



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 25, 2025

Richard D. Pio Roda
City Attorney
City of San Leandro
409 13th Street
Suite 600
Oakland, California 94612

Re: Your Request for Advice
Our File No. A-25-027

Dear Mr. Pio Roda:

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

Does Mayor Gonzalez have a disqualifying interest in the City of San Leandro's (“City”) decisions regarding Lake Chabot Road and whether to reopen the road to vehicular traffic going in both directions, in one direction only, or close the road to vehicle traffic permanently where his real property interest is located within 550 feet of the road?

CONCLUSION

No. The facts indicate it is not reasonably foreseeable that the Lake Chabot Road decisions would have a material financial effect on his real property interest due to the fact that his property’s accessibility is not dependent upon Lake Chabot Road and, because of its interior location within

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.

his neighborhood and the significant difference in elevation between the road and the Mayor's property, it is insulated from the traffic or construction effects related to the road. Accordingly, the Act does not prohibit the Mayor from taking part in the decision.

FACTS AS PRESENTED BY REQUESTER

The City has a current population of 85,784 and is approximately 15 square miles. Lake Chabot Road, located within the City, was closed in 2018 due to settlement and significant erosion following a storm. In response, the City obtained American Rescue Plan Act funds to stabilize some portions of the roadway. The extent of repairs needed for the road depends on the planned use of the road in the future. Some options include opening the road back up to two-way vehicular traffic with a sidewalk as previously used, opening the road up to one-way vehicular traffic, and/or the installation of bike lanes. In 2022, a storm worsened the conditions of Lake Chabot Road, and the City obtained additional funding from the Federal Highway Administration to construct repairs. Since this time, the City has obtained a consultant to perform environmental design services in support of the repairs.

The City Council will in the future discuss potential options for the future of Lake Chabot Road. In particular, the City Council may consider options including, but not limited to, reopening the road to vehicular traffic going in both directions, reopening the road in one direction only, or closing the road to vehicle traffic permanently. Additionally, the City Council may discuss and approve agreements for consultant or contractor services in support of the repairs.

Mayor Gonzalez currently owns a home on Daniels Drive in San Leandro as his personal residence (the "Property"). The total fair market value of Mayor Gonzalez's economic interest in the property is over \$2,000. The Property's nearest point to Lake Chabot Road is located where the road meets Chabot Terrace, approximately 550 feet from the Property and is approximately 850 feet from the point at which the City has placed a gate to close the road. The Property backs up to a park area and is separated from Lake Chabot Road by houses and interior roads within the neighborhood. There is also a significant change in elevation between the Property and the road, lessening any impacts on air quality and noise. The Property is not dependent upon Lake Chabot Road for access, and the roads within the Mayor's neighborhood are not through-ways. Each interior road end in a cul-de-sac. Due to the Mayor's property's interior nature to the neighborhood, reopening Lake Chabot Road in one or both directions for vehicular traffic would not cause an increase in traffic on the Mayor's street.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. 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, relevant to these facts: An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)

Mayor Gonzalez has a real property interest in his residence. We examine whether it is reasonably foreseeable that the Lake Chabot Road decisions to reopen the road to vehicular traffic going in both directions, reopen the road in one direction only, or close the road to vehicle traffic permanently will have a material financial effect on his Property.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. Regulation 18701(a) states that a financial interest is “the subject of” a proceeding under certain criteria, including where the decision affects a real property financial interest as described in the regulation setting forth the real property materiality standard, Regulation 18702.2, items (a)(1)-(6). Pertinent to these facts, an official’s property is the “subject of a decision” where that decision:

Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the [official’s] parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.

(Regulation 18702.2(a)(6).)

The facts provided do not indicate that construction or improvements to Lake Chabot Road will provide either a disproportionate benefit or a detriment to the Property, which is not dependent upon Lake Chabot Road for access.

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). It states, “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.”

Relevant to a parcel located more than 500 feet but less than 1,000 feet from the property at issue in the decisions, Regulation 18702.2(a)(8) states that the financial effect of a decision on the official’s parcel is material if the decision would change the official’s parcel’s development potential; income producing potential; highest and best use; character (by substantially altering traffic levels, the intensity of use, parking, view, privacy, noise levels, or air quality); or its market value. The facts provided do not indicate that the decisions regarding modifications or closure of Lake Chabot Road would impact the Property in any of these manners, particularly in regard to its character or marketability. This is due to the fact that the Property’s accessibility is not dependent upon Lake Chabot Road. Also, the Property is insulated from the traffic or construction effects related to the road due to its interior location within the Mayor’s neighborhood and the significant difference in elevation between the road and the Mayor’s Property. Therefore, it is not reasonably foreseeable that the Lake Chabot Road reopening, directions of traffic, or closure to vehicular traffic decisions would have a material financial impact on Mayor Gonzalez’s real property interest, and the Mayor may take part in the decisions.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja