



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 3, 2023

Marian L. Slocum
City Attorney
City of Brea
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-23-068

Dear Ms. Slocum:

This letter responds to your request for advice on behalf of City of Brea Planning Commissioner Joseph Covey 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 Commissioner Covey have a disqualifying conflict of interest with respect to Planning Commission discussions and decisions concerning the Gaslight Square Redevelopment Project (“Project”) because his husband’s event planning business will have to relocate to a new office space?

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

No. The Act does not prohibit Commissioner Covey from taking part in decisions relating to the Project because it is not reasonably foreseeable that those decisions would have a material financial effect on the Commissioner's source of income interest based on the facts presented.

FACTS AS PRESENTED BY REQUESTER

The Brea Planning Commission held a hearing on the Project on April 11, 2023, and Commissioner Covey abstained from participating in an abundance of caution. The Commission ultimately voted to recommend Project approval to the City Council, which is charged with making a final decision on the Project and will consider the matter at a future date. There nevertheless remains a possibility that—prior to taking final action on the Project—the City Council may remand the Project (or some aspect thereof) back to the Planning Commission for further consideration.

The Project involves the demolition of four commercial/office buildings for the construction of two new commercial buildings on a parcel that is zoned for Administrative and Professional Offices. The current buildings located at the Project site are used for office, retail, and medical spaces. Two of the existing buildings on the northern portion of the property where the Project is located will remain while the other four on the southern portion of the property will be demolished. The two new buildings will include a 2,000 square-foot drive-through restaurant building and a 6,000 square-foot commercial building that includes a 2,400-square foot sit-down restaurant space and 3,600 square feet of medical or retail space. The Project also includes new landscaping and parking spaces. There are no specific tenants identified at this time for the Project. The restaurant and retail/medical uses within the larger building are presumed to operate during daytime and evening hours, seven days per week, while the proposed drive-through restaurant use is presumed to operate 24-hours per day, seven days per week.

The City has prepared a draft Environmental Impact Report (“Draft EIR”), which has been circulated for public comment. The Final EIR will incorporate responses to public comments on the Draft EIR.

The Project requires amendments to the City's General Plan and Zoning Map to change the permissible uses of the Project site; as well as approval of a site plan and conditional use permit. The Planning Commission is required to make recommendations to the City Council whether to approve, conditionally approve, or deny these entitlements. The Planning Commission must also make a recommendation whether to certify the EIR. Final decisions on the Project applications and the Final EIR will be made by the City Council.

Commissioner Covey's Husband's Business

Commissioner Covey's husband, Mr. Kevin Covey, is a wedding and event planner whose office is located within one of the commercial/office buildings at the Gaslight Square property that will be demolished for the Project. The office is approximately 150 square feet and the business leases the office space on a month-to-month basis for approximately \$425 per month. Until January 2023, Mr. Covey operated the event planning business as a sole proprietorship, Kevin Covey Weddings and Events. As of January 2023, he no longer operates his own business, but has become

an employee of another event planning company, Slay Events. Mr. Covey still operates out of the office in the building at the Project site, and the lease is in his name. Slay Events reimburses him for the rental payments.

In a follow up email, your office stated that Slay Events will either pay or reimburse Commissioner Covey's husband for any out-of-pocket expenses or increase in rent in the event he needs to relocate his office. Relocation will not have any impact on his future business because of the nature of the event planning business. Your office also provided information on comparable office space, which indicated that the existing lease reflected the current market rate, and that equivalent space was currently available for the monthly rate of \$494. The estimated moving costs would be no more than \$1,000. In short, Slay Events will ensure that Commissioner Covey's husband will be made whole should he need to move the office. Slay Events' annual revenue is \$2 million.

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 public official's official 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 his or her immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests are "[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more," and "[a]ny source of income . . . aggregating five hundred dollars (\$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." (Section 87103(a), (c).) Commissioner Covey has a source of income interest in Slay Events as his husband's employer. Because the office space Commissioner Covey's husband leases is a month-to-month tenancy, it does not constitute a real property interest for purposes of the Act. (Regulation 18233.)²

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 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 Regulation 18702.2(a)(1)-(6)."

² Given that Commissioner Covey's husband operated his event planning business as a sole proprietorship until January 2023, Commissioner Covey also has a source of income interest in any client who paid his husband \$1,000 or more (based on Commissioner Covey's community property interest in the income) within the 12 months preceding a Planning Commission decision. You have not provided any facts regarding any clients and, consequently, we do not attempt to analyze theoretical financial effects on those clients. To the extent Commissioner is aware of or uncertain about a potential financial impact on a client, he should seek additional advice.

Where 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). 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." Based on the facts provided, Slay Events is not explicitly involved in the relevant governmental decisions.

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a source of income is material if the source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Under Regulation 18702.1, the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity is material if the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)

The reasonably foreseeable financial effect on a business entity is also 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: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

You provided no facts indicating that Slay Events would be financially affected by the Planning Commission's decision on the Project under the materiality thresholds in Regulation 18702.1(a)(2) or (3). You state that relocation will not have any impact on his future business because of the nature of the event planning business. While the facts suggest the approval of the Project could result in a minor increase in the amount of rent that Commissioner Covey's husband would need to pay for a comparable office space, and that the Commissioner Covey's husband would incur minor additional expenses to relocate his office due to the Project, the rent on equivalent office space is comparable to the rent on the existing space, and you have stated that moving expenses would be no more than \$1,000. Based on these provided facts, it does not appear reasonably foreseeable that a decision relating to the Project would result in an increase or decrease of the annual gross revenues, or the assets or liabilities, of Slay Events which would be material under Regulation 18702.1(a)(2), or a change in the business's expenses meeting the materiality threshold of Regulation 18702.1(a)(3). Therefore, those decisions would not have a material financial effect on Slay Events, and the Act's conflict of interest provisions do not prohibit Commissioner Covey from taking part in decisions relating to the Project based on the information presented.

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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