



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

June 21, 2023

Julian Miranda
City Manager
Irwindale City Hall
5050 N. Irwindale Ave.
Irwindale, CA 91706.

Re: Your Request for Advice
Our File No. A-23-083

Dear Mr. Miranda:

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

Under the Act, may you and two Irwindale City Councilmembers take part in governmental decisions related to proposed improvements to the Irwindale Veterans Memorial, given that each of you own real property located either less than 500 feet or between 500 and 1,000 feet away from the Veterans Memorial?

CONCLUSION

Yes, because of the minimal scope of the proposed project, including only a minor potential change in view for the single property from which the Veterans Memorial is visible, the proposed improvements would not have a reasonably foreseeable, material financial effect on any of the 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.

properties inquired about and, therefore, the Act does not prohibit any of the property owners from taking part in the decisions.

FACTS AS PRESENTED BY REQUESTER

You are the City Manager for the City of Irwindale (“City”). Mark A. Breceda and Manuel R. Garcia are members of the City Council.

You are a resident of the City and live in and own a home in Irwindale located within 500 feet of City Hall. Councilmember Breceda is a resident of the City and owns one property within 500 feet of City Hall and two other properties located between 500 and 1,000 feet of City Hall. Councilmember Garcia is a resident of the City and lives in and owns a home in the City located between 500 and 1,000 feet from City Hall.

The Irwindale Veterans Memorial, located at the entrance to City Hall, was constructed and dedicated in 2007. The City is now considering making improvements to the Veterans Memorial, which would include:

- A display of flags for the six military branches with flag poles approximately 20-30 feet high;
- Additional lighting fixtures used to illuminate the flags; and
- Minor updates to landscaping, including removal of palm trees located immediately behind the Veterans Memorial, as may be required.

Proposed improvements may have an impact on noise and traffic in the area while construction is underway. In either its current or potential future form, the Memorial cannot be seen from your property, Councilmember Garcia’s property, or Councilmember Breceda’s properties located between 500 and 1,000 feet away from the Memorial. The Memorial is currently visible from Councilmember Breceda’s property located less than 500 feet away and the flag poles would be visible from his property if constructed.

With your request for advice, you also included a plot map showing the various properties within 500 and 1000 feet of the Veterans Memorial, an overhead photo of the area around the Veterans Memorial, as well as photos of the Veterans Memorial itself.

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.) Those specified economic interests include “[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).)

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. 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, and 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.”

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).)

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is also material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel’s:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).) Lastly, Regulation 18702(b) provides that “the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant.”

With respect to your home and Councilmember Breceda’s real property located within 500 feet of the Veterans Memorial, the scope of the project is minimal, such that potential increases in traffic or noise levels would not be for an extended period. The proposed changes to the memorial itself are so minimal they could not feasibly affect the development potential, income producing potential, market value, or highest and best use of nearby properties. Although the installation of several 20 to 30 foot flag poles could theoretically impact the view from Councilmember Breceda’s property, the flag poles would essentially be replacing palm trees that are already in place and similarly impact views of the area. Accordingly, there is clear and convincing evidence the decision of whether to approve the improvements to the Veterans Memorial would not have any measurable impact on your real property or Councilmember Breceda’s property located within 500 feet.

Further, while the decision may have some impact on landscaping or views of the Veterans Memorial, the financial effect of those changes on nearby properties may fairly be characterized as nominal, inconsequential, or insignificant under Regulation 18702(b).

For the same reasons, the decision to improve the Veterans Memorial also would not have a material financial effect under Regulation 18702.2(a)(8) on any of the properties located between 500 and 1,000 feet from the Veterans Memorial.²

Accordingly, the Act does not prohibit you or either City Councilmember from taking part in decisions relating to the proposed improvements to the Veterans Memorial.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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² Although you have noted Councilmember Breceda's three properties, you have not indicated he has any tenants, who would qualify as source of income interests under the Act. Nor have you indicated Councilmember Breceda has a rental business related to any rental properties. We note, however, that even to the extent that Councilmember Breceda's properties are rental properties, it is not reasonably foreseeable the decisions would have a material financial effect on these interests for the same reasons it is not foreseeable the decision will affect the property interests. (See, e.g., Regulation 18702.3(a)(2)(C)(ii); Regulation 18702.1(a)(4)(B).) Barring any other interests in the decision, there is no indication Councilmember Breceda is disqualified from the decisions due to his interest in any rental business or tenant of his properties.