



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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July 3, 2018

Casey Strong  
Assistant City Attorney  
City of Fairfield  
Richards Watson Gershon  
44 Montgomery Street, Suite 3800  
San Francisco, CA 94104

Re: Your Request for Advice  
**Our File No. A-18-111**

Dear Ms. Strong:

This letter responds to your request for advice on behalf of City of Fairfield Planning Commissioner Gary Walker regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> 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

Does the Act prohibit the Planning Commissioner from taking part in governmental decisions relating to initial planning for the redevelopment of the "Sam Yeto Site" with multifamily housing given that he has an interest in residential real property within 475 feet of the Site?

#### CONCLUSION

Yes. The Act prohibits the Planning Commissioner from taking part in those decisions because they would have a reasonably foreseeable measurable impact on his residential real property interest located within 475 feet of the Sam Yeto Site under Regulation 18702.2(a)(11).

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<sup>1</sup> 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 18110 through 18997 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 REQUESTOR

The City of Fairfield owns the Sam Yeto Site, a 2.3-acre real property parcel within the City previously owned by the Fairfield-Suisun Unified School District and formerly occupied by the Sam Yeto Continuation School. The Site ceased being used as a school at the end of the 2014-2015 school year, and the City purchased the land soon thereafter. Since the School's closure, its buildings, classrooms, and ancillary structures have been removed from the Site.

Located within the City's "Heart of Fairfield Specific Plan," the Site is zoned for medium-density residential uses, including duplexes, multifamily dwellings, and single-family detached homes. The Plan describes the neighborhood in which the Site is located as "the traditional family-friendly residential neighborhood in the Heart of Fairfield, with a strong housing stock of single family homes and smaller apartment buildings."

Although no specific project has been proposed for the Site at this time, the Heart of Fairfield Specific Plan identified the Site for its potential to be redeveloped into medium-density residential housing. The City may soon consider whether to sell the Site to a developer for the development of a medium-density residential project on the Site. In the coming months, staff may request that the Planning Commission provide early, conceptual input regarding potential plans for redeveloping the Site with multifamily housing.

The Planning Commissioner owns and resides in his single-family residence located within approximately 670 feet of the Site. The Commissioner's residence is within a neighborhood considered a part of the transition zone between Downtown Fairfield and the residential neighborhoods to the south. The Commissioner also has a 50-percent ownership interest in another single-family residence located approximately 475 feet from the Site. On May 25, 2018, you confirmed that the Commissioner receives approximately \$5,500 in rental income annually from the tenant of that property.

## ANALYSIS

The Act prohibits a public official from taking part in a governmental decision that would have a reasonably foreseeable material financial effect on one or more of the official's financial interests distinguishable from the effect on the public generally. (Sections 87100 and 87103.) An official's financial interests that may give rise to a disqualifying conflict of interest are set forth in Section 87103. Of those interests, the Planning Commissioner has the following interests with respect to the decisions at issue:

- An official has an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Therefore, the Planning Commissioner has separate real property interests in his residence and his residential rental property, assuming he has an interest of \$2,000 or more in each of them.
- An official has an interest in any business entity in which the official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a).) Therefore, the Planning Commissioner has a business interest in his residential rental business, assuming he has an investment in it worth \$2,000 or more.

- An official has an interest in any source of income aggregating \$500 or more to the official within 12 months prior to the decision. (Section 87103(c).) The Planning Commissioner receives approximately \$5,500 annually in rent from the tenant of his residential rental property. Therefore, the Commissioner has source of income interests in his residential rental business and in the tenant of his residential rental property.
- An official always has an interest in his or her personal finances or those of immediate family members. (See Section 87103.)

Therefore, with respect to the decisions at issue, the Planning Commissioner has a real property interest in his residence, a real property interest in his residential rental property, a business interest in his residential rental business, source of income interests in both the business and the tenant of the residential rental property, and an interest in his personal finances, based on the facts presented.

#### Foreseeability & Materiality

Regulation 18701(b) provides that a decision's effect on an official's interest that is not a named party in, or the subject of, the decision is reasonably foreseeable only if it "can be recognized as a realistic possibility and more than hypothetical or theoretical." None of the Planning Commissioner's interests are a named party in or the subject of the initial planning decisions relating to the Sam Yeto Site. Therefore, the effect of those decisions on each of the Commissioner's interests is reasonably foreseeable only if it can be recognized as a realistic possibility and more than hypothetical or theoretical.

Under Regulation 18702.2(a)(11), a decision's effect on an official's real property interest, other than an interest in commercial property containing a business, is material if the decision affects real property value located within 500 feet of the official's property, unless there are sufficient facts to indicate that the decision will not have a reasonably foreseeable measurable impact on the official's property.

The Planning Commissioner's residential rental property located approximately 470 feet from the Site is not a commercial property. The 2.3-acre Site is currently unoccupied and devoid of buildings or structures. If the Site is redeveloped into multifamily housing it is highly likely that there will be significant increases in intensity of use, traffic, and parking demand in the area surrounding the Site. Therefore, the Act prohibits the Commissioner from taking part in decisions relating to the initial planning of the redevelopment of the Site because those decisions would have a reasonably foreseeable measurable impact on his real property interest in his residential rental property under Regulation 18702.2(a)(11).<sup>2</sup>

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<sup>2</sup> We do not analyze the Planning Commissioner's other financial interests with respect to the decisions at issue because we have already determined that the Act prohibits him from taking part in those decisions.

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

Sincerely,

Brian G. Lau  
Acting General Counsel

A handwritten signature in black ink, appearing to read "Matthew F. Christy". The signature is written in a cursive, somewhat stylized font.

By: Matthew F. Christy  
Counsel, Legal Division

MFC:jgl