



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 14, 2024

Christina Cameron
Devaney Pate Morris & Cameron LLP
402 W. Broadway, Suite 1300
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A- 24-068

Dear Ms. Cameron:

This letter is in response to your request for advice regarding 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

Does the public generally exception under the Act apply to allow City of Del Mar (the City) Mayor Druker, Deputy Mayor Gaasterland, and Councilmembers Quirk and Martinez to make, participate in making, or attempt to influence decisions regarding the Objective Design Standards for “By-Right” Multi-Unit and Mixed-Use Housing Development Projects (the Standards) where each of these City officials owns property and resides within 500 feet of a zone impacted by the Standards?

CONCLUSION

The only interest at issue is each official’s primary residence, thus the public generally exception applies if at least 15% of the residential real property within the City are affected by the decisions and the respective official’s property is not uniquely affected. Here, 61.6% of all residential parcels are within 500 feet of the zones subject to the Standards. Moreover, the facts indicate that there are no differences in the standards that would apply to the various zones. Therefore, the residences of Mayor Druker and Councilmembers Quirk and Martinez, are situated similarly to 61.6% of all residential properties in the City and would not be uniquely affected by the

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.

decisions. Accordingly, Mayor Druker and Councilmembers Quirk and Martinez may participate in decisions regarding the Standards under the public generally exception.

The public generally exception does not apply to Deputy Mayor Gaasterland whose residence is located in the RMS Zone. Only 14.4% of residential properties are located within zones that would be subject to the Standards. Thus, the Deputy Mayor residence is similarly situated to less than 15% of residential properties in the City, which does not constitute a significant segment under Regulation 18703(b)(2). Accordingly, the public generally exception does not apply, and Deputy Mayor Gaasterland is prohibited under the Act from taking part in decisions regarding the Standards.

FACTS AS PRESENTED BY REQUESTER

The City Council will consider Objective Design Standards for “By-Right” Multi-Unit and Mixed-Use Housing Development Projects (the Standards). If adopted, these Standards will apply to the following zones in the City: Medium Density Mixed Residential South (RMS); three of the City’s commercial zones, North Commercial (NC), Central Commercial (CC) and Professional Commercial (PC); and the City’s Public Facilities zone (PF). The facts provided indicate no differences in the standards that would apply to the various zones.

You provide the Standards Manual, which generally describes the Standards as follows:

The [Standards] have been created with the intent of protecting the City’s unique residential seaside community character and village-like scale, enhancing the quality of design and development throughout the City, and considering the interests of neighboring property owners. The Standards establish regulations for by-right multi-unit residential, and residential mixed-use development, consistent with state law related to “objective design standards.” Objective design standards are mandatory development requirements that are measurable and verifiable, as opposed to design guidelines that are intended to be flexible and subject to interpretation. Objective design standards are intended to provide the public, building and design professionals, and decision makers with objective criteria for development.

The City consists of 1,134 acres with fewer than 4,000 residents. There are 2,402 total parcels and 1,972 residential parcels on 1,584 residential lots. The numbers of residential parcels affected by the Standards are as follows:

- 284 (14.4%) – Total number of residential parcels within all affected zones.
- 1,215 (61.6%) – Total number of residentially zoned parcels within 500 feet of all affected zones, not including parcels within the Standards.²

² Some of the zones are close enough to each other that the 500-foot areas overlap. One residence may be within 500 feet of more than one zone affected by the Standards. Thus, the residences within 500 feet of each individual zone do not equal 61.6% of residences within 500 feet of the combined affected zones.

Deputy Mayor Gaasterland's principal residence is located within the RMS zone. Three other members of the five-member City Council have a principal residence outside of the zones to which the Standards would apply but within 500 feet of the zones:

- Mayor Druker's principal residence is located 200 feet from CC zone and separated by developed residential property and residential streets.
- Councilmember Quirk's principal residence is located 228 feet from NC and separated by approximately five developed residential properties, as well as the Los Angeles-San Diego-San Luis Obispo Rail Corridor (LOSSAN).
- Councilmember Martinez's principal residence is located 193 feet from NC and separated by a major thoroughfare, Jimmy Durante Boulevard.

