



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

May 18, 2022

Julian Miranda
City Manager
City of Irwindale

Theresa Olivares
Assistant City Manager
City of Irwindale

Re: Your Request for Advice
Our File No. A-22-029

Dear Mr. Miranda and Ms. Olivares:

This letter responds to your requests for advice regarding your duties under 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. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTIONS

1. May City of Irwindale ("City") official Julian Miranda participate in the decisions regarding the City Hall/Police Department needs assessment and follow-up project, the Irwindale Park Improvement Project Phases IV and V, the Public Library/Dan Diaz Recreation Center Capital Improvements Project, or in the decisions regarding the Las Casitas housing development ground lease and management where his residential real property is located within 500 feet of the City

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.

Hall/Police Department facilities and the Irwindale Park, between 500 and 1,000 feet of the Public Library/Dan Diaz Recreation Center, and over 1,000 feet from the Las Casitas housing development? ?

2. May City official Theresa Olivares participate in decisions regarding the Public Library/Dan Diaz Recreation Center Capital Improvements Project, and the Irwindale Park Improvement Project Phases IV and V where her residential real property is located between 500 to 1,000 feet from each project?

CONCLUSIONS

1. The facts provided do not rebut the presumption that the decisions will have a material financial effect on his real property located within 500 feet; therefore, Mr. Miranda has a prohibitive financial interest and may not take part in the City Hall/Police Department needs assessment and follow-up project, or the Irwindale Park Improvement Project Phases IV and V. (Regulation 18702.2(a)(7).) Likewise, the facts provided indicate the Public Library/Dan Diaz Recreation Center Capital Improvements Project decisions would substantially alter traffic levels, intensity of use, parking, and noise in the neighborhood area, and affect his residence's market value; therefore, he may not take part in these decisions as well. (Regulation 18702.2(a)(8).) However, Mr. Miranda does not have a prohibitive financial interest under the Act related to his personal residence or personal finances in the Las Casitas housing development ground lease and management decisions and he may take part in these decisions.

2. Due to the fact that her property is separated by at least three city blocks of established residential and commercial buildings and there is no indication that the projects would alter the character of her parcel or its market value, Ms. Olivares does not have a prohibitive financial interest in her residential real property under the Act and may take part in the decisions concerning the City Public Library/Irwindale Dan Diaz Recreation Center Capital Improvements Project and the Irwindale Park Improvement Project decisions.

FACTS AS PRESENTED BY REQUESTER

The City is located within Los Angeles County and comprises 9 square miles, with a population of 1,400.² It is situated between the seven cities, including West Covina, Azusa and Monrovia. Julian Miranda is the City Manager and the City Housing Authority's Executive Director. Theresa Olivares is the Assistant City Manager, The City has the following upcoming facility expansion, building and refurbishing projects:

1. City Hall/Police Department: Needs Assessment. The City will be entering into contract with a consultant to perform a facility needs assessment. The City Council will consider and take actions based on the needs assessment which may result in an expansion or intensification of the facilities.

² Irwindale, California - Wikipedia, as viewed on May 5, 2022.

2. Public Library/Dan Diaz Recreation Center Capital Improvements Project to build an entirely new library structure and expand the existing Recreation Center to use the current library space.

3. Irwindale Park Improvement Project: Phases IV and V to remodel the park restrooms; upgrade and add new lighting; remodel existing picnic shelter; removal/replace sod, picnic tables, trash cans, horseshoe pit, and BBQ pits; add new corn hole game; new construction of open picnic table cover and accessibility seating at the softball field; and removal and replacement of several concrete pads throughout the park.

These projects are in close proximity to one another, in a grouping of civic buildings that flows into the Irwindale Park.

Additionally, the City's Housing Authority will be considering the purchase of the ground lease at Las Casitas, a housing development owned in fee by the City Housing Authority, from a third-party management company. The initial contemplated result of this transaction was that the Housing Authority would own, manage, and operate the existing housing development. In response to our request for additional facts, Mr. Miranda and City Attorney Mr. Adrian Guerra explained in a telephone conference on April 13, 2022, that currently the decision will result in a new third-party management being selected rather than the City managing the housing development.

