



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

October 2, 2025

Rene A. Ortega
City Attorney
City of Marina
396 Hayes Street
San Francisco, CA 94102

Re: Your Request for Advice
Our File No. A-25-128

Dear Ms. Ortega:

This letter responds to your request for advice on behalf of City of Marina, (“City”), City Manager Layne Long, 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. Finally, the Commission is not authorized and does not provide advice concerning past conduct under the Act (Regulation 18329(b)(6)(A)) or Section 1090 (Section 1097.1(c)(2)). Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

Does the City Manager, Layne Long, have a disqualifying financial interest in the City’s decisions regarding the Rental Cap Policy for the City-owned Preston Park Housing Property (“Preston Park Property” or “Property”) where he has a month-to-month tenancy in one of the Property’s units and as a part of his City Manager duties serves as the Chief Executive Officer on the Preston Park Sustainable Community Nonprofit Corporation’s board that leases the Property and facilitates the City’s ownership?

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.

CONCLUSION

Based on the facts provided, the study session decision may involve a rental cap increase for his unit, and it is a realistic possibility that the cap may be increased by more than one percent. Accordingly, it is reasonably foreseeable that the decision may result in Mr. Long receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. He may not make, participate in making, or attempt to use his official position to influence the Rental Rate Cap Policy decision, as described below.²

FACTS AS PRESENTED BY REQUESTER

The City of Marina (the “City”) is a city with a population of approximately 22,000 located in Monterey County. City Manager, Layne Long, has been in his position since April 1, 2013. Mr. Long currently rents one of the market-rate residential units in the Preston Park Property, subject to a month-to-month tenancy.

The Preston Park Sustainable Community Nonprofit Corporation (the “Nonprofit Corporation”) is a nonprofit public benefit corporation formed in 2015 to facilitate the City’s ownership, development, and operation of the Preston Park Property located at 682 Wahl Court. The City Council is the Nonprofit Corporation’s Board and various city officials serve as the Nonprofit Corporation’s officers - the City Manager as the Chief Executive Officer (“CEO”), the Deputy City Clerk as the Secretary, and the City’s Finance Director as the Chief Financial Officer.

The City currently owns the Preston Park Property, which consists of 354 apartment units, both market-rate residential units and below market-rate units subject to a regulatory agreement. The Preston Park Property is leased to the Corporation and managed by Greystar California, Inc. On June 2, 2010 the City Council adopted a policy (the “Rental Rate Cap Policy”) that capped increases to market-rate rental rates at the Property to the lesser of three percent or the Department of Labor’s Consumer Price Index for San Francisco-Oakland-San Jose, All Items, for All Urban Consumers (referred to as “CPI-U”).

The City Council will be holding a study session on whether to direct staff to review and recommend adjustments to the Rental Rate Cap Policy for the Property. That direction could include a recommendation that City staff come back to the City Council with a recommendation to alter the Rent Rate Cap Policy. A one percent increase (from the greater of three percent or CPI) in the Rent Rate Cap Policy is likely not to impact the City Manager’s rent by \$500 or more in a 12-month period. However, an increase above one percent would likely increase the City Manager’s rent by \$500 or more in a 12-month period.

² This advice pertains solely to the Rental Rate Cap Policy decision for the Preston Park Property. As the Commission cannot provide advice regarding past conduct under the Act or Section 1090, we express no opinion regarding the application of these provisions to the City Manager’s rental agreement, the City Manager’s appointment to the position of CEO for the Nonprofit Corporation in light of the City Manager’s lease, and any previous decisions the City Manager has taken part in as the CEO of the Nonprofit Corporation.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from making, participating in making, or using their official position to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests, distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- An interest in a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)) or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- 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).)
- An interest in real property, including a leasehold interest, in which the official has a direct or indirect interest of \$2,000 or more. (Sections 82033, 87103(b); Regulation 18702.2.)
- An interest in the official's personal finances, including those of their immediate family. (Section 87103; Regulation 18702.5.) This is commonly referred to as the "personal financial effects" rule. (Section 87103.)

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 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: 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 the official's authority or on behalf of the official's agency in making the contact.

The facts state that the City Manager Long is the CEO of the Nonprofit Corporation as a part of his current job duties with the City. He does not have a business interest in the Nonprofit Corporation because a nonprofit organization is not a "business entity" as defined by the Act. (Section 82005.) Nor does he have a source of income interest because this position is part of his City Manager duties and local government salaries are not "income" as defined by the Act. (Section 82030(b)(2).) He also does not have an interest in real property related to his month-to-month tenancy because Regulation 18233 specifically excludes the interest of a tenant in a month-to-month lease from the definition of an "interest in real property" and that of a "leasehold interest." City Manager Long has identified an interest in his personal finances as it relates to the Rental Rate Cap Policy decisions applicable to his rental property.

Foreseeability and Materiality

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the "subject of a proceeding" if the governmental 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 decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6). For financial interests not explicitly involved in a decision, if the financial effect can be recognized as a realistic possibility and is 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. (Regulation 18701(b).)

Regulation 18702.5 provides the materiality standard for a personal financial effect. It states that it is reasonably foreseeable that a governmental decision's financial effect on a public official's financial interest will be 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).)

Here, the Rental Rate Cap Policy decision involves Mr. Long's rental agreement for his unit, and specifically the rental cap applicable to his unit, which sets the amount by which the unit's rent may be increased in a given period. At this time, the issue is at the "study session" level, and it is realistically possible that the discussion could consider an increase above one percent, which would likely increase the City Manager's rent by \$500 or more in a 12-month period. Therefore, he has a disqualifying interest in the Rental Rate Cap Policy decision and may not make the decision, participate, or attempt to use his official position to influence the decision in any manner, including with City staff, under these circumstances.

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