



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 12, 2023

Veronica Ramirez
City Attorney
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063

Re: Your Request for Advice
Our File No. A-23-034

Dear Ms. Ramirez:

This letter responds to your request for advice on behalf of Redwood City Councilmember Kaia Eakin regarding the conflict of interest provisions of the Political Reform Act and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

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.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the San Mateo County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Does Councilmember Eakin have a conflict of interest under the Political Reform Act in City Council decisions related to planning approvals for the General Plan and Downtown Precise Plan ("DTPP") amendments resulting from her employment with San Mateo County Historical Association?

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. Does Councilmember Eakin have a conflict of interest under the Political Reform Act in City Council decisions related to decisions to issue land use entitlements to six redevelopment projects (collectively known as the “Gatekeeper Projects”) located at: (a) 651 El Camino Real, (b) 901-999 El Camino Real, (c) 2300 Broadway / 609 Price, (d) 603 Jefferson / 750 Bradford, (e) 1900 Broadway, or (f) 601 Allerton Street?

3. Will Councilmember Eakin have a conflict of interest under Government Code Section 1090 or the Political Reform Act in any City Council decisions related to the making and approval of development agreements with the applicants for the aforementioned six Gatekeeper Projects?

CONCLUSION

1.-3. The Act does not prohibit Councilmember Eakin from taking part in the decisions related to planning approvals for the General Plan and DTPP, and for the Gatekeeper Projects, as there are no facts indicating that the decisions will have a material financial effect on her nonprofit employer as a source of income. Based on the facts presented, Section 1090 does not apply to Councilmember Eakin for purposes of decisions involving development agreements with the applicants for the six Gatekeeper Projects.

FACTS AS PRESENTED BY REQUESTER

Background

In 2011, the City Council adopted the DTPP, a specific plan that regulates redevelopment of the City’s Downtown. The DTPP allows for streamlined development project analysis and public review by setting overall development caps (“Maximum Allowable Development” or “MAD caps”) for office, residential, retail, and hotel development. The MAD caps for office space and residential uses specified in the DTPP and General Plan are almost met. As a result, any project proposing to exceed those caps has had to request both a General Plan and DTPP amendment the past few years.

In 2020 and 2021, given the large number of projects requesting such amendments, the City Council used a “Gatekeeper” process to evaluate pending General Plan and DTPP amendment requests. The City Council analyzed a variety of conceptual land use redevelopment projects in the Downtown against its Strategic Plan and Priorities. The Council authorized the six Gatekeeper Projects (five of which are within the existing DTPP boundary and one of which, 651 El Camino Real, is located just outside the current boundary) to formally submit applications to initiate the General Plan and DTPP amendment process and obtain any necessary discretionary approvals.

Each Gatekeeper Project generally involves a proposal to redevelop land Downtown that is currently improved with one or two-story commercial development and replace it with a mixed-use development consisting of commercial office, retail and residential (including affordable) development up to approximately 10-stories tall and provide various community benefits (such as additional affordable housing, community/recreational space, etc.). The individual DTPP Gatekeeper Projects are located at: 1) 651 El Camino Real; 2) 901–999 El Camino Real/Caltrain Property; 3) 2300 Broadway / 609 Price; 4) 603 Jefferson / 750 Bradford; 5) 1900 Broadway; and 6) 601 Allerton Street. Applications for the individual Gatekeeper Projects are in various stages of planning, revision, and submission. None have been deemed complete.

The Council also directed staff to return with updates to the DTPP and General Plan to update certain land uses, circulation, parking, and other policies in anticipation of substantial mixed-use redevelopment Downtown.

Current Projects

On or about May 8, 2023, the City Council will consider adopting DTPP Planwide amendments that revise certain development standards within the DTPP and make corresponding General Plan revisions (collectively, the “DTPP Planwide Amendments”).² The proposed DTPP Planwide Amendments will also require the applicant of any project seeking a General Plan Amendment to negotiate a Development Agreement with the City. The purpose of these DTPP Planwide Amendments is to make policy changes at the General Plan and specific plan (DTPP) level in advance of the consideration of the six Gatekeeper Projects to ensure those projects conform to the City’s vision for development in Downtown. While the Planwide Amendments do not propose significant changes to the MAD Caps³ or an extension of the DTPP boundary, the environmental impacts of doing so are being studied.⁴

Assuming the Council adopts the DTPP Planwide Amendments, each individual Gatekeeper Project is expected to finalize their redevelopment application and request General Plan and DTPP amendments to change the MAD caps (and/or extend the DTPP boundary for 651 El Camino Real) and negotiate a Development Agreement as part of its project-level land use approvals. The Development Agreement is expected to establish an agreement between the City and the applicant identifying the time period for vested rights in a specific development proposal, specifying the phasing of the mixed-use and affordable development over time, and establishing commitments to certain community benefits.

Relevant Facts Regarding Councilmember Eakin

Councilmember Kaia Eakin is employed by San Mateo County Historical Association (“Association”) as a Development Specialist for Endowment & Capital Projects. Her salary from the association is not dependent upon or otherwise related to the finances of the Association. She raises funds for Capital and Endowment. The Association is a non-profit organization that operates three historical sites across San Mateo County. The only site in Redwood City is the San Mateo

² The Plan-Wide Amendments consist of amendments to the DTPP and the Redwood City General Plan, to revise certain development standards, guidelines and policies, including, but not necessarily limited to, those with respect to permitted or conditionally permitted land uses (including allowing Research and Development Laboratory space as a conditional use); streets and circulation (including pedestrian, bicycle, and vehicular circulation); building placement; building height and massing (including allowing the development of recreational rooftop structures within existing height limitations); parking requirements; historical resources; and open space.