Julian Miranda, City Manager, and the City Housing Authority's Executive Director owns residential real property located:

- Within 500 feet of the City Hall/Police Department facilities, and
- Within 500 feet of Irwindale Park.
- Between 500 and 1,000 feet of the City Public Library/Irwindale Dan Diaz Recreation Center.
- 1,000 feet or more from the Las Casitas housing development.

Also, although he is the City Housing Authority's Executive Director, Mr. Miranda confirmed that there will not be any change in his salary or duties as a result of the Las Casitas decisions. He explained in the telephone conference that he plays a role in making recommendations to the City Council on the facility projects. In regard to the City Public Library/Irwindale Dan Diaz Recreation Center decisions, the map provided indicates that Mr. Miranda's residence is separated from the Library/Recreation Center only by existing recreational facilities including the Irvingdale Park and Swimming Pool. Accordingly, the residence is in the immediate neighborhood and located on the route directly encircling the park and Library/Recreation Center. Mr. Miranda stated in the telephone conference that he anticipates this project may substantially alter traffic levels, intensity of use, parking, and noise in the neighborhood area.

Theresa Olivares, Assistant City Manager, owns residential real property located between 500 to 1,000 feet from the City Public Library/Irwindale Dan Diaz Recreation Center, and from Irwindale Park. This residence is not located adjacent to the park and is separated from the park and Library/Recreation Center by 3 blocks of existing residential and commercial buildings. She did not request advice regarding the City/Hall Police facilities or the Las Casitas housing development

decisions. She participated in the above-noted telephone conference and provided a map indicating the location of her residence as well as Mr. Miranda's residence in proximity to the facilities. The map illustrates that the Irwindale Park is separated from her residence by at least the three city blocks of residential and commercial structures.

ANALYSIS

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using his or her 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, including "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." and an "interest in the public official's own personal finances" and those of immediate family members. (Section 87103; Regulation 18700(a).)

Regulation 18701 provides the standard for determining the foreseeability of a financial effect on an economic interest depending on whether it is explicitly, or not explicitly, involved in the governmental decision. A financial interest is explicitly involved in a decision if it is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) 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). (*Ibid.*) Neither of the official's residential property meets the criteria as a named party or a subject of the proceedings.

Where, as here, an official's economic interest is not explicitly involved in the governmental decisions, Regulation 18701(b) provides the applicable standard for determining the foreseeability of a financial effect. This provision states, "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." (Regulation 18701(b).)

Real Property Standards

Regulation 18702.2 provides the standards for determining when a government decision's reasonably foreseeable effect on an official's real property interest is material considering factors such as the proximity of the property subject to the decision to the official's real property parcel. Applicable to these facts, the reasonably foreseeable financial effect is material:

- Whenever the decision involves property located 500 feet or less from the property line of the official's 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).) (Under this standard, there is a presumption of a material financial effect on the official's parcel due to the closeness of the property affected by the decision.)

- Whenever the 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 development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value. (Regulation 18702.2(a)(8).)

Whenever the governmental decision involves property 1,000 feet or more from the official's property, the financial effect of the decision is presumed to not be material as to the official's property, unless rebutted with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property. We next apply the 18702.2 materiality standards respective to each official's residential real property interest for the decisions indicated.³

1. Julian Miranda

City Hall/Police Department Expansion or Intensification Project

Julian Miranda owns his personal residence located within 500 feet of the City Hall/Police Department facilities. The map provided shows his residence is across the street from the Irwindale Park, which flows into the City Hall/Police Department area. There are no facts presented indicating that the expansion or intensification of the City Hall/Police Department facilities will *not* have a measurable impact on his real property interest. As a result, he has a reasonably foreseeable and material financial interest in the decision pursuant to Regulation 18702.2(a)(7) and he may not take part in the project decisions.⁴

Irwindale Park Improvement Project: Phases IV and V.

Julian Miranda's residence is located across the street and within 500 feet of Irwindale Park. Mr. Miranda noted that the park improvements are of a less involved nature than the City Hall or Library projects. However, the facts do not show that there would be "no measurable impact" on his parcel. The decisions involve improvements to the park and new amenities which may enhance his parcel's market value. As a result, the Regulation 18702.2(a)(7) presumption of a material effect is not rebutted. Therefore, it is reasonably foreseeable the decisions will have a material effect on his financial interest in the decision pursuant to Regulation 18702.2(a)(7) and he may not take part in the project decisions.

