



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 7, 2024

Erin Weesner-McKinley
Deputy City Attorney
City of Long Beach
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

Re: Your Request for Advice
Our File No. A-24-058

Dear Ms. Weesner-McKinley:

This letter responds to your request for advice on behalf of the City of Long Beach and City Councilmember Kristina Duggan, 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. 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 Councilmember Duggan participate in City Council decisions related to venue use agreements with the Los Angeles Organizing Committee for the 2028 Olympic and Paralympic Games (the “OCOG”) involving the Marine Stadium venue specifically, given that she owns real property within 500 feet of the venue?

2. May Councilmember Duggan take part in discussions with City staff related to Marine Stadium being a venue for the 2028 Summer Olympics?

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. May Councilmember Duggan, and members of her staff, discuss issues related to Marine Stadium being a venue for the 2028 Summer Olympics if she is unable to participate in the City Council decision related to the venue use agreement involving Marine Stadium?

4. May Councilmember Duggan participate in City Council decisions involving venue use agreements and other related agreements with the OCOG that run across all City venue sites City-wide if the decision is applicable to Marine Stadium?

CONCLUSIONS

1-3. Councilmember Duggan owns property located within 500 feet of Marine Stadium, and there is no clear and convincing evidence that these decisions would not have any measurable impact on the property. Accordingly, it is reasonably foreseeable that the financial effect of these decision on her property interest will be material, and she is precluded from taking part in decisions involving the use of Marine Stadium as an Olympic venue. We also note that she may not contact City staff for the purpose of influencing any decision involving Marine Stadium as an Olympic venue.

4. To the extent that any governmental decisions involving Marine Stadium can be segmented and are considered first, with a final decision on Marine Stadium reached without Councilmember Duggan participating in any way, it may be possible to segment some specific decisions so that she may take part in the remaining decisions involving venue use agreements and other related agreements with the OCOG concerning other City venue sites, as long as any such decision does not reopen the prior decisions regarding Marine Stadium. However, we cannot advise on whether segmentation may be possible without first knowing more about the specific decision at issue, and examining the effects on all her financial interests. You may wish to seek further advice when a specific decision is identified.

FACTS AS PRESENTED BY REQUESTER

Councilmember Duggan is serving her first term as a member of the City Council. Under the Charter of the City, the nine-member City Council has broad authority over contracts and policies in the City. As a City Councilmember, Councilmember Duggan will vote on final decisions, and make contractual and policy commitments on a wide range of City business, including contracts for improvements to City property. Some of the decisions that will come before the City Council will involve Marine Stadium, which is located within Councilmember Duggan's district.

Councilmember Duggan and her husband own and manage property in the vicinity of Marine Stadium, from which they receive a gross annual income of approximately \$84,000. The Property faces Marine Stadium and a parking lot that abuts the site. The distance from the Property to the boundary line of Marine Stadium is approximately 143 feet. In a follow up email, you stated that the Property is used as a long-term residential rental property.

On May 14, 2024, the Long Beach City Council voted to authorize the City Manager, or designee, to execute a Games Agreement with the OCOG, to host a portion of the 2028 Olympic and Paralympic Games ("Games") at the Long Beach Convention Center and Entertainment Center

area, adjacent waterfront, and potentially other areas throughout Long Beach. The Games Agreement establishes governing principles and commitments for the City's participation as a venue city while also including specific terms and conditions to provide the framework for how the City and OCOG will work together to coordinate and deliver a successful Games. Key elements include outlining the City's role, such as the process for delivery of standard and enhanced public services and arranging for the reimbursement of City expenses through supplemental agreements currently in development between staff and the OCOG. In a follow up email, you stated that the only item that has come before the City Council is the Games Agreement, which committed the City to being a host city. The agreement did not include specificity on the events the City will host or the locations that will be used.

It is now anticipated that during the Games Long Beach's downtown and coastal areas will be transformed into the Long Beach Sports Park. Currently, the conceptualized Sports Park is the largest of four unique parks in the Games concept and could host a myriad of Olympic and Paralympic events. The Games Plan is not yet finalized, and events are subject to change as the OCOG negotiates with a multitude of cities in the region. The OCOG and International Olympic Committee (IOC) anticipate confirming the final Games Plan sometime in 2024.

Subsequent to the Games Agreement, Marine Stadium has been identified as a possible venue to host events for the Games. As venues within the City are finalized as part of the Games Plan, the City Council will be asked to decide whether the City should enter into venue agreements for the use of specific sites throughout the City, in addition to agreements that relate to the operation of City venues to host the Games.

Since Marine Stadium is located within Councilmember Duggan's district, she may receive complaints or concerns from residents about Marine Stadium serving as a venue for the Games which require Councilmember Duggan and her staff to work with City staff to address.

The Games are anticipated to be hosted at numerous sites across the City and are expected to therefore have City-wide impacts. Additionally, the Games will be a regional event with benefits not just expected city-wide, but throughout the region.

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.)

Among those specified economic interests are:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, 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.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103.)

Councilmember Duggan has an economic interest in the Property. You have also indicated that the Property is a residence that is used as a long-term rental. Accordingly, it also appears that Councilmember Duggan may have interest in her property rental business as a business entity, and as well as her tenants as sources of income. However, we do not have sufficient information to provide analysis of these interests and further analysis is unnecessary because of the conclusion reached below.

Foreseeability and Materiality

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. An interest in real property is the subject of the decision and explicitly involved in the decision anytime the decision affects the property as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

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

For a property not explicitly involved in the decision, 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).)

A public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. Rather, the official is prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.

(Section 87100.) Regulation 18704 includes definitions for “making a decision,” “participating in a decision,” and “using official position to influence a decision.” “A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency.” (Regulation 18704(a).) “A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.” (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official:

- (1) Contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision; or
- (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of the official’s agency in making the contact.

(Regulation 18704(c).)

Here, Councilmember Duggan would be disqualified from any decisions related to Marine Stadium as a venue for the 2028 Summer Olympics because her property is located within 500 feet of Marine Stadium and there is no clear and convincing evidence that decisions involving the use of Marine Stadium as a venue for the 2028 Summer Olympics would not have any measurable impact on the Property. As such, even without consideration of her interests in any business entity or tenants as sources of income, it is reasonably foreseeable the financial effect of these decisions on Councilmember Duggan’s property interest is material under applicable Commission regulations. Thus, she is precluded from taking part in decisions involving the use of Marine Stadium as an Olympic venue. We also note that she may not contact City staff for the purpose of influencing any decision involving Marine Stadium as an Olympic venue.

Segmentation

It may be possible that the City Council could segment certain decisions pertaining to Marine Stadium from those venue use agreements and other related agreements with the OCOG that run across all City venues, such that Councilmember Duggan may take part in decisions to a limited extent. Under Regulation 18706, Councilmember Duggan would be permitted to take part in venue use agreements and other related agreements segmented from those pertaining to Marine Stadium to the extent that the following segmentation procedure is adhered to:

- (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;²

² For purposes of this regulation, decisions are “inextricably interrelated” when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision. (Regulation 18706(b).)