³ The DTPP Planwide Amendments only propose an increase of 80,000 square feet in the office development cap to be reserved specifically for small office projects of 20,000 net new square feet or less.

⁴ The Draft Subsequent EIR for the DTPP Planwide Amendments evaluates development of additional office development of 1,087,100 square feet (total of 1,167,100 square feet including the 80,000 square feet for small offices) within the DTPP area. The SEIR also evaluates an additional 830 residential units would be developed within the DTPP area.

County History Museum (“Museum”), housed inside the former Courthouse located at 2200 Broadway Street in Downtown Redwood City. This location is across the street from the 2300 Broadway Street Gatekeeper Project. This property is owned by San Mateo County and leased to the Association for a term of 99 years. Currently, there are 74 more years to go on the lease.

The Museum generates revenue primarily from fundraising efforts and a *de minimis* portion of the Association’s annual gross receipts come from general ticket sales and fees for events held at the Museum.⁵ Most events held at the Museum are personal in nature (weddings, bar mitzvah parties, etc.); the Museum hosts very few corporate events. The Association’s annual gross receipts are approximately \$1.5 Million.

ANALYSIS

The Act

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 public 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 a specified economic interest, including any source of income aggregating five hundred dollars (\$500) or more in value provided or promised to or received by the official within 12 months prior to the time when the decision is made. (Section 87103(c).) All public officials have an economic interest in their personal finances and those of their immediate family. (Section 87103.)

Pertinent to these facts, Councilmember Eakin has a source of income interest in the Association as a result of her employment as a Development Specialist for Endowment & Capital Projects, as well as in her own personal finances. You have not provided any facts to suggest Councilmember Eakin’s participation in governmental decisions would affect her personal finances. We do not, therefore, further analyze her personal finances as a potential conflict of interest.

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.” It further provides that 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. This also includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

⁵ IRS Form 990 for San Mateo County Historical Association indicates that for 2020 program services accounted for 1.7% of the Association’s total revenue. In years prior this percentage ranged from 5% (2014) to 16.6% (2016).

Where an official's economic interest is not explicitly involved in the governmental decision, as here, 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.

Regulation 18702.3(a)(3) provides the applicable standard for determining whether the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a nonprofit source of income is material. It requires the examination of three areas of possible impacts on the nonprofit entity as a result of the decision: annual gross receipt or asset/liability changes, changes to expenses, and impacts on a real property interest. For the first category, the financial effect is material if the decision may result in an increase or decrease of the nonprofit organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or greater than \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is at least \$10,000. (Regulation 18702.3(a)(3)(A).) For the second, the effect is material if the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).) For the third, the financial effect is material if the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)

For the first category: you provided no facts indicating that the Association will see an increase or decrease in its annual gross receipts, value of its assets or liabilities, in an amount equal to or greater than \$1,000,000; or an increase or decrease of at least \$10,000 in its gross receipts. (Regulation 18702.3(a)(3)(A).) For the second, you provided no facts indicating that the decision may cause the Association to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).) For the third, the Museum, property in which the Association has a financial interest, is not a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), as none of the decisions pertain to the Museum parcel. The remaining question is whether there is clear and convincing evidence the decision would have a substantial effect on the property.

These projects would involve the creation of large buildings bringing a significant increase in the amount of office-space, as well as residential housing units in the area. The construction of the new buildings would likely result in the inherent increase in foot traffic, partly due to a significant increase in affordable/workforce/below-market-rate housing units, and an increase in nearby parking.

However, you state that the Museum generates revenue primarily from fundraising efforts, while only a *de minimis* portion of the Association's annual gross receipts come from general ticket sales and fees for events held at the Museum. Most events held at the Museum are personal in

nature, such as weddings and bar mitzvah parties, and the Museum hosts very few corporate events. The museum property is not used for residential or office purposes, and the creation of additional office space and residential units would not have a substantial effect on the property, which remains subject to the terms of a lease for an additional 74 years. There is not clear and convincing evidence the decision would have a substantial effect on the property. Accordingly, it does not appear reasonably foreseeable that the decision would have a financial impact meeting the materiality standards specified above.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Here, the decisions at issue involve development agreements with the applicants for the aforementioned six Gatekeeper Projects. In this case, Section 1090 applies to all councilmembers, as development agreement constitutes a contract for purposes of Section 1090. (78 Cal.Op.Atty.Gen. 230, 235 (1995).) However, the pertinent issue is whether Councilmember Eakin will have a prohibitory financial interest in a development agreement for purposes of Section 1090.

Previously, for purposes of a highway project, we have found that an official does not have an interest in a contract involving the highway project under Section 1090 merely because the official has a property or a business adjacent to or in close proximity to the project. (*Bordsen* Advice Letter, No. A-17-059.) Likewise, here, the close proximity of Councilmember Eakin’s employer’s real property to the six Gatekeeper Projects would not alone establish a financial interest under Section 1090 with respect to any contract relating to the future development of the six Gatekeeper Projects. Barring additional facts to the contrary, Councilmember Eakin does not have a financial interest in these decisions for purposes of Section 1090, and it does not prohibit the City from entering into development agreements relating to the six Gatekeeper Projects.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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