None of the properties for the three officials, outside but within 500 feet of the zones subject to the Standards, directly abut a lot that would be subject to the Standards.

ANALYSIS

A. The Act.

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), which provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision, 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 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."

Deputy Mayor Gaasterland has a property interest inside one of the zones to which the Standards apply. Under applicable standards the reasonably foreseeable financial effect of a government decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision “[i]nvolves the adoption of or amendment to a development plan or criteria applying to the parcel.” (Regulation 18702.2(a)(1).) Therefore, Mayor Gaasterland’s property interest is explicitly involved in the decisions. Under Regulations 18701(a) and 18702.2(a)(1), it is presumed to be reasonably foreseeable that the decisions will have a material financial effect on the Deputy Mayor’s interest. Thus, the Deputy Mayor is disqualified from taking part in the decisions unless the public generally exception applies.

Mayor Druker and Councilmembers Quirk and Martinez each have a property interest outside of the zones to which the design standards apply. These property interests are not explicitly involved in the decisions. Under the applicable standards, 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).) For Mayor Druker and Councilmembers Quirk and Martinez, the facts provided do not establish clear and convincing evidence that each official’s decision would have no measurable impact on the property interests. Accordingly, each of the officials is disqualified from taking part in the decisions unless the public generally exception applies.

B. The Public Generally Exception.

The Act does not prohibit an official from taking part in a decision if the financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally. Under Regulation 18703, the 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. A significant segment of the public includes at least 15% of residential real property within the official’s jurisdiction if the only interest an official has in the governmental decision is the official’s primary residence. (Regulation 18703(b)(2).) A unique effect is defined in Regulation 18703(c) to include a disproportionate effect on:

- (1) The development potential or use of the official’s real property or on the income producing potential of the official's real property or business entity.
- (2) The official’s business entity or real property resulting from the proximity of a project that is the subject of a decision.
- 3) The official’s interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.
- (4) The official’s interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

(5) A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.

(6) The official's personal finances or those of the official's immediate family.

Here, the facts provided indicate that 277 of residentially zoned parcels, or 14.4% of residential parcels within the City, are located within the zones affected by the Standards. There are, however, 1,215 residential parcels, or 61.6% of residential parcels within the City, located outside of the zones affected by the Standards but within 500 feet from one of the zones. 80% of residential parcels are in or within 500 feet from the zones affected by the Standards.

1. Mayor Druker, Councilmember Quirk, and Councilmember Martinez.

Mayor Druker's principal residence is located 200 feet from CC Zone and 300 feet from the PF Zone, Councilmember Quirk's principal residence is located 228 feet from NC Zone, and Councilmember Martinez's principal residence is located 193 feet from NC. Based on the facts provided, 80% of residential parcels are in or within 500 feet of the zones subject to the Standards, while 61.6% of all residential parcels are outside but within 500 feet of all zones subject to the Standards. Moreover, because these three official's properties are located outside zones, do not abut the zones, and are separated from the zones by other properties, there is no indication of a unique effect on any of these officials based on their respective interests in their residences. Accordingly, barring any other financial interest in the decisions, Mayor Druker, Councilmember Quirk, and Councilmember Martinez have established that the public generally exception applies based on the facts provided.

2. Deputy Mayor Gaasterland.

Deputy Mayor Gaasterland's principal residence is located within the RMS Zone and will be subject to the proposed Standards. Only 14.4% of residential properties are located within one of the five zones that would be subject to the Standards. Thus, the Deputy Mayor is similarly situated to less than 15% of residential properties in the County, which does not constitute a significant segment under Regulation 18703(b)(2). Deputy Mayor Gaasterland, therefore, has not established that a significant segment is affected and the public generally exception does not apply to him under the circumstances.

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.

JF:aja

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