



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 13, 2022

Jeffrey A. Walter
Colantuono, Highsmith, Whateley, PC
670 W. Napa Street, Suite F
Sonoma, CA 95476

Re: Your Request for Advice
Our File No. A-22-069

Dear Mr. Walter:

This letter responds to your request for advice on behalf of Novato Mayor Eric Lucan 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.

QUESTION

Under the Act, may Novato Mayor Eric Lucan take part in a City Council decision impacting a business’s ability to offer check cashing services at a new location in the City’s Downtown Core Retail zoning district—a zone that ordinarily prohibits such services—given that the Mayor owns a rental property located 260 feet away from the business’s proposed location?

CONCLUSION

No, because Mayor Lucan’s real property interest is located less than 500 feet from the business’s proposed site and there is no clear and convincing evidence that the City Council decision would not have any measurable impact on the Mayor’s rental property, he is prohibited from taking part in the decision.

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

Eric Lucan is the Mayor of the City of Novato (“City”) and a member of the City Council. He and his wife own a residential rental property located on Machin Avenue within the City of Novato.

In September 2021, the owner of La Star Latina (also known as Luna Travel), a local travel agency and check cashing business, intended to relocate from its then (and current) location at 1212 Grant Avenue (“1212 Grant”) in Novato to 904 Grant Avenue (“904 Grant”). At that time, the Novato Code Enforcement Division received a complaint regarding La Star Latina’s proposed relocation to 904 Grant. The complaint inquired whether appropriate permits had been obtained to conduct such a business at the proposed new address at 904 Grant. In response to the complaint, the City’s Planning Division staff determined that La Star Latina then offered and currently offers check cashing services, including issuing wire transfers and money orders for a fee.

La Star Latina’s proposed new location, namely 904 Grant, is located within 260 feet of Mayor Lucan’s rental property. The 904 Grant property is currently vacant, but purportedly leased to La Star Latina and the company has reportedly made some tenant improvements to the space. The area immediately surrounding 904 Grant is primarily developed with commercial uses, but there are a few residential units in the area, including the Mayor’s rental property. There are buildings and trees that block the line of sight between 904 Grant and the Mayor’s rental property.

Although 1212 Grant and 904 Grant are both located in the Downtown Core Retail (“CDR”) zoning district, the check cashing services at the 1212 Grant location predate changes to the Novato Zoning Code which made that use (check cashing) no longer permissible. The City Planning staff has determined that the check cashing services which were provided (and are provided) by La Star Latina at the 1212 Grant location were and are a “legal nonconforming use.”

Per the City’s Planning Division, “[t]he CDR district is assigned to those areas of downtown Novato that are envisioned to support pedestrian-oriented shopping, dining, entertainment, and gathering experiences with ground floor street-fronting tenant spaces reserved for such activities. Accordingly, the district accommodates a select assortment of commercial land uses and imposes specific location requirements (e.g., upper floor or rear of building) on certain activities to preserve ground floor, street-fronting tenant spaces for the noted targeted uses.” The purpose and intent of the CDR district was “to support the revitalization of downtown Novato and encourage additional retail development”

In 2012, the City Council adopted amendments to the City’s Zoning Code that established a specific definition for “check cashing services” and prohibited such services in every commercial district in the City except for the “General Commercial” district, generally located to the north of the Downtown Core area. According to the City’s Planning Division, this action “further refined the land use mix in downtown Novato with the intent of strengthening the retail synergy desired in downtown Novato consistent with the aims of the 1996 Novato General Plan and Downtown Novato Specific Plan.” Thus, commencing in 2012, check cashing services were prohibited as a primary use in the CDR Zoning District.

Novato Planning staff has informed the owner of La Star Latina that if it moves to the 904 Grant location, it cannot perform check cashing services because of the 2012 Zoning Code

amendments. In response to this advice, the attorneys representing La Star Latina argued that check cashing services should be treated as an “accessory use” to La Star Latina’s travel agency business under the definitional provisions of the Novato Zoning Code. The City’s Planning Division has issued a formal interpretation disagreeing with La Star Latina’s attorneys’ opinion. La Star Latina appealed that interpretation to the Novato Planning Commission. The Novato Planning Commission upheld that interpretation and it is anticipated La Star Latina will appeal that determination to the City Council.

The City of Novato Planning staff has expressed concern that the interpretation at issue herein may have broad applicability to all commercial zoning districts that permit travel agencies. If a use that is expressly prohibited as a primary use in a commercial district can nonetheless be exercised as an accessory use, as La Star Latina maintains, it will become problematic to determine what uses can and cannot be allowed in a given commercial district. The Planning staff has identified seven other commercial zoning districts in which travel agencies are permitted as a primary use. It is not possible to predict the broader implications should the City ultimately agree with La Star Latina’s interpretation of the City’s Zoning Code.

It is clear, however, that if the City’s Planning Division’s interpretation is upheld on appeal, La Star Latina would be precluded from providing check cashing services at its proposed 904 Grant location.

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 [their] official position to influence a governmental decision in which [the official] knows or has reason to know he 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 his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).)

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, as here, 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 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).)

Mayor Lucan has a real property interest in his rental property. The rental property is located 260 feet from 904 Grant, both of which are located in the CDR district. If permitted, La Star Latina would move into the currently vacant 904 Grant property and resume its business operations, which include check cashing services. Such services are generally prohibited in the CDR district because they conflict with the City's intent of strengthening the “retail synergy” desired in downtown Novato—that is, the City has deemed that check cashing services do not support pedestrian-oriented shopping, dining, entertainment, and gathering experiences. Regulation 18702.2(a)(7) requires “clear and convincing evidence that the decision will not have any measurable impact on the official's property.” Although buildings and trees block the line of site between the two properties, this alone does not constitute clear and convincing evidence of no measurable impact on Mayor Lucan's property, particularly given that the intended use of 904 Grant would conflict with the City's intent for the CDR district. It is reasonably foreseeable, for instance, that a new business operating in conflict with the CDR district's intended purpose could impact the market value of nearby properties, particularly given that the purpose and intent in creating the CDR district was to support the revitalization of downtown Novato and encourage additional retail development.

For these reasons, a City Council decision impacting La Star Latina's ability to offer check cashing services at 904 Grant would have a reasonably foreseeable, material financial effect on Mayor Lucan's rental property located 260 feet away. Accordingly, the Act prohibits him from taking part in the decision and he must instead recuse himself.

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

Sincerely,

Dave Bainbridge
General Counsel

By:


Kevin Cornwall
Counsel, Legal Division

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