



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 22, 2024

Keith F. Collins  
City Attorney, City of Whittier  
3777 N. Harbor Blvd  
Fullerton, CA 92835

Re: Your Request for Advice  
**Our File No. A-24-049**

Dear Mr. Collins:

This letter responds to your request for advice 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

Under the Act, may Whittier City Councilmember Mary Ann Pacheco take part in the City Council’s decision on whether to approve a bid package related to a development project that would “beautify” a part of Uptown Whittier located more than 1,000 feet from Councilmember Pacheco’s condominium, but within 1,000 feet of the condominium complex’s co-owned common areas?

### CONCLUSION

Yes, because: (1) Councilmember Pacheco’s co-ownership of the condominium complex’s common areas does not constitute a real property interest under the Act; and (2) there is no clear and convincing evidence of a substantial effect on Councilmember Pacheco’s condominium to rebut the regulatory presumption that the governmental decision would have no material financial effect on the real property located more than 1,000 feet away from the project site.

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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 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 intersection of Wardman St. and Greenleaf Ave. is the southern boundary of a proposed Greenleaf Promenade Improvement Project (“Project”). The proposed Project involves the beautification of Greenleaf Ave. in Uptown Whittier from Wardman St. to Hadley St. and includes numerous improvements designed to establish Uptown Whittier as a vibrant urban destination. The Project would include sidewalk upgrades, tree replacement, landscaping, improved lighting, construction of monument signage, outdoor dining, and additional green space. More specifically, the Project’s “Addendum to the Negative Declaration for the Uptown Whittier Streetscape Plan” (“ND”) describes the Project’s characteristics as follows:

In accordance with the proposed Streetscape Plan Amendment, the proposed project would implement several streetscape improvements along Greenleaf Avenue from Wardman Street to Hadley Street. Generally, the project removes a portion of the existing angled street parking to expand the public realm with a mix of flexible program zones and planting. Anticipated improvements include modular precast seat walls that define the edge of the pedestrian space (protecting from vehicular traffic and doubling as seating areas); retractable bollards at each block; paved pedestrian areas and intersections; ornamental light poles, lighting fixtures, and overhead decorative lights; and primary over-the-road gateway signage/monumentation and secondary pylon signage/monuments at major and secondary intersections along Greenleaf Avenue. In addition to the street improvements, two adjacent pocket parks are planned. While the specific design of these pocket parks is not governed by the existing Streetscape Plan and therefore not part of the proposed Streetscape Plan Amendment, they are consistent with the intentions of the Streetscape Plan in utilizing and enhancing street-adjacent parcels as paseos and park space.

Councilmember Mary Ann Pacheco was elected to the Whittier City Council in April 2024. She owns and resides in Unit “I” within a condominium complex located on Bright Ave. and a 1/27th interest in the common areas of the complex. A portion of the common areas of the complex are located within 1,000 feet of the intersection of Wardman and Greenleaf Ave. (the southern boundary of the proposed Project site), while her unit is located further than 1,000 feet from this intersection. There is a physical buffer of an entire city block between Councilmember Pacheco’s residence and the southern extent of the streetscape improvements.

Prior to Councilmember Pacheco’s election, the City Council approved the general design of the Project. However, the City Council has not yet approved the bid package that will be used to provide contractors with the specific plans and specifications upon which to submit their bids. The City Council has requested City staff do additional research and analysis into various aspects of the Project before staff can finalize the bid package for Council approval. Staff is currently in the process of gathering this information for Council consideration at an upcoming meeting.

In a follow-up email, you provided several resources relating to the Project, including a link to a December 2023 City Council Meeting Agenda containing several Project documents. These documents include a “Final Greenleaf Promenade Design Amendment” and the aforementioned ND. In 2019, the City adopted an initial version of the ND that determined the Project would have less than significant environmental impacts with mitigation measures incorporated where

applicable. Therefore, the version of the ND adopted by the City in 2019 determined that no significant environmental impact would result from implementation of the Project. The amended ND—updated to address changes made to the proposed Project within the past five years—similarly concluded the updated Project would have no new environmental impact, including potential effects on air quality, greenhouse gas emissions, water quality, land use and planning, noise levels (beyond short-term construction impacts that may exceed noise standards), population and housing, or transportation, among other categories.

## 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 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).) Real property in which an official has a financial interest does not include any common area as part of the official’s ownership interest in a common interest development as defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq.). (Regulation 18702.2(e)(4).)

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 financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official’s property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official’s property. (Regulation 18702.2(b).)

Councilmember Pacheco owns her individual unit within the condominium complex, as well as 1/27th of the complex’s common areas. Per Regulation 18702.2(e)(4), her interest in the

complex's common areas does not constitute an economic interest for purposes of the Act's conflict of interest provisions. Accordingly, we only need to analyze whether the City Council's decision on whether to approve the Project bid package would have a reasonably foreseeable, material financial effect on her real property interest in Unit I of the complex.

Given that her unit is located more than 1,000 feet from the intersection that makes up the southern boundary of the Project site, it is presumed decisions concerning the Project, including approval of the bid package, will not have a material financial effect on Councilmember Pacheco's real property. That presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on her unit. You have noted that the Project aims to "beautify" Uptown Whittier into a vibrant urban destination and would include sidewalk upgrades, tree replacement, landscaping, improved lighting, construction of monument signage, outdoor dining, and additional green space. We do not think these described changes establish clear and convincing evidence of a substantial effect on Councilmember Pacheco's residential unit located over 1,000 feet away, particularly given the presence of buildings buffering her residence from the Project site and the ND's lack of significant environmental impacts. As such, the City Council's decision to approve a Project bid package would not have a reasonably foreseeable, material financial effect on Councilmember Pacheco's real property interest and, therefore, the Act does not prohibit her from taking part in that 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

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