



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 17, 2024

Benjamin L. Stock  
City Attorney  
City of Foster City  
181 Third Street, Suite 200  
San Rafael, California 94901-6587

Re: Your Request for Advice  
**Our File No. A-24-101**

Dear Mr. Stock:

This letter responds to your request for advice on behalf of City of Foster Planning Commissioner Charles S. Bronitsky 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.<sup>2</sup>

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 Planning Commissioner Bronitsky appear before the City Council as a private attorney to represent the appellant in the appeal of a Planning Commission decision?

### CONCLUSION

Yes. Because the City Council is not an agency “appointed by or subject to the budgetary control of” the Planning Commission, Commissioner Bronitsky may appear before the City Council

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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.

<sup>2</sup> We note that certain activities relating to outside employment may raise issues outside of the Act. Please check with each of your local agency’s counsel regarding any other laws that may apply including any restriction on incompatible activities.

so long as he does not act or purport to act as a representative of, or on behalf of the Planning Commission, to any member, officer, employee or consultant of the City Council and the matter will not return to the Planning Commission.

### **FACTS AS PRESENTED BY REQUESTER**

Commissioner Bronitsky is a Planning Commissioner on the City's Planning Commission and former City Councilmember. Commissioner Bronitsky is an attorney who practices law as a sole practitioner in the City and represents clients primarily on land use matters.

The Planning Commission is a legislative body of five members. The Planning Commissioners are appointed to the Planning Commission by the City Council for four-year terms. The Planning Commission has approval authority over certain permits, including Architectural Review permits and development approvals, subject to appeal rights to the City Council.

The City's Planning Department received an application for an Architectural Review Permit (AR2023-0004) to relocate and construct an additional driveway, add six new skylights, expand an existing covered patio in the rear, and construct a total of 770 square foot (SF) addition to the front and rear elevation of the single-story single-family residence located at 106 Challenge Court in the City of Foster City ("Project"). The Project property at 106 Challenge and its neighbor at 104 Challenge Court share a driveway to access their properties, with the property line running down the middle of the shared driveway. The property owners at 104 Challenge Court have expressed objections to the Project.

The Planning Commission considered and discussed the Project at meetings on September 7, 2023, and August 15, 2024. Commissioner Bronitsky was absent from all of those meetings and did not participate in those discussions. Recently, at the August 15th meeting, the Planning Commission considered the Project and the objections to the project raised by the property owners at 104 Challenge and voted to approve the Project and gave direction to staff to return at the next Planning Commission meeting on September 5, 2024 with a resolution to affirm their decision.

Commissioner Bronitsky recently informed you that he represents the property owners at 104 Challenge Court in a civil matter against the applicant relating to the Project and will receive income exceeding \$500 from the property owners in connection with this representation. Commissioner Bronitsky's clients have filed an appeal with the City alleging, among other things, that the Project eliminates their access to a shared driveway thereby creating a narrower driveway for them. The appeal seeks to overturn the Planning Commission's decision relating to the Project. Commissioner Bronitsky would like to appear before the City Council to represent his clients. In a follow up email, you confirmed that the decision of the City Council will be final, and that the matter will not go back before the Planning Commission.<sup>3</sup>

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<sup>3</sup> In a follow-up email, you cited Section 17.06.150 of the Foster City Municipal Code, Appeal Procedures, which states that after the city council reviews an appeal of a planning commission decision, the "decision of the city council shall be final."

## ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using an official position to influence a governmental decision in which the official has a financial interest.

Section 87103 defines interest from which a conflict of interest may arise and includes any source of income aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)

Your question involves whether Commissioner Bronitsky may appear before the City Council to represent clients in opposition to the Project. We must first analyze whether the appearance constitutes making, participating in making, or influencing a governmental decision. The Act's conflict of interest provisions apply only when a public official "make[s], participate[s] in making, or in any way attempts to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." (Section 87100; Regulation 18700(b)(2).) The Commission has defined "making," "participating in making," and "influencing" a governmental decision in Regulation 18704 as follows:

*Making a Governmental Decision:* A public official "makes a governmental decision" when the official, "official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency." (Section 87100; Regulation 18704(a).)

*Participating in Making a Governmental Decision:* A public official "participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Section 87100; Regulation 18704(b).)

*Influencing a Governmental Decision:* Two rules address whether a public official is using or attempting to use an official position to influence a governmental decision. (Section 87100; Regulation 18704(c).)

Under Regulation 18704(c), the first rule applies when the governmental decision is within or before the public official's own agency or an agency subject to the authority or budgetary control of the official's agency. In these cases, if the official "contacts or appears before" or otherwise attempts to influence, any member, officer, employee or consultant of the agency, then the official is attempting to influence a governmental decision. (Regulation 18704(c)(1).)

The second rule applies when the governmental decision is within or before an agency *other* than the public official's own agency, or an agency appointed by or subject to the budgetary control of the public official's agency. (Regulation 18704(c)(2).) Under this rule, the official cannot act or purport "to act within the official's authority or on behalf of the official's agency in making the

contact” to influence a decision that will have a material financial effect on the official’s economic interests.

According to your facts, Commissioner Bronitsky will not be making or participating in making a decision as contemplated by the Act. The City Planning Commission made its determination on the Project on August 15<sup>th</sup> and affirmed the decision on September 5, 2024. Commissioner Bronitsky did not attend these meetings. However, his appearance before the City Council may still be considered “influencing” under Regulation 18704(c). The decision of the City Council will be final, and the matter will not go back before the Planning Commission. The threshold determination that must be made is which standard in Regulation 18704(c) would apply.

Based on your facts, the rule in Regulation 18704(c)(2) would apply. Commissioner Bronitsky is a member of the Planning Commission and would like to comment on a proposed Project before the City Council on behalf of a client he represents in his private capacity as an attorney. The City Council is not his agency, nor is it an agency appointed by, or subject to, the budgetary control of the Planning Commission. Rather, the Planning Commission is appointed by, and subject to, the budgetary control of the City Council. Thus, so long as Commissioner Bronitsky appears before the City Council in a private capacity he may appear and comment on the Project. Thus, as the Project is past Planning Commission Review and any further decisions involving the Project will not come before the Planning Commission, an appearance or communication with City Council or staff is prohibited only to the extent that Commissioner Bronitsky acts or purports to act in his official capacity.<sup>4</sup>

If you have other questions on this matter, please contact me by email at [znorton@fppc.ca.gov](mailto:znorton@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

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<sup>4</sup> Our conclusion is based on the fact the decision of the City Council is final in this instance, and the decision cannot go back to the Planning Commission. We caution that if it is foreseeable a decision could go back to the Planning Commission, taking part in the decision would include any attempts to influence shared staff. (See *Farrell* Advice Letter, No. I-03-121 and *Fulhorst* Advice Letter, No. I-12-045).