



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 22, 2023

Scott M. Rennie
City Attorney
City of Belmont
One Twin Pines Lane, Suite 340
Belmont California

Re: Your Request for Advice
Our File No. A-23-123

Dear Mr. Rennie:

This letter responds to your request for advice on behalf of Belmont City Councilmember Gina Latimerlo 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.

QUESTIONS

May Councilmember Latimerlo make, participate in making, or influence government decisions necessary for annexation of the Harbor Industrial Area (the “HIA”) including decisions that will substantially facilitate annexation of the HIA (such as preliminary agreements with other government agencies and agreements with consultants to develop information to inform annexation related decisions) and decisions to adopt a draft specific plan for the HIA? If Councilmember Latimerlo is disqualified from taking part in the decisions may the Councilmember take part in decisions to adopt a HIA draft specific plan if discussion of traffic circulation, O’Neill Avenue corridor transition uses and zoning controls, or both, were bifurcated from the rest of the specific plan?

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

Because Councilmember Latimerlo's residence is located less than 500 feet from the HIA, it is subject to a standard that requires clear and convincing evidence that these decisions would have no measurable effect on the residential real property. The facts presented indicate that the annexation of the HIA into the City would result in higher intensity commercial, research and development, and mixed-use zoning for the HIA, and there is no clear and convincing evidence the decisions would not have a measurable effect on the property. Moreover, the public generally exception does not apply. Councilmember Latimerlo has a disqualifying conflict of interests under the Act and may not take part in the decisions identified.²

FACTS AS PRESENTED BY REQUESTER

The City of Belmont ("City") is a general law city with a directly elected mayor and four councilmembers elected by district. Councilmember Latimerlo represents District 1, having been elected in November 2022 to a four-year term of office. District 1 borders a portion of unincorporated San Mateo County jurisdiction known as the HIA.

Councilmember Latimerlo owns her residence and operates a business out of her residence. Councilmember Latimerlo's residence is located in the Homeview residential neighborhood less than 500 feet from the HIA jurisdictional border. The Homeview neighborhood is comprised mostly of single-family homes. Councilmember Latimerlo operates a private voice instruction business from her home. Councilmember Latimerlo has more than a \$2,000 investment interest in her residence and in her business. Her clientele is approximately half school age children and half adults. Approximately 25 percent of her clients live in Belmont and most of the rest live in other cities in San Mateo County, Santa Clara County and the City of and County of San Francisco. Her business grosses less than \$100,000 per year.

O'Neill Avenue straddles the border between the Homeview neighborhood and the HIA. The streets in the Homeview neighborhood, including Councilmember Latimerlo's street, are effectively dead-end streets that can only be accessed by vehicles from Ralston Avenue and are closed to vehicles at their intersection with O'Neill by barriers that block vehicle access but allow bicycle and pedestrian access. The only exception is Elmer Street which crosses O'Neill Avenue and continues to Harbor Boulevard in the HIA.

The HIA consists of 62 acres of mostly low intensity industrial and commercial land uses. An aging residential trailer park occupies approximately 2.3 acres of the HIA adjacent to Highway 101. The edge of the trailer park parcel is approximately 835 straight-line feet from Councilmember Latimerlo's residence. The sewer needs of the HIA are served by the Harbor Industrial Sewer Maintenance District ("HISMD"), a dependent special district to the county. HISMD has a transportation and treatment agreement with the City of San Carlos to connect to San Carlos' sewer

² We note that there is no indication that bifurcating discussions of traffic circulation, or the O'Neill Avenue corridor transition uses and zoning controls, would alter this conclusion. Even if considered separately, decisions regarding the HIA involve property less than 500 feet from Councilmember Latimerlo's residence and the Councilmember has a disqualifying conflict of interests absent clear and evidence that the decisions will not have any measurable effect on the residence.

system in order to convey and treat HISMD sewage at the Silicon Valley Clean Water (“SVCW”) treatment plant, a facility operated by a joint powers authority whose members consist of the cities of San Carlos, Belmont, and Redwood City and the West Bay Sanitary District.

Harbor Boulevard is the principle east-west route in the HIA connecting El Camino Real to southbound Highway 101. Vehicles traveling to or from southbound Highway 101 can enter or exit the HIA directly via Harbor Boulevard. Vehicles traveling northbound Highway 101 would either exit at Holly Street in San Carlos and reach Harbor Boulevard via Industrial Road, or exit at Ralston, cross the overpass and take the southbound Highway 101 entrance from westbound Ralston and exit at Harbor Boulevard. Vehicles traveling to northbound Highway 101 from Harbor Boulevard can either take the southbound entrance to Highway 101, exit at Holly, cross the overpass and enter northbound Highway 101, or take northbound Elmer Street (or Old County Road or El Camino Avenue) to eastbound Ralston Avenue to the Highway 101 interchange. Under the existing vehicle circulation pattern, traffic associated with the HIA has very little effect on the Homeview neighborhood.

