



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 12, 2024

M. Christine Davi
City Attorney
City of Monterey
512 Pierce Street
Monterey, California 93940

Re: Your Request for Advice
Our File No. A-24-029

Dear Ms. Davi:

This letter responds 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 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 Neighborhood Improvement Program Committee Member William Tipton take part in governmental decisions relating to three Neighborhood Improvement Program projects located within 500 feet of Mr. Tipton’s residence?

CONCLUSION

No, under the Act, there is no clear and convincing evidence any of the three projects would have no measurable impact on Mr. Tipton’s real property and, therefore, the Act prohibits Mr. Tipton from taking part in governmental decisions relating to the three projects.

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

The City of Monterey's Neighborhood Improvement Program is set forth in Monterey Charter section 6.6. It was established in 1988, and its purpose is to ensure "...that a minimum portion of the City's annual budget is expended to improve the residential neighborhoods of the City and to provide for capital projects of community-wide benefit." Charter section 6.6 requires that the City Council "appropriate at least 16% of the Transient Occupancy Tax ("TOT") estimated to be collected during the fiscal year to be expended on Neighborhood and Community Improvements." The Program's budget this year exceeds \$6 million.

The City has 16 neighborhoods, and the City Council appoints one resident from each neighborhood to serve on the Committee. The City Council also appoints alternates to serve on the Committee. Most, but not all, neighborhoods have an alternate representative. Anyone may nominate a project for the Committee's consideration. The Committee "...recommends [to the City Council] a list of capital improvements to be accomplished in each neighborhood." (Charter section 6.6(d).) From the recommendations of the Committee, the City Council includes a Neighborhood Improvement Program in the annual budget. The City Council approves the projects, priorities, and expenditures. (Charter section 6.6(e).)

On June 6, 2024, the Committee will consider and vote on approximately 100 proposed projects, three of which involve property located within 500 feet of Mr. Tipton's residence. It cannot be established that at least 25 percent of all real property within the Downtown district will be affected by any of the three projects.

Project DT-4

If approved this project would: (1) remove and replace the existing irrigation system; (2) replace and upgrade the underground drainage system; and (3) replace the existing infield and outfield with new artificial turf at Jacks Ball Park. Jacks Ball Park is a 3.7-acre multi-use municipal sport park. This park includes a ball field, bleachers, and night lighting; a tot play area; and public restrooms. The estimated cost of this project is \$350,000.00. The project nomination form submitted by Save Our Sports describes the need for the project as follows:

This new infield and outfield surface would not only provide a safer surface for the young student athletes, but also for our adult population that uses the field. The project improvements being requested, have been requested before, and address "Fair Play and Equity" issues associated with this field in comparison to Frank Sollecito Jr. Ball Park. This new surface also creates a water savings, provides improved drainage in and around the parks, and requires much less man hours and expenses for maintenance. A new surface on Jacks Park would be a source of pride for the City, High School, and Community as a whole. This type of improvement would be an overall win for the City, not only requiring less maintenance, but will also provide more playable days when it comes to field conditions affected by the weather or maintenance for safety and allow use by multiple sports and other community activities. Additional matching funds are being solicited by Save Our Sports (SOS) and the City for this project. Technology has advanced since Frank Sollecito Jr. was

improved, and other materials besides rubber could be used for the under-surface padding. This will be explored when designing the project specifications.

The project area is not visible from Mr. Tipton's residence.

Project DT-12

The Monterey Tennis Center located at 401 Pearl Street, immediately next to Jacks Ball Park, described above in DT-4. The Tennis Center is open daily from 9 a.m. – 10 p.m. and it has six lighted tennis court and a pro shop. The estimated cost of this project is \$60,000. The project nomination form, submitted by the co-owner of the Monterey Tennis Center business, describes the need for the project as follows:

[The Monterey Tennis] center currently hosts tennis camps for kids, tennis lessons for adults and children, and manages the Monterey Bay Racquet Club at the Hyatt Regency Monterey, with over 100 pickleball members. To further enrich our services and foster community engagement, we are considering a strategic expansion into pickleball, proposing a name change to the Monterey Racquet Center. The proposed project involves converting tennis courts 1 and 2 into eight pickleball courts, complete with lighting for evening play. This alternative approach presents an opportunity to offer an appealing pickleball experience without the need for additional traffic on Highway 68, contrary to the Ryan Ranch Pickleball Project. Understanding the importance of community input, we are committed to obtaining feedback from our local community. We also recognize the need for regulatory compliance and will ensure that we obtain all necessary approvals to proceed. In terms of financing, we estimate that the project for redoing the tennis courts and adding pickleball courts would require an investment in the range of \$50,000 to \$60,000. We are exploring funding options and potential partnerships to support this endeavor. Additionally, I am pleased to inform you that we accept Optum Fitness Networks, providing free play opportunities to individuals with Renew Active by UnitedHealthcare or Onepass by Aaptiv insurance plans. This inclusivity aligns with our goal of making our facilities accessible to a wide range of community members.

