



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

July 10, 2023

Jolie Houston
Berliner Cohen
10 Almaden Blvd. 11th Floor
San Jose, CA 95113

Re: Your Request for Advice
Our File No. A-23-108

Dear Ms. Jolie:

This letter is in response to your request for advice regarding 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

May Jonathan D. Weinberg, Vice Mayor of the City of Los Altos, participate in the City's decisions relating to an Automatic License Plate Reader (ALPR) camera at an intersection located within 500 feet of rental property owned by the Vice Mayor?

CONCLUSION

Yes. Although Vice Mayor Weinberg has an interest in real property located within 500 feet of one of fifteen ALPR system cameras, the facts provided indicate that the decision will not have any measurable impact on the official's interests in his real property, rental business, or tenants. Thus, Vice Mayor Weinberg does not have a disqualifying interest under the Act and he is not prohibited from taking part in the decision regarding the ALPR camera pilot program.

FACTS AS PRESENTED BY REQUESTER

The City of Los Altos is a general law city incorporated in 1952, located in Santa Clara County, 37 miles south of San Francisco. The City covers seven square miles and borders Los Altos Hills, Palo Alto, Mountain View, Sunnyvale, and Cupertino. It has a population of approximately

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.

30,500 people, with roughly 10,585 households and 1,383 businesses. The City has an at-large voting system; therefore, Vice Mayor Weinberg's jurisdiction is the entire City.

ALPR systems capture images of vehicles, images of vehicles' license plate, and the geospatial location where images are captured. Law enforcement can compare information collected by the ALPR cameras with various databases and lists of vehicles of legitimate interest to law enforcement. Thus, ALPR systems aim to provide law enforcement with an additional tool to pursue and investigate crimes.

A. The City's Proposed ALPR Pilot Program.

The City is considering a pilot program that will install about 15 ALPR cameras throughout the City. The City is hoping to target and reduce crimes involving stolen vehicles, burglary, and catalytic converter thefts with this pilot program. The proposed pilot program will assist the City Police Department with gathering specific evidentiary data to investigate such crimes and provide real time alerts to the City Police Department.

The City Police Department is seeking authorization to purchase ALPR cameras for a one-year pilot to gauge whether an ALPR system would be effective when pursuing such crimes. The data collection and usage will be analyzed at the six-month mark to determine how many investigations the ALPR technology has assisted as well as how many real time hits were received and how many responses occurred.

The vendor supplying the ALPR system has provided proposed locations to place the ALPR cameras. These locations are generally at the high-traffic points where traffic enters and exits the City.

B. Vice Mayor Weinberg's Interests.

Vice Mayor Weinberg owns real property in the City within 500 feet of an intersection where an ALPR camera is proposed to be installed. The property is currently vacant and is not his primary residence. However, Vice Mayor Weinberg intends to use it as a rental property that will be leased out to generate income.

C. Impact on the Public Generally.

The ALPR system intends to improve law enforcement efforts across the City, not just the areas within proximity to a camera. You state that all individuals, businesses, and real property in the City will benefit similarly from the ALPR system. As a result, there is no direct benefit to having an ALPR camera near one's property because the 15 cameras will work as a system to monitor vehicles throughout the City for crimes that have also occurred throughout the City. You also state that the real estate within 500 feet of an ALPR camera will not experience any sort of positive or negative financial impact because the ALPR system as a whole will be serving the safety interests of the City.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a public official from making, participating in making, or otherwise using the official's position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests that is distinguishable from the decision's effect on the public generally.

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts provided, those economic interests include:

- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)
- Any source of income, aggregating \$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(c).)

Accordingly, Vice Mayor Weinberg has a potentially disqualifying economic interest in his real property. He may also have interests in a rental business, as a business entity and source of income, should he rent the property in the future, as well as potential interest in any tenant of the rental business.

A. Foreseeability.

A financial effect on a public official's economic interest is reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) An economic 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 economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Where a public official's economic interest is not explicitly involved in the decision, a different standard for determining the reasonable foreseeability of a financial effect is applicable. Under Regulation 18701(b):

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.

The decision at issue involves the approval of an ALPR camera system and Vice Mayor Weinberg's interests are not a named party in or the subject of the decision. Under Regulation 18701(b), he will have a financial interest in the decision if there is a realistic possibility that the decision will have a material financial effect on his economic interests.

B. Real Property, Rental Business, and Tenants.

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Relevant to the ALPR system near Vice Mayor Weinberg's property, Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.

Under Regulation 18702.1, the Act provides that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income, 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.
- 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.
- The official knows or has reason to know that the entity has an interest in real property and 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.

Under Regulation 18702.3, the Act provides that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in an individual who is a source of income is material if:

- The decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by \$1,000 or more.
- The official knows or has reason to know that the individual has an interest in a

business entity that will be financially affected under the materiality standards in Regulation 18702.1.

- The official knows or has reason to know that the individual has an interest in real property and the property is a named party in, or the subject of, the decision, as defined in 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.

Here, Vice Mayor Weinberg owns real property within 500 feet of an intersection where one of fifteen ALPR system cameras will be located. The facts provided indicate, however, that the decision will not have any measurable impact on Vice Mayor Weinberg's property. The ALPR system will enable the City to improve law enforcement efforts across the City, not just the areas in proximity to a camera. All individuals, businesses, and real property in the City will benefit similarly from the ALPR system. Thus, there is no measurable benefit to having an ALPR camera near a particular property because the 15 cameras will work as a system to monitor vehicles throughout the City for crimes that have also occurred throughout the City. Real estate within 500 feet of an ALPR camera will not experience any sort of positive or negative financial impact because the ALPR system as a whole will be serving the safety interests of the City. Thus, there is clear and convincing evidence the decisions will not have any measurable impact on Vice Mayor Weinberg's property. Moreover, for the same reasons, there is no indication of a financial effect on the real property, there is also no indication that these decisions would potentially affect any interest in a rental business or tenants of the business.

Accordingly, based on the facts provided, Vice Mayor Weinberg does not have a financial interest in the City's decision regarding an ALPR camera system because it is not reasonably foreseeable the decision will have a material effect on his interest in real property located within 500 feet of one of fifteen ALPR system cameras. Thus, Vice Mayor Weinberg does not have a disqualifying interest under the Act and he is not prohibited from taking part in the decision regarding the pilot program to install the ALPR camera system.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:aja