The HIA is within the City’s sphere of influence and is anticipated to be annexed into the City in the near future, potentially during Councilmember Latimerlo’s current term of office. The annexation process requires the City and the County to reach an accord on tax sharing and transfer of a portion of the County’s regional housing needs allocation (“RHNA”). Annexation viability may also require the City and County to collaborate on regional stormwater infrastructure and management, on transfer of sewer service responsibility within the HIA and treatment capacity rights from the City of San Carlos to the City of Belmont, and on policy matters including the housing needs of trailer park residents in the HIA who have experienced flooding during major storms. Pre-annexation discussions between City and County staff may lead to the formation of one or more cooperative or service transfer agreements that may come before the City Council in advance of annexation and before other agreements necessary for annexation. The purpose of these interim agreements would be to anticipate and facilitate orderly annexation.

In preparation for HIA annexation, the City has initiated a planning effort that is intended to lead to the adoption of a specific plan for the HIA should it be annexed. It is anticipated that the specific plan will be developed in advance of annexation and adopted concurrently with annexation. City staff anticipate that the draft specific plan will include significant intensification of allowable non-residential development in the HIA. The planning effort will examine circulation which may include examining possible changes to vehicle access in and around the HIA from O’Neill Avenue and the Homeview neighborhood, which could in turn include removing vehicle barriers and opening one or more streets at their intersection with O’Neill and extending one or more Homeview-serving streets across O’Neill into the HIA, including the block containing Councilmember Latimerlo’s residence and the parallel blocks immediately adjacent to her block.

The planning effort will also examine the O’Neill Avenue corridor as a transition zone between the existing lower-intensity Homeview residential neighborhood and the anticipated higher-intensity commercial, research and development, and mixed-use zoning, and eventual new or intensified uses in the HIA. The potential purposes of the transition zone would be to reduce or avoid negative impacts to the Homeview neighborhood and provide community benefits that tradeoff or mitigate impacts. Planning elements to be considered on the O’Neill corridor could include greenways, open spaces and park amenities, high quality bike-ped facilities, deepening the

right of way and building setback on the HIA side, transitioning building height and intensity from lower intensity along O'Neill to higher intensity further into the HIA, and requiring a certain amount of residential serving commercial uses on the corridor like coffee shops and day care facilities. The City is also in the process of updating both its Sewer Master Plan and Stormwater Master Plan. The plans will identify system deficiencies and capital improvements needed to serve current and anticipated future development including development in the HIA, financing strategies, and priorities. The Sewer Master Plan will have an HIA chapter that addresses sewer system needs in the HIA.

The City's Geographic Information Systems ("GIS") coordinator performed an analysis of single-family, multi-family and nonresidential parcels in District 1 in proximity to the HIA. The data you provided indicates that there are a total of 1,256 residential parcels within District 1. Of this total, 132 residential parcels, or approximately 10.6 percent, are within 500 feet of the HIA boundary, while 268 residential parcels, or approximately 21 percent, are within 1,000 feet of the HIA boundary.

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 his or her official 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 real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more. (Section 87103(b)).
- An interest in a 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(c).)
- A business entity interest, where an official has a direct or indirect investment of \$2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

Accordingly, Councilmember Latimerlo has a potentially disqualifying economic interest in her real property, as well as a source of income and business interest in her voice instruction business. Councilmember Latimerlo may also have source of income interests in any client of her business.

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 decisions at issue involve the annexation of the HIA and the adoption of a draft specific plan for the HIA. As such, none of Councilmember Latimerlo's interests are a named party in or the subject of the decisions. Under Regulation 18701(b), she will have a financial interest in the decision if there is a realistic possibility that the decision will have a material financial effect on her economic interests.

Real Property

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Relevant to the annexation of the HIA and the adoption of a draft specific plan for the HIA, 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.

Councilmember Latimerlo owns a primary residence less than 500 feet from the HIA. The HIA is currently unincorporated area within San Mateo County, but within the City's sphere of influence. It consists of 62 acres of mostly low intensity industrial and commercial land uses. O'Neill Avenue straddles the border between the Homeview neighborhood and the HIA. The streets in the Homeview neighborhood, including Councilmember Latimerlo's, are effectively dead-end streets that can only be accessed by vehicles from Ralston Avenue and are closed to vehicles at their intersection with O'Neill by barriers that block vehicle access but allow bicycle and pedestrian access. The City anticipates possible changes to vehicle access in and around the HIA from O'Neill Avenue and the Homeview neighborhood, which could in turn include removing vehicle barriers and opening one or more streets at their intersection with O'Neill and extending one or more

Homeview-serving streets across O'Neill into the HIA, including the block containing Councilmember Latimerlo's residence and the parallel blocks immediately adjacent to her block. You have also stated the City anticipates higher intensity commercial, research and development, and mixed-use zoning for the HIA, and that changes may include a transition zone along the O'Neill Avenue corridor to reduce or avoid negative impacts to