional information, you confirmed that none of the current applicants for the Rent Board are Mayor Gordo’s tenants, nor are any a source of income, a source

of gifts or an employee or business associate. Mayor Gordo has further confirmed that none of the applicants are family members, live with the Mayor or his family, or pay any personal expenses of the Mayor or his family.

### ANALYSIS

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) 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, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Relevant to the facts provided, Section 87103 defines a financial interest to include:

- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$ 2,000) or more.
- Any source of income, aggregating \$ 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 source of gift interest in any donor, or the donor's intermediary or an agent, from whom the official receives a gift or gifts worth \$ 500 or more in value in the 12 months prior to when the decision is made. (Section 87103(e).)
- A public official has an economic interest in their personal finances, including those of their immediate family (Section 87103.)

Mayor Gordo has real property interests in his residential property, and the rental properties. He also has a business entity interest and source of income interest in his rental properties business, as well as a source of income interest in the rental property tenants.<sup>2</sup> The decisions at issue will establish the PRHB with eleven appointed, salaried members, two alternates and an initial operating budget. The PRHB will then function outside the control of the City Council. We examine whether it is reasonably foreseeable that the decisions will have a financial effect on Mayor Gordo's interests.

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<sup>2</sup> Section 82030 provides that an individual's "income" includes "a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10 percent interest or greater." Because you have greater than a 10 percent interest in your rental property business, you would have a source of income interest in any client of the businesses from whom you receive \$500 or more in income in the 12 months prior to the decision at issue.

### *Foreseeability*

A financial effect on a public official's economic interest is reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) An economic 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 economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Where, as the facts indicate here, a public official's economic interest is not explicitly involved in the decision, a different standard for determining the reasonable foreseeability of a financial effect is applicable. Under Regulation 18701(b), "[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."

### *PRHB Appointment of Members*

The first decision involves the appointment of salaried members to the PRHB. The pertinent question is whether it is reasonably foreseeable that the decision, which establishes the membership of the independent board, would have a material financial effect on Mayor Gordo's interests in real property, his rental business, and his tenants. Arguably, appointing an individual who has expressly stated a position on rental matters, such as placing a minimum on fines for rental violations to protect landlords, could realistically affect these interests.

In past advice letters involving decisions to appoint a board member, we have advised that there is no foreseeable financial effect on an official's financial interests, including a real property interest if: (1) the official does not have a financial interest in the appointment decision, (2) there is no understanding between the official and the appointee as to how the appointee will vote, and (3) the appointee has not taken a position or otherwise expressed how they would vote on particular issues. (*Oderman* Advice Letter, No. I-07-143, citing *McAndrews* Advice Letter, No. A-99-213, and also, *McLaughlin* Advice Letter, No. A-04-225; *Ungar* Advice Letter, No. A-93-277; and *McHugh* Advice Letter, No. A-93-142.) This advice has been "premised on the assumption that an appointee will act independently, exercising his or her own judgment to decide issues rather than merely carrying out the will of the appointing power." (*McAndrews, supra.*) The *Oderman* advice notes that an official has no financial interest in the appointment decision if the person appointed to the positions are not sources of income, or sources of gifts to the official. (*Oderman, supra*, fn. 4.)

The facts do not indicate that Mayor Gordo has any financial interest in the applicants as sources of income or gifts, or as sources of a personal financial effect. Therefore, to the extent that the other two *Oderman* factors are met (no understanding between Mayor Gordo and an appointee on how they would vote on particular issues, and no appointee has expressed a position on particular rental board issues), it is not reasonably foreseeable that the decisions will have a financial impact on his interests in his real property, business, and tenants.

*Advancement of Operating Funds*

The second decision is a budget allocation decision for the City to provide initial operating funds for the establishment of the PRHB prior to the board having rental fee allocations to support its operations. Generally, an official would have a prohibitive financial interest in a budget allocation decision, for example, if their business or source of income interest received funding from an agency affected by the decision. (*Pike* Advice Letter, No. A-95-175; city councilmember may not participate in budget allocation decision regarding the city's Human Services' budget where his non-profit source of income received funding from the agency within the past 12 months.) Additionally, it is a realistic possibility that the budget allocation could further act to advance the official's financial interests if the official had a financial interest in the appointment of particular members to the board.

The facts do not indicate that Mayor Gordo's financial interests would somehow be the recipient of the PRHB's establishing budget allocation. Moreover, any action by the PRHB will be independently made by the appointees as opposed to the City Council Accordingly, to the extent all factors stated above are met: (1) the official does not have a financial interest in the persons up for appointment, (2) there is no understanding between the official and the appointee as to how the appointee will vote, and (3) the appointee has not taken a position or otherwise expressed how they would vote on particular issues, then it is not reasonably foreseeable that the decision would have a material financial impact on Mayor Gordo's interests.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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