The project area is visible from the sidewalk abutting Mr. Tipton's residence. Due to the popularity of pickleball, this project may increase traffic and parking in the vicinity. Pickleball generates more noise than tennis. There is a time limit for parking on the 500 Block of Pearl Street, where Mr. Tipton's property is located, and on the 400 Block of Figueroa Street, next to the park.

Project DT-13

This project is also located at the Monterey Tennis Center, described in DT-12, above. The project nomination form, submitted by the co-owner of the Monterey Tennis Center business, describes the need for the project as follows:

The proposed tennis court improvement project for the Monterey Tennis Center includes the following enhancements:

1. **Updated Lights:** The current lighting system at the Monterey Tennis Center is outdated and inefficient. The new lighting system will provide better visibility for evening matches and tournaments. The new LED lights will be energy-efficient and provide more uniform lighting.
2. **Court Repairs:** Some of the tennis courts have cracks and uneven surfaces, which can be hazardous for players. The courts will be repaired and resurfaced to create a safer playing surface. This will involve filling in cracks and resurfacing the courts with new asphalt or concrete.
3. **New Fencing:** The existing fencing around the courts is showing signs of rust, minor repairs, with wear and tear. The new vinyl coated chain link would be a major facelift.
4. **Updated Pro Shop:** The current pro shop is outdated and needs a facelift to replace the outdated design from the 70s. The new pro shop will be modern and inviting, with new flooring, lighting, and displays. It will offer a wider range of tennis equipment and apparel, as well as snacks and drinks for players and spectators. In addition, the pro-shop will also include two restrooms and a locker room, providing convenient and accessible facilities for players and campers. The new locker room will allow players to store their belongings securely while they play, providing an added level of convenience and comfort.
5. **An Indoor Bubble for Courts One and Two:** During the rainy season, an indoor bubble on courts 1 and 2 would be terrific for the community, offering people the opportunity to play during those months along with providing shade to those sensitive to sunlight. These improvements will benefit the kid campers who use the facilities. In fact, the center hosts an annual summer camp that attracts a significant number of young players every year. According to the camp attendance records, approximately 56.6% (81 campers) of the participants attend one week. About 26.6% (38 campers) attend two, while around 10.5% (15 campers) attend three. A small percentage of campers attend the summer camp more frequently, with about 3.5% (5 campers) attending four weeks, 2.1% (3 campers) attending five weeks, and 0.7% (1 camper) attending six weeks. To continue providing top-notch facilities and programs for these young tennis players, the Monterey Tennis Center will undergo an extensive improvement project. These enhancements will not only benefit the camp attendees but also the wider tennis community in the city, attracting more players and creating a more vibrant and active tennis culture in Monterey. With modern facilities and upgraded equipment, the center will continue to be a hub of tennis activity and a key part of the city's recreational infrastructure, maintaining its high standards and reputation as a premier tennis destination for years to come.

The City has not yet developed a budget for this project. The court fencing and court repairs may improve Tennis Center aesthetics. Upgrades to the Pro Shop are internal and should have no effect on Mr. Tipton's property value. The updated lights will improve the quality of lighting and reduce light overspill. The indoor bubble will allow for increased Tennis Center use and increased traffic and on street parking.

Your request for advice included an exhibit showing the location of Mr. Tipton's residence in relation to these projects, as well as exhibits showing the project locations.

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, including "[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).)

Each of the three identified projects involves improvements to infrastructure that could foreseeably impact the value of nearby real property by increasing usage of the facilities and affecting traffic in the vicinity of the projects. More specifically, Project DT-4 may increase playable days. Project DT-12 also involves a project site visible from the sidewalk abutting Mr. Tipton's property and may impact traffic, parking, and noise. Project DT-13 may similarly increase traffic and impact parking. Further Mr. Tipton's property appears to be well within 500 feet of the project sites, with few obstacles in between his property and the project sites. Based on the facts provided, there is no clear and convincing evidence the project decisions at issue would have no measurable impact on Mr. Tipton's real property. Accordingly, he has a disqualifying financial interest in the decisions and the Act requires he recuse himself from those decisions.

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

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