



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 30, 2023

Kevin G. Ennis
City of Moorpark
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-23-106

Dear Mr. Ennis:

This letter responds to your request for advice on behalf of City of Moorpark Mayor Chris Enegren and Mayor Pro Tem Daniel Groff 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.¹ Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) 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.

QUESTIONS

1. If the City follows the procedures in Regulation 18706(a) and Mayor Enegren and Mayor Pro Tem Groff recuse themselves from portions of the Comprehensive Zoning Code Update that may affect their financial interests, may Mayor Enegren and Mayor Pro Tem Groff participate in the final adoption of one Ordinance that adopts the comprehensive Zoning Code Update and Zoning Map Update implementing the adopted General Plan Amendment?

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 the City need to divide the adoption of the comprehensive Zoning Code Update and Zoning Map implementing the adopted General Plan Amendment update into three separate Ordinances, with one Ordinance approving changes in which Mayor Enegren has a potential conflict of interest and with his abstention, a second Ordinance for the changes in which Mayor Pro Tem Groff has a potential conflict of interest, with his abstention, and then a final and third Ordinance for approval of the rest of the Zoning Code Update by which all five members of the City Council may participate in the vote to adopt that portion?

CONCLUSIONS

1. So long as the decisions concerning the respective zones that include their property interests are considered first and without their participation, Mayor Enegren and Mayor Pro Tem Groff may take part in a decision to approve the rest of the Zoning Code Update, pursuant to Regulation 18706(a).

2. To the extent that any governmental decisions involving the respective zones in which their interests are located are segmented and considered first, with a final decision on those zones reached without Mayor Enegren and Mayor Pro Tem Groff participating in any way, they may take part in the remaining decision to approve changes to the rest of the Zoning Code Update, as long as any such decision does not reopen the prior decisions regarding the parcels. When properly segmented, this may include three separate Ordinances, with one Ordinance approving the changes in which Mayor Enegren has a potential conflict of interest, a second Ordinance for the changes in which Mayor Pro Tem Groff has a potential conflict of interest, and a final and third Ordinance for approval of the rest of the Zoning Code Update.

FACTS AS PRESENTED BY REQUESTER

On May 3, 2023, the City completed a three-year process of adopting a comprehensive General Plan Update, by which all elements of the General Plan, including the Land Use Element were comprehensively updated. Through that process, all elements of the City's General Plan were comprehensively updated and most General Plan designations in the City were updated and changed.

Mayor Enegren and Mayor Pro Tem Groff each have financial interests that will be affected by the Comprehensive Zoning Code Update. Mayor Enegren is a part-owner of Enegren's Brewery and restaurant. He and his business partners lease property and a building in which they operate their business. The property that he leases is currently zoned M-1 (Light Manufacturing). Mayor Pro Tem Groff owns a commercial building in the City's downtown. His property is located in the area covered by the Downtown Specific Plan and it is currently zoned Old Town Commercial (OT-C).

The General Plan Land Use designation for the property on which Mayor Enegren operates his business was changed from Light Industrial (M-2) to Industrial Flex (IF) which permits a higher density of development on affected property. The General Plan Land Use change to Mayor Enegren's property was segmented from the other changes to the General Plan Land Use Map. In that segment Mayor Enegren recused himself from any consideration and discussion of that particular segment and change while the other Councilmembers made that decision. You state that

once that segment was approved, Mayor Enegren participated in the consideration of other changes to the General Plan and then, pursuant to the segmentation regulation (Regulation Section 18706(c)), voted to approve the Resolution that adopted the General Plan Update.

In connection with the General Plan Update, the Land Use Designation for the Downtown Specific Plan was not changed. It remained “Downtown Specific Plan.” Thus, Mayor Pro Tem Groff did not recuse himself from that General Plan Update.²

Now that the General Plan Update has been completed and adopted, the City is implementing those General Plan Map changes and making other changes to the City’s Zoning Code and Zoning Map to bring the zoning into compliance with the General Plan. One of the changes in the comprehensive zoning update is to rezone the property on which Mayor Enegren’s property is located from M-1 (Light Manufacturing) to IF (Industrial Flex). That change in zoning designation will permit a higher density of development on the property that currently allowed under the M-1 Zoning. This change explicitly involves the property that he leases and affects the development potential of that property.

With respect to Mayor Pro Tem Groff’s property, the zoning of the property that he owns is proposed to change from Old Town Commercial (OT-C) to Mixed Use Medium. This change will affect the uses and density of his property. Mayor Enegren and Mayor Pro Tem Groff are prepared to recuse themselves from decisions involving the zones in which each of their respective interests are located, as these changes explicitly involve properties in which they have an interest.

ANALYSIS

Segmentation

In general, the Act disqualifies Mayor Enegren and Mayor Pro Tem Groff from taking part in governmental decisions if it is reasonably foreseeable the decisions will have a material financial effect on their respective financial interests. You have noted that Mayor Enegren and Mayor Pro Tem Groff plan to recuse themselves from decisions involving the zones in which each of their respective interests are located because such decisions would affect their real property interests under Regulation 18702.2(a)(2). Under this regulation, a reasonably foreseeable effect on an official’s real property interest is material if the decision, “involves the adoption of or amendment to a development plan or criteria applying to the parcel” or “determines the parcel’s zoning or rezoning, other than a zoning decision applicable to all properties designated in that category.”

However, it is possible that the City Council could segment certain decisions related to the Zoning Code Update., such that Mayor Enegren and Mayor Pro Tem Groff may take part in decisions to a limited extent. Under Regulation 18706, Mayor Enegren and Mayor Pro Tem Groff would be permitted to take part in Housing Element decisions to the extent that the following segmentation procedure is adhered to:

² Pursuant to Regulation 18329(b)(6)(A), we are unable to express any opinion on the instances of past conduct, including the officials’ involvement in the previous decisions or whether those decisions were properly segmented.

- (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
- (2) The decision in which the official has a financial interest is segmented from the other decisions;
- (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

(Regulation 18706(a).)

As the two properties at issue do not fall within the same affected zone, multiple segmented decisions would be required. Accordingly, to the extent that any governmental decisions involving zoning changes to the zones in which Mayor Enegren and Mayor Pro Tem Groff interests are located are segmented and considered first, with a final decision reached without either officials' participation the decisions on the zones in which their respective interests are located in any way, they may take part in a decision to approve the rest of the Zoning Code Update, pursuant to Regulation 18706(a). However, we caution this exception applies only to participating in the final vote to approve the rest of the Zoning Code Update and does not extend to discussions of reopening any of the previously finalized decisions or any discussions occurring if the amendment is rejected.³

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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³ We note that you have specifically inquired about the application of Regulation 18706(c), which provides, "[o]nce all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan." However, this exception applies only to budgets and general plans affecting the entire jurisdiction and, therefore, is inapplicable here.