



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 21, 2024

Michael J. Maurer
Best Best & Krieger LLP
City of Albany
300 South Grand Avenue, 25th Floor
Los Angeles, California 90071

Re: Your Request for Advice
Our File No. A-23-182

Dear Mr. Maurer:

This letter is in response 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 provisions of the Act and not under other general conflict of interest prohibitions such as common law 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 change, you should contact us for additional advice.

QUESTION

Does the Act prohibit Mayor John Miki from participating in the City of Albany’s discussions and decisions regarding the City’s Housing Element?

CONCLUSION

No. Based on the facts provided, the financial effect of the governmental decisions at issue would have no unique effect on Mayor Miki’s rental properties compared to similarly situated rental properties. Because the financial effect would be indistinguishable from that on the public generally, the Act does not prohibit Mayor Miki from participating in the decisions provided he has no other interests in the decisions other than those interests related to the two residential rental properties identified.

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.

FACTS AS PRESENTED BY REQUESTER

A. City's Housing Element Implementation.

The City of Albany's Housing Element was certified for compliance by the California Housing and Community Development Department earlier this year, and the City is now in the process of implementing the various policies and programs outlined in the Housing Element. Due to the number of adopted programs and existing resources, City staff has proposed a phased implementation plan. The relevant phases and projects (collectively the Project) are as follows:

Phase I

- **Just Cause for Eviction:** Conduct an evaluation of a just cause for eviction ordinance, which defines specific conditions under which a tenant can be evicted, such as non-payment of rent, damage to the unit, criminal activity, etc.
- **Non-Discrimination and Anti-Harassment:** Conduct an evaluation of a non-discrimination and anti-harassment ordinance so that landlords cannot harass tenants who are exercising their legal rights.
- **Rent Stabilization:** Additional rent stabilization measures, including a limit on annual rent increases.
- **Rent Review:** Conduct an evaluation of the rent review and non-binding conciliation and mediation program established in 2018. Use the findings of this evaluation to either make the program more effective or replace it with more effective measures. Seek input from both housing providers and tenants in this process.
- **Access to Legal Counsel:** Tenant and housing provider organizations have indicated that access to legal aid organizations could be beneficial to improve housing security.

Phase II

- **Relocation Assistance:** Relocation assistance for tenants who are evicted without cause.

Phase III

- **Feasibility of Local Housing Voucher Program:** A locally funded program similar to Housing Choice Vouchers that would expand the number of qualified tenants that receive rent subsidies paid directly to housing providers.

The Rent Stabilization program listed in Phase I is proposed to apply to all multi-unit (two or more) rental dwellings in the City; condos and single-family dwelling units are excepted under the Costa-Hawkins Rental Housing Act. The proposed Rent Stabilization program is limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property, and the program would apply to all residential rental properties within the City other than those excepted by the Costa-Hawkins Rental Housing Act. The other Phase I programs are proposed to apply to all residential real property in the City. The Phase II and III programs listed above would also apply to all residential real property in the City. The duplex owned by Mayor Miki's trust would be subject to each of these programs.

The decisions in the phased implementation plan would not change the termination date of the lease for the property. The decisions related to each of the programs in Phases I, II, and III may potentially determine conditions or restrictions that would apply to all rental dwellings in the City (with the exception of the Rent Stabilization Program in Phase I, which is proposed to apply to all multi-unit rental dwellings in the City), including the residential real property owned by Mayor Miki's trust, which may impact the potential rental value of the property. The governmental decisions in the phased implementation plan would not change the Mayor's actual or legally allowable use of the property as a residential dwelling that is leased to tenants. Except for the property owner moving back into a rental unit, the Mayor does not anticipate that the decisions in the phased implementation plan would impact his use and enjoyment of the property.

B. Mayor Miki.

Mayor Miki and his wife are the co-trustors of a family trust that owns a duplex, two residential rental units, located in the City that is currently leased to tenants. Mayor Miki and his wife own 100 percent of the family trust. The Mayor and his wife manage the property, and his wife's parents receive the rental income. Given this real property interest, Mayor Miki has recused himself from the previous City discussion and decisions regarding Phases I, II, and III. In the future, the City will be considering the Phases and programs described above, and Mayor Miki seeks advice as to whether he may participate in the City discussions and decisions regarding those programs.

ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Under Section 87103, "[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 his or her immediate family," or on certain specified economic interests including:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. An indirect interest in business or real property means a business or real property interest owned by the spouse or dependent child of the official.
- 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.

Relevant to your request, Mayor Miki has a real property interest in his rental properties.² He also has a business entity interest in the rental property business and potential source of income interests in the rental property businesses as well as the rental property tenants.³

A. Foreseeability and Materiality.

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an 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 interest. In addition, an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1)-(6).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

B. Real Property.

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material, including decisions that "[w]ould impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel." (Regulation 18702.2(a)(3).) A reasonably foreseeable financial effect on an interest in real property is also material, if the decision "[i]nvolves the issuance, denial or revocation of a license, permit or other

² You have indicated that the property is held in a family trust. We note that Regulation 18234(c) provides the applicable rules for determining when an official has an economic interest in interests in real property, sources of income, and investments of a trust. You have indicated that Mayor Miki and his wife own 100 percent of the trust and there is no other indication that Mayor Miki does not have an interest in the real property, income, or investments of the trust based upon the provision in Regulation 18234(c). Accordingly, our analysis is based on the assumption that Mayor Miki has an economic interest in the interests in real property, income, and investments of the trust. Moreover, it is unnecessary to consider Regulation 18234(c) further in light of the conclusion that the public generally exception applies to the extent that Mayor Miki has an economic interest in the interest in real property, income, and investments of the trust.

³ 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 he has a greater than a 10 percent interest in his rental property business, Mayor Miki would have a source of income interest in any tenants from whom he receives \$500 or more in income in the 12 months prior to the decisions at issue. While you have indicated Mayor Miki's parent in laws receive the rental income, you have also indicated that Mayor Miki and his wife own 100 percent of the trust. Under these circumstances, we note that Mayor Miki generally has a financial interest in the income he is entitled to from the rental business and tenants regardless of whether he has gifted the income to his parent in laws. However, it is unnecessary to make the determination of whether Mayor Miki has sources of income interest in the rental business or tenants in light of the conclusion that the public generally exception applies even assuming that Mayor Miki does have such interests.

land use entitlement authorizing a specific use of or improvement to the parcel ... that changes the permitted use of, or restrictions placed on, the property.” (Regulation 18702.2(a)(5).)

According to the facts provided, the Rent Stabilization program in Phase I is proposed to apply to all multi-unit rental dwellings in the City; condos and single-family dwelling units are excepted. Mayor Miki’s owns a multi-unit rental dwelling. Thus, Mayor Miki’s real property interests in his rental properties would be the “subject” of the decisions. Moreover, the decisions at issue may determine fees and restrictions that would apply to all rental properties in the City. Therefore, under Regulation 18702.2(a)(3) and (5), it is reasonably foreseeable the decisions would have a material financial effect on Mayor Miki’s interests in his rental properties.⁴

C. Public Generally Exception

Although it is reasonably foreseeable a decision may have a material financial effect on an official’s interest under the Act, where the financial effect of a decision on an official is indistinguishable from the effect on the public generally, the public official may nonetheless participate in the decision under the public generally exception. (Section 87103.) Relevant to this issue, Regulation 18703(e) provides specific rules for special circumstances, including where the decision solely impacts an official’s interest in the lease of residential real property, as the lessor of the property.

Under Regulation 18703, public generally exception applies if the official establishes that a significant segment of the public is affected, and the official’s financial interest is not unique compared to the effect on the significant segment. Regulation 18703(e)(4) states:

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: ... The 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:

⁴ It is unnecessary to further consider whether Mayor Miki is potentially disqualified based upon his economic interests in the rental business and tenants of the rental business. To the extent the public generally exception applies as determined below, the exception applies to all interest related to the rental business.

(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.

Here, Mayor Miki owns fewer than three residential rental units and the only interests affected by the decisions at issue are as lessor of the rental properties. The proposed programs would be limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property. The proposed programs would apply to all residential rental properties within the City other than those excepted by the Costa-Hawkins Rental Housing Act. The facts provided do not indicate that there will be a unique effect on the official's rental properties compared to similarly situated rental properties. Accordingly, under Regulation 18703(e)(4), the financial effect is deemed indistinguishable from that on the public generally and Mayor Miki may participate in the decisions regarding the Project provided he has no other interests in the decisions other than those interests related to the two residential rental properties identified.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JF:aja