³ Ms. Olivares did not request advice on the decisions concerning the City Hall/Police Department Project or the Las Casitas housing development and no facts were provided in that regard. Therefore, we do not provide an analysis for her regarding these decisions.

⁴ Please note, under certain circumstances, a public official disqualified from one decision may participate in other related decisions if the official's participation does not affect the decision in which the official has a conflict of interest, and the decisions are not too interrelated to be considered separately. (Regulation 18706. "Government Decision. Segmentation.") Please contact us for additional advice, as needed, for the segmentation of any of the decisions. Additionally, the officials may wish to review Regulation 18704, which sets forth the definitions for "making, participating, or influencing a government decision."

Public Library/Dan Diaz Recreation Center Capital Improvements Project.

Julian Miranda's residence is located between 500 feet and 1,000 feet of the Library/Recreation Center. This project involves the construction of a new public library and the expansion of the recreation center into the existing library space. As Mr. Miranda's residence is located within an already-developed neighborhood, there are no facts to indicate that the project would affect the development potential, income producing potential, or highest and best use of the Councilmember's property interest in his residence. At issue, then, is whether decisions pertaining to the project would affect his parcel's character or market value.

Mr. Miranda stated in the telephone conference that he anticipates this project may substantially alter traffic levels, intensity of use, parking, and noise in the neighborhood area. Moreover, Mr. Miranda's residence is located in this affected neighborhood on the route directly encircling the park and the Library/Recreation Center. Therefore, the project decisions would change the character of his property under Regulation 18702.2(a)(8). The new Library and expanded Recreation Center may also affect his residence's market value, as an improvement to the neighborhood area. (*Id.*) Therefore, it is reasonably foreseeable the decisions will have a material effect on Mr. Miranda's financial interest pursuant to Regulation 18702.2(a)(8) and he may not take part in the project decisions.

City's Housing Authority: Las Casitas Housing Development decisions

Julian Miranda's residence is located 1,000 feet or more from the Las Casitas housing development, where the City is seeking to purchase the ground lease and contract with a new third-party manager. The presumption under Regulation 18702.2(a)(9) is that the impacts of this decision will not be material as to his property, and there are no facts that rebut this presumption. The decision relates to the City's ownership of the property and does not entail changes to the current use of the facility.⁵

2. Theresa Olivares

Public Library/Dan Diaz Recreation Center Capital Improvements Project.

Theresa Olivares owns her personal residence located between 500 feet and 1,000 feet from the Library/Recreation Center. As noted above, the building of the new Library and expansion of the Recreation Center are anticipated to substantially alter traffic levels, intensity of use, parking, and noise in the immediate neighborhood area. However, her residence is not located in the immediate neighborhood of the area and is three blocks of

⁵ We note that Mr. Miranda also has an interest in his personal finances. (Section 87103.) Regulation 18702.5(a) states that a governmental decision's reasonably foreseeable financial effect on a public official's financial interest in personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. While Mr. Miranda is the City Housing Authority's Executive Director, and these decisions involve changes to the Housing Authority's management of the Las Casitas housing development, the facts state that the decisions do not involve changes to Mr. Miranda's salary, position, or benefits. Based on the facts presented, there is no indication that the Las Casitas decisions will affect Mr. Miranda's personal finances.

residential and commercial buildings away from this improvement project. Based on these facts, it is less likely that her residential neighborhood will experience an increase in construction noise and traffic, or parking disruptions given this distance. Similarly, her residential parcel is less likely to see a market value change due to the project. Considering the size of the project and the fact that the project involves facilities and services already provided in the location, it is not reasonable reasonably foreseeable that the decisions would have a material effect on Ms. Olivares's real property interest under Regulation 18702.2(a)(8) and she may take part in the project decisions.

Irwindale Park Improvement Project: Phases IV and V.

Theresa Olivares' residence is located between 500 feet and 1,000 feet from Irwindale Park, which is adjacent to the City Library Project but approximately half a block further from her home. Ms. Olivares also noted in the telephone conference that the park improvements are of a less involved nature than the above projects, in that it is a remodeling of the existing park. Further, the park is not visible from her residence. While the decisions involve improvements to the park and new amenities, there is no indication the decision would change her residential parcel's market value due to its location over three blocks away. Therefore, she does not have a prohibitive financial interest in the decision barring her participation pursuant to Regulation 18702.2(a)(8).

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

LKH:dkv