



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

May 29, 2025

Christopher Cardinale
Alvarez-Glasman & Colvin
City of Bunea Park
13181 Crossroads Parkway North
Suite 400 West Tower
City of Industry, CA 91746

Re: Your Request for Advice
Our File No. A-25-055

Dear Mr. Cardinale:

This letter responds to your request for advice regarding the 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

Under the Act, is Buena Park City Councilmember Carlos Franco disqualified from taking part in governmental decisions concerning the Coral Motel and the underlying real property, given that it is located approximately 950 feet from his residence, which is owned by his parents, who charge him less than the property’s fair market rental value?

CONCLUSION

No, Councilmember Franco is not prohibited from taking part in those decisions because he does not have a real property interest in his residence, in which he has a month-to-month tenancy, and he does not have a “source of income” or “source of gifts” interest in his parents, as their

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.

discounted rental rate does not constitute a “gift” or “income” under the Act. Additionally, it is not reasonably foreseeable that Councilmember Franco’s personal finances would be materially affected as a result of the decisions. Consequently, the Act does not prohibit him from taking part in the decisions, but we caution that the common law doctrine against conflicts of interest, which falls outside the scope of our jurisdiction and advice, should be given consideration and analysis before Councilmember Franco takes part in the decisions.

FACTS AS PRESENTED BY REQUESTER

Buena Park

The City of Buena Park is situated in northern Orange County and on the southeast boundary of Los Angeles County. Buena Park has a population of approximately 82,000 and covers 10.55 square miles, and is governed by a five-member City Council each of which is elected by and represent one of five voting districts.

Auto Center Specific Plan (“ACSP”)

The ACSP is a specific plan adopted by the City Council on April 7, 1997 under authority of the California Planning and Zoning Law. The ACSP covers approximately 131 acres that are primarily located along Interstate 5 Freeway (I-5) and Auto Center Drive, and is commercially known as the Buena Park Auto Center and home to several nationally branded new car dealerships. The stated purpose of the ACSP is to encourage the concentration and location of auto dealers to the planning area, and consistent with that purpose the ACSP restricts permitted land uses to new vehicle sales, and allows complementary commercial uses such as full-service hotels, restaurants, and vehicle-related services with a conditional use permit.

A conditional use permit is a discretionary land use entitlement that requires a noticed public hearing and approval by the Buena Park Planning Commission (“Planning Commission”), and the Planning Commission’s decision is appealable de novo to the City Council. Any use of property that preexisted but does not comply with the ACSP is a “nonconforming use” and governed by Chapter 19.204 of the Buena Park Municipal Code (“Chapter 19.020”). Decisions concerning nonconforming land uses require a noticed public hearing and approval by the Planning Commission, and the Planning Commission’s decisions are appealable de novo to the City Council.

The Coral Motel

The Coral Motel is a 47-room, one-story motel (“Motel”) that is situated on a 1.05 acre parcel located at 7891 Whitaker St., Buena Park, CA 90621 (the “Property”); and within the ACSP and City Council District 2. The Motel was built in the early 1950’s with approvals issued by the County of Orange, and it predates Buena Park’s incorporation on January 27, 1953, and adoption of the ACSP. An inspection of the Motel was completed in October 2024 which identified significant building code violations, and the Property has generated over 1,200 calls for service over the past 10-years including incidents like disturbing the peace, spousal abuse, drugs, vandalism, battery, grand theft and assault. The Motel has never applied for or been issued a conditional use permit, and the amortization deadline for terminating the Motel as a nonconforming use has expired.

Councilmembers Carlos Franco and the Franco Residence

Councilmember Franco is an elected member of the City Council representing District 2 with a term scheduled to expire in November 2026. Councilmember Franco's primary residence is a one-story single-family home that is owned by his parents ("Franco Residence"). The Franco Residence is in a single-family residential neighborhood that is bounded by commercial and medium density residential uses to the east, general commercial uses to the west, an arterial roadway and single-family residential to the north, and the ACSP area to the south.

