



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 13, 2023

Heather S. Baker
City Attorney
9770 Culver Blvd.
Culver City, CA 90232

Re: Your Request for Informal Assistance
Our File No. I-23-147

Dear Ms. Baker:

This letter responds to your request for advice on behalf of Culver City Mayor Albert Vera regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your request for advice is general in nature, we are treating it as a request for informal assistance.²

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 Mayor Vera take part in City Council decisions amending the City’s Rent Control Ordinance or Tenant Protections Ordinance, given that he owns four single family residences, at least some of which are subject to the ordinance?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Generally, decisions regarding the Rent Control Ordinance and Tenant Protections Ordinance will have a reasonably foreseeable, material financial effect on Mayor Vera's real property interests, which would ordinarily disqualify him from taking part in those decisions. However, because he owns 3 or fewer rental units, the public generally exception permits him to take part in decisions regarding the Rent Control Ordinance and Tenant Protections Ordinance so long as the decisions apply to all residential rental properties in the jurisdiction (other than those excepted by the Costa-Hawkins Rental Housing Act) and Mayor Vera has no other interests in the decision other than the interests resulting from his rental properties. To the extent Mayor Vera needs additional assistance regarding any specific decision, he should seek additional advice once details regarding specific decisions are known.

FACTS AS PRESENTED BY REQUESTER

In September 2020, the City Council adopted a permanent Rent Control Ordinance and a permanent Tenant Protections Ordinance ("the Ordinances"). Mayor Vera was elected in November 2020, after the Ordinances were adopted.

The Rent Control Ordinance (Culver City Municipal Code (CCMC) Section 15.09.200) has some terms that apply to all rental units and some terms that do not apply to single family residences. The Rent Control Ordinance imposes the following requirements applicable to all rental units:

- A landlord must register each rental unit.
- A landlord must pay an annual fee of \$167 per unit to register a rental unit.
- A violation of the ordinance can be enforced by the City through penalties and other enforcement measures.
- A violation of the ordinance can also be enforced by a tenant through a civil action.

The Tenant Protections Ordinance—CCMC Section 15.09.300—applies to landlords of all rental units. The Tenant Protections Ordinance imposes the following requirements:

- A landlord may only terminate a tenancy pursuant to listed "for cause" and "no fault" reasons.
- A landlord who terminates a tenancy for a "no fault" reason must pay relocation assistance of 3 months' rent + \$1,000.
- A landlord must relocate a tenant during temporary untenable conditions such as construction work, and must allow the tenant to return to the unit after the work is completed.
- A landlord and tenant can agree to a "tenant buyout agreement" through which the tenant voluntarily terminates a tenancy.
- Retaliatory eviction or harassment by a landlord is unlawful.
- A violation of the ordinance can be enforced by the City through penalties and other enforcement measures.
- A violation of the ordinance can also be enforced by a tenant through a civil action.

The Rent Control Ordinance and Tenant Protections Ordinance are collectively referred to as the “Ordinances.”

Mayor Albert Vera owns four single family residences in Culver City:

- Only one single family residence is occupied by a tenant who pays rent and utilities. The rent charged is \$1,000 per month. This unit is subject to the Ordinances, except that the City does not regulate the amount of rent charged for single family units.
- In one residence, the resident pays electric and water bills but does not pay rent. For this particular unit, the resident is doing repairs on the house while Mayor Vera pays for all materials for the repairs. This unit is subject to the Ordinances because Mayor Vera accepts labor from the resident in consideration for occupancy of the unit.
- In one residence, the resident pays water, cable, and gardener bills. The resident does not pay rent. This unit is not subject to the Ordinances, as it is not a “rental unit” as defined in the Ordinances because the resident does not make any payments to or on behalf of Mayor Vera.
- In one residence, the resident does not pay rent and Mayor Vera covers all costs, including utilities. This unit is not subject to the Ordinances, as it is not a “rental unit” as defined in the Ordinances.

