



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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November 5, 2024

Sarah Carrillo  
County Counsel  
County of Tuolumne  
2 South Greet St.  
Sonora, CA 95370

Re: Your Request for Advice  
**Our File No. A-24-111**

Dear Ms. Carrillo:

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

Does the Act prohibit Anaiah Kirk, a member of the Tuolumne County Board of Supervisors, from taking part in decisions to amend the current Short Term Vacation Rental (“STVR”) ordinance given he owns and operates an STVR property within the County?

### CONCLUSION

Yes. Due to the anticipated broad nature of the County’s amendments to the STVR ordinance, which will affect all STVR properties in the County, under the standards in Regulation 18701(a) and Regulation 18702.2(a)(5) it is reasonably foreseeable that these decisions will have a material financial effect on Supervisor Kirk’s residential real property interests. In addition, while the proposed changes apply to potentially all residential housing units in Supervisor Kirk’s district, the public generally exception will not apply because the effect of the decisions on Supervisor Kirk’s interest in his STVR property will be unique as compared to the significant segment of the

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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.

public generally. Therefore, Supervisor Kirk may not take part in decisions to amend the STVR ordinance.

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

Your office represents the County of Tuolumne. Anaiah Kirk, a member of the County Board of Supervisors, owns and manages a Short Term Vacation Rental (“STVR”), which is a one-bedroom “loft” detached unit located on the same property as his primary residence. The unit sleeps up to four people. Supervisor Kirk rents this STVR part-time (about 40 percent of the year) and has done so for the past four years. Supervisor Kirk earns over \$2,000 per year in gross revenues from the operation of this rental.

There are approximately 31,500 residential housing units within Tuolumne County and currently around 938 active STVR listings there. All of the housing units within the County are eligible to become STVRs (the County allows STVRs in all zoning districts). Within District 3, Supervisor Kirk’s district, there are approximately 8,850 housing units and approximately 508 active STVR listings. There are no other STVRs within 500 or 1,000 ft from Supervisor Kirk’s STVR. The nearest STVR is approximately 2,800 ft away. The area where his STVR is located has a relatively low concentration of STVRs.

The County currently has an ordinance requiring STVR owners to undergo a fire inspection and to pay a fire inspection fee of \$86.75. The fire inspection is required to be performed every two years. In addition to the fire inspection, the ordinance also requires STVR owners to comply with various fire-related health and safety operational standards. Failure to comply with this ordinance may result in appropriate enforcement by the Tuolumne County Fire Department.

County staff is proposing an amendment to the STVR ordinance to add a requirement that all STVR owners apply for and obtain a permit that would ensure property owners are maintaining safe accommodations and are avoiding undue nuisance and disturbance to neighboring residents. Applications for a permit will be required at the time of the fire inspection request and subject to an additional fee (which has not yet been determined). Permits must also be renewed every two years. Owners who apply for the STVR permit must make several attestations, including but not limited to: posting and enforcing quiet hours of 10:00 p.m. through 6:00 a.m.; limiting guest parking to the maximum number of parking spots allotted on their permit; and limiting guest occupancy to two guests per bedroom (ages 10 and up), plus an additional two guests in the rental. Violations of this ordinance may result in the revocation or non-renewal of the STVR permit.

### **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. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s

interests. (Section 87103; Regulation 18700(a).) Section 87103 defines financial interests to include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more (Section 87103(b)), including a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater (Section 82033).
- An interest in a source of income to the official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c)) including any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest (Section 82030(a)).
- Personal finances, meaning the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family.

Relevant to your request, Supervisor Kirk has real property interest in his residence, including the detached one-bedroom loft on the same property that he uses for his STVR business. He also has a business entity interest and source of income interest in his STVR business, as well as a potential source of income interests in his STVR business tenants. No specific facts are provided regarding STVR-related clients as sources of income and we do not further consider this issue at this time.

### ***Foreseeability and Materiality: Real Property Financial Interests***

Regulation 18701 provides the standard to determine the foreseeability of a decision's financial effect on an official's financial interest. Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. (Regulation 18701(a).) An official's financial interest is explicitly involved in a governmental decision if the interest is a named party in, or subject of, the decision. (*Ibid.*) 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 the materiality standard for real property financial interests, Regulation 18702.2(a)(1)-(6). (*Ibid.*) Regulation 18702.2(a)(5) states that a decision's financial effect is material when it "[i]nvolves the issuance, denial or revocation of a ... permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property."

According to the facts, Supervisor Kirk owns a one-bedroom loft, located on the same property as his personal residence, that he currently uses as an STVR. Because the County will consider adding a requirement to the current ordinance that all STVR owners apply for and obtain a permit subject to an additional fee that must be renewed every two years, these decisions may require Supervisor Kirk to obtain a permit in order to continue using his loft as an STVR. Therefore, under the standards in Regulation 18701(a) and Regulation 18702.2(a)(5), Supervisor Kirk's residential real property interest is explicitly involved, and it is reasonably foreseeable that the decisions would have a material financial effect on his residential real property interest.<sup>2</sup>

### ***Public Generally Exception***

A public official that has a reasonably foreseeable and material financial interest in a decision may still participate if the official demonstrates that the financial effect is indistinguishable from its effect on the public generally. (Regulation 18703.) Under Regulation 18703(a), a decision's financial effect on a public official's financial interest is indistinguishable if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment.

Regulation 18703(b)(1)(B) defines a "significant segment of the public" to include at least 25 percent of all residential real property within the official's jurisdiction. Supervisor Kirk's jurisdiction is his district (18703(d)), which is District 3. Because all of the residential housing units in the County, including all of those in Supervisor Kirk's district, are eligible to become STVRs, the decisions at issue will affect a significant segment of the public.

Here, however, Supervisor Kirk has not established that the significant segment of residential housing units in District 3 will be similarly affected by the amendments to the STVR. While you state that the decisions to amend the current STVR ordinance will theoretically apply to all housing units in District 3 because all are eligible to become STVRs, the public generally exception does not apply if there is a unique effect on the official's interest. Under Regulation 18703(c)(1), a unique effect on an official's real property interest includes a disproportionate effect on its development potential, use or income producing potential. Your facts state that of the approximately 8,850 housing units in District 3, only about 508 are active STVR listings. Therefore, the effects of the proposed amendments to increase fees and impose noise, parking and occupancy limitations will affect less than 6 percent of the housing units in District 3, including Supervisor Kirk's.

Under these facts, Supervisor Kirk's STVR property will be uniquely affected by decisions to amend the current STVR ordinance and the public generally exception does not apply. Accordingly, he may not take part in decisions to amend the ordinance.

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<sup>2</sup> Due to this finding, we need not separately consider the remaining financial interests of Supervisor Kirk.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

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