In a follow-up email, you clarified that Councilmember Franco does not have a formal or written lease agreement with his parents, nor is there a will, contract, or other arrangement that would make him the owner of the property. He pays rent approximately equal to his parents' mortgage on the home, which is less than the current fair market rental value.

Potential Conflict of Interest

This office expects the City Council to be presented with and make decisions involving the continued operation of the Motel in the near future. The specific nature of the decision is unknown at this time, and is likely to result in one of three (3) outcomes: (1) allowing the Motel's continued operation by extending the amortization deadline to terminate the use; (2) terminate the Motel as a nonconforming use; or (3) change use of the Property to one that is permitted by the ACSP. To provide specific examples of the anticipated decision:

- The Planning Commission has initiated proceedings to consider terminating the Motel as a nonconforming use, and this hearing is scheduled to take place in the next few weeks. We expect the Planning Commission's decision to be appealed to the City Council; either by Motel owners seeking a reversal and extension of nonconforming privilege, or a member of the community seeking to terminate the conforming privilege.
- The owner of the Motel and Subject Property has expressed interest in selling the Subject Property to Buena Park, and any potential purchase would require approval by the City Council.

The nearest part of the Property is approximately 950 feet from the Franco Residence. The Franco Residence is two residential blocks north of the Property, and there is no direct line-of-travel or line-of-sight between the two properties. There is no vehicular or pedestrian traffic, noise, parking overflow, or privacy impacts on the Franco Residence that may be directly attributable to the Motel, and the "by right" uses of the Property permitted by the ACSP (e.g., new vehicle sales) are likely a more intense land use of the Property.

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 real property in which the public official has a direct or indirect interest worth \$2,000 or more; 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; and any donor of, a gift or gifts aggregating \$630 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(b)-(c), (e).) A public official also has an economic interest in the official's own personal finances. (Sections 87100, 87103.)

The terms "interest in real property" and "leasehold interest" as used in Section 82033 does not include the interest of a tenant in a periodic tenancy of one month or less. (Regulation 18233.) Given the lack of a formal lease and the monthly payment of rent, Councilmember Franco is presumed to have a month-to-month periodic tenancy and, consequently, does not have a leasehold interest in his residence. (See Cal. Civ. Code Section 1944.)

The Act defines "income" to generally mean "a payment received," including rent. (Section 82030(a).) The Act also defines "gift" to mean "[a]ny payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." (Section 82028(a).) Ordinarily, then, a landlord charging less than fair market value for rent could be considered income or a gift. However, under the exception for payments from parents, in Section 82028(b)(3), a "gift" does not include a payment from one's parents, nor is it considered "income." (See also Regulation 18942(a)(3).) Consequently, Councilmember Franco does not have a source of income or source of gift interest in his parents.

A governmental decision's reasonably foreseeable financial effect on a public official's financial interest in personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).) "Immediate family" means the spouse and dependent children. (Section 82029.) Here, the facts do not indicate that the decisions regarding the Motel would impact the official's finances in any manner and it is not reasonably foreseeable that Councilmember Franco would experience a financial benefit or loss of \$500 or more in a 12-month period as a result of the decisions at issue.

Because Councilmember Franco does not have a real property interest in his parents' property, does not have a source of income interest in his parents, and it is not reasonably foreseeable his personal finances would be materially affected, he does not have a potentially disqualifying interest under the Act. Therefore, the Act does not prohibit him from taking part in decisions concerning the Coral Motel and the underlying real property.

While Councilmember Franco's participation in his capacity as a member of the City Council is not prohibited under the Act, we note that the decisions' potential impact on his parents financial interests may raise questions of a potential conflict of interests under common law. (See, e.g., 92 Ops.Cal.Atty.Gen. 19 for a discussion of the common-law doctrine against conflicts of interest where there may be a temptation to act for personal or private reasons rather than in the

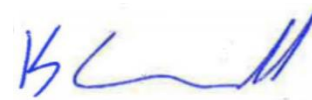
public interest.) Common law is beyond the scope of our jurisdiction and analysis. Consequently, we express no opinion on this issue but flag the issue for consideration and analysis before Councilmember Franco participates in the decisions at issue.

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

KC:aja