



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 23, 2024

Erin Weesner-McKinley
Deputy City Attorney
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

Re: Your Request for Informal Assistance
Our File No. I-24-109

Dear Ms. Weesner-McKinley:

This letter responds to your request for advice on behalf of the City of Long Beach and City Councilmember Kristina Duggan, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because no specific decision has been identified and your inquiry is general in nature, 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 Duggan participate in City Council decisions related to venue use agreements with the Los Angeles Organizing Committee for the 2028 Olympic and Paralympic Games (the “OCOG”), including participating in discussions with City staff, related to Marine Stadium being a venue for the 2028 Summer Olympics, given that she owns real property within 500 feet of the venue. if she resides in the Property and the Property no longer generates rental income?

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).)

CONCLUSION

Councilmember Duggan owns property located within 500 feet of Marine Stadium. Generally, unless there is clear and convincing evidence that these decisions would not have any measurable impact on the property, it is reasonably foreseeable that the financial effect of these decisions on her property interest will be material, and she is precluded from taking part in decisions involving the use of Marine Stadium as an Olympic venue. Accordingly, we must advise Councilmember Duggan to recuse herself from the decisions, based on the information provided. We also note that to the extent Councilmember Duggan is disqualified from a decision involving Marine Stadium as an Olympic venue, she may not contact City staff for regarding the decision. However, to the extent you need assistance determining whether a conflict may exist as the result of a specific, future decision, you may wish to seek additional advice once the decision has been identified.

FACTS AS PRESENTED BY REQUESTER³

Councilmember Duggan is serving her first term as a member of the City Council. Under the Charter of the City, the nine-member City Council has broad authority over contracts and policies in the City. As a City Councilmember, Councilmember Duggan will vote on final decisions, and make contractual and policy commitments on a wide range of City business, including contracts for improvements to City property. Some of the decisions that will come before the City Council will involve Marine Stadium, which is located within Councilmember Duggan's district.

Councilmember Duggan and her husband own and manage property in the vicinity of Marine Stadium, from which they receive a gross annual income of approximately \$84,000. The Property faces Marine Stadium and a parking lot that abuts the site. The distance from the Property to the boundary line of Marine Stadium is approximately 143 feet. The Property is currently used as a long-term residential rental property. Although Councilmember Duggan does not currently reside at the Property, she is planning to move to the Property in advance of the 2028 Olympics.

On May 14, 2024, the Long Beach City Council voted to authorize the City Manager, or designee, to execute a Games Agreement with the OCOG, to host a portion of the 2028 Olympic and Paralympic Games ("Games") at the Long Beach Convention Center and Entertainment Center area, adjacent waterfront, and potentially other areas throughout Long Beach. The Games Agreement establishes governing principles and commitments for the City's participation as a venue city while also including specific terms and conditions to provide the framework for how the City and OCOG will work together to coordinate and deliver a successful Games. Key elements include outlining the City's role, such as the process for delivery of standard and enhanced public services and arranging for the reimbursement of City expenses through supplemental agreements currently in development between staff and the OCOG.

It is now anticipated that during the Games Long Beach's downtown and coastal areas will be transformed into the Long Beach Sports Park. Currently, the conceptualized Sports Park is the

³ Facts incorporated by Requester's reference to *Weesner-McKinley* Advice Letter, No. A-24-058.

largest of four unique parks in the Games concept and could host a myriad of Olympic and Paralympic events. Since Marine Stadium is located within Councilmember Duggan's district, she may receive complaints or concerns from residents about Marine Stadium serving as a venue for the Games which require Councilmember Duggan and her staff to work with City staff to address. In a follow-up email, you confirmed that additional actions regarding the Olympics are expected to come before the City Council in the years leading up to the games, but there are no specific decisions pending at this time.

In a follow-up email, you stated that, on June 11, 2024, The City Council voted to enter the 2028 Venue Use Guarantee with the Los Angeles Organizing Committee for the 2028 Olympic and Paralympic Games. Based on the advice provided by the FPPC on June 7, 2024, the vote was bifurcated with the City Council first considering the inclusion of Marine Stadium as a venue location. Councilwoman Duggan recused herself from that vote. Councilwoman Duggan participated in the vote to enter the 2028 Venue Use Guarantee to confirm the Convention Center and Entertainment Center, Marina Green and Alamitos Beach, and waterfront around the Belmont Shore Beach area as venues for the 2028 Olympic and Paralympic Games.

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 are:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)
- Any source of income aggregating five hundred dollars (\$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).)
- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Councilmember Duggan has a real property interest in the Property. You have also indicated that the Property is a residence that has been used as a long-term rental. Accordingly, Councilmember Duggan will have an interest in her property rental business as a business entity, so long as it is rented to tenants, and in her tenants as sources of income both while they remain tenants and for a 12-month period following any payments aggregation \$500 or more. However, we

do not have sufficient information to provide an analysis of these interests, and further analysis is unnecessary because of the conclusion reached below analyzing her real property interest.

Foreseeability and Materiality

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. An interest in real property is the subject of the decision and explicitly involved in the decision anytime the decision affects the property as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

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."

For a property not explicitly involved in the decision, 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).)

Based on the facts provided, the above-stated "clear and convincing evidence" standard is not met. Generally, because her property is located within 500 feet of Marine Stadium and there is no clear and convincing evidence that decisions involving the use of Marine Stadium as a venue for the 2028 Summer Olympics would not have any measurable impact on the Property, Councilmember Duggan has a disqualifying financial interest in the decisions. Even without consideration of her interests in any business entity or tenants as sources of income, it is reasonably foreseeable that the financial effect of these decisions on Councilmember Duggan's property interest is material under applicable Commission regulations. Thus, she is precluded from taking part in the decisions involving the use of Marine Stadium as an Olympic venue.⁴

A public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. Rather, the official is prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Regulation 18704 includes definitions for "making a decision," "participating in a

⁴ Although the "clear and convincing evidence" standard is not met, we note that you have not identified a specific decision. To the extent that you may identify future, specific decisions, along with evidence that would rebut the presumption of a material financial effect on Councilmember Duggan's real property, you may wish to seek additional advice.

decision,” and “using official position to influence a decision.” “A public official makes a governmental decision if the 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.” (Regulation 18704(a).) “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.” (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official:

- (1) Contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision; or
- (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of the official’s agency in making the contact.

(Regulation 18704(c).)

Here, to the extent Councilmember Duggan is disqualified from any decisions related to Marine Stadium as a venue for the 2028 Summer Olympics, she is prohibited from contacting or appearing before any City official or employee for the purpose of affecting a decision. Accordingly, based on the facts provided, we note that Councilmember Duggan may not contact City staff regarding decisions involving Marine Stadium as an Olympic venue.

If you have other questions on this matter, please contact me by email at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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