



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 24, 2024

Gregory M. Murphy
City Attorney of Buellton
444 S Flower St. - Suite 2400
Los Angeles, California 90071

Re: Your Request for Informal Assistance
Our File No. I-24-077

Dear Mr. Murphy:

This letter responds to your request for advice on behalf of Buellton City Councilmember Hudson Hornick regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because no specific decision is before the City Council, we are treating your request as one for informal assistance.²

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

May Councilmember Hornick take part in City Council decisions regarding the potential development of unused property into a boutique hotel, small market, and café, given that his residence is located approximately 1,158 feet from the site of the proposed development?

CONCLUSION

Generally, an official whose sole interest in a decision is a property interest 1,000 feet or more from the property subject to the decision is only disqualified from taking part in the decision if there is clear and convincing evidence of a substantial financial effect on the official’s property. For

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

an official with a residence within a common interest development, the measurement from the development site to the official's property interest is the distance to the property line of the official's residential unit, not the distance to common area owned by a homeowners association.

However, the application of the conflict of interest rules is necessarily fact specific. You have indicated the property owner has expressed interest in developing a boutique hotel, coffee shop, and small market, but no application has been filed and the parameters of the specific decision have not been sufficiently identified. Accordingly, while you have not presented facts indicating a clear and convincing financial effect on the official's property at this time, we cannot provide a determinative conclusion regarding the Councilmember's involvement in any future decision without a more specific identification of the proposed development. You may wish to seek additional advice once the specific decision and development proposal can be identified if uncertain whether there is clear and convincing evidence of a substantial effect on the Councilmember's property.

FACTS AS PRESENTED BY REQUESTER

The City Council for the City of Buellton ("City") will consider governmental decisions regarding land use approvals for property located at APN 137-190-013 ("Property"), located within the City. The owner of the Property has expressed interest in developing the Property with a boutique hotel, coffee shop, and small market, which would replace primarily unused land that is currently surrounded by a "glamping" RV park, a restaurant, a used-car dealership, and other commercial uses. The potential developer of the Property has not submitted a formal application for any development permits or approvals and the proposed scope of the proposal is not known at this time

Hudson Hornick is a City Councilmember whose primary residence is located approximately 1,158 from the nearest edge of the Property, and in an HOA-owned subdivision, the closest portion of which is a landscaped area approximately 237 feet from the nearest edge of the Property. Obstacles between Councilmember Hornick's residence and the Property include a cement wall and the HOA-owned landscaped area.

In a follow-up email, you provided a map indicating Councilmember Hornick's real property and the Property at issue are separated by numerous houses, landscaping and roadways.

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).) However, 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.), including common interest property owned by a homeowners association. (Regulation 18702.2(d)(4); see also Cal. Civ. Code Sections 4080 & 4200.) As such, while Councilmember Hornick has a real property interest in his primary residence, he does not have a real property interest in the HOA-owned subdivision for purposes of the Act.

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.” Based on the facts provided, Councilmember Hornick’s interest in his residence is not explicitly involving in the decision(s).

For a real property interest such as Councilmember Hornick’s interest not explicitly involved in the decision, the financial effect of a governmental decision involving property 1,000 feet or more away from the official’s property interest 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).)

Here, Councilmember Hornick’s residence is located 1,000 feet or more from the property subject of the prospective governmental decision(s). Consequently, the Councilmember is prohibited from taking part in the decision only if there is clear and convincing evidence the governmental decision(s) would have a substantial effect on his residence. In this case, you have provided only that the proposal may include a boutique hotel, small market, and café. Given both the distance and physical obstacles separating the Property from Councilmember Hornick’s residence, including houses, landscaping, and roadways, the facts provided do not necessarily indicate clear and convincing evidence of a substantial effect on the Councilmember’s real property interest. Barring additional facts indicating that magnitude of the project is unusually large in relationship to the existing uses of the surrounding properties, it is unlikely the Councilmember Hornick will be prohibited from taking part in the decision. However, the specific proposal and scope of the proposal are not yet known. Until the actual proposal is identified, we cannot provide a determinative conclusion regarding the Councilmember’s involvement in any specific decision, and you may wish to seek additional advice once the development proposal is submitted by the property owner if uncertain whether there is clear and convincing evidence of a substantial effect on the Councilmember’s property.

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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