With respect to these third and fourth properties, Mayor Vera anticipates the above arrangements will continue for the foreseeable future and does not anticipate charging rent and/or utilities to occupants of these two properties in the near future. While two of the four units are not rental units, out of an abundance of caution, Mayor Vera paid \$167 per unit, or \$668 total annually, to register all four residences with the City pursuant to the Rent Control Ordinance.

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.

(Section 87103.)

As a landlord, Mayor Vera has a business entity interest in his rental units. He also has real property interests in the underlying property, as well as source of income interests in his rental business as well as his tenants. Whether Mayor Vera will be able to take part in any governmental decisions revising or implementing the Ordinances will depend on whether the particular decision would have a reasonably foreseeable, material financial effect on any of those economic interests.

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, 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 official’s real property is the subject of the governmental decision under Regulation 18702.2(a)(1)-(6). This includes any governmental decision that:

- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel; or
- Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property;

(Regulation 18702.2(a)(3), (5).)

Generally, under the above standards, the Rent Control Ordinance and Tenant Protections Ordinance decisions would have a reasonably foreseeable, material financial effect on Mayor Vera’s real property interests because they would impact the applicable taxes, fees, assessments, as well as the entitlements and permissible uses of the rental properties. The decisions would have reasonably foreseeable, material financial effects on Mayor Vera’s economic interest in his rental property business based on the same standards. (See Regulation 18702.1(a)(4)(A).)³

However, as described below, the “public generally exception” allows an official, otherwise disqualified from taking part in a decision, to take part in some decisions. Under the Act’s conflict

³ Because no facts have been provided regarding Mayor Vera’s tenants as sources of income, we do not analyze whether Ordinance decisions would have a reasonably foreseeable, material financial effect on them aside from their leasehold interests.

of interest provisions, a public official is only disqualified from taking part in a governmental decision if it would have a reasonably foreseeable, material financial effect on an economic interest *distinguishable from the effect on the public generally*. (Section 87103.) Regulation 18703 details the public generally exception and includes a provision specifically relating to rental properties, stating:

The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes . . . [t]he decision is limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property, including a decision regarding a rent control ordinance or tenant protection measures, provided all of the following criteria are met:

(A) The decision is applicable to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.40, et seq.).

(B) The official owns three or fewer residential rental units. For purposes of this regulation, a residential rental unit is each individual unit consisting of a single-family household.

(C) The only interests affected by the decision are:

(i) Interests resulting from the official's lease of residential real property, as the lessor of the property.

(ii) An interest in the official's primary residence as either a lessee or owner of the property.

(Regulation 18703(e)(4).)

Mayor Vera owns four properties. In your request for advice, you acknowledge that two of them qualify as rental units. In a third property, the resident pays water, cable, and gardener bills. However, we do not need to analyze whether those circumstances amount to a "rental property" for purposes of the public generally exception, because the person residing in Mayor Vera's fourth property pays no rent, utilities, or other types of payments that could amount to the property being considered a "rental property." Moreover, you have indicated that Mayor Vera has no current intention of renting this fourth property and the current arrangement will remain in place for the foreseeable future. Based upon these facts, for purposes of the public generally exception, Mayor Vera currently has, at most, three rental properties. Therefore, Regulation 18703(e)(4) will permit Mayor Vera to take part in Ordinance decisions, as long as the other criteria are met.

However, we caution that if an Ordinance decision would not meet those criteria—such as not applying to all residential rental properties in the jurisdiction (other than those excepted by the Costa-Hawkins Rental Housing Act)—Mayor Vera will generally be disqualified from the decision, but may seek additional advice as necessary.

Notably, you have also inquired about whether Mayor Vera may be permitted to take part in some decisions related to the Ordinances if he is disqualified from others. Under Regulation 18706, an agency may segment a decision in which a public official has a financial interest to allow participation by the official, provided all of the following conditions apply:

- (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) The decision in which the official has a financial interest is segmented from the other decisions;
- (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

We are not able to provide definitive advice on segmentation based on the information provided. Moreover, any analysis of the segmentation procedure is moot so long as the public generally exception applies. To the extent there are additional facts indicating that the public generally exception does not apply to any specific decision, Mayor Vera should seek additional advice identifying the specific decision.

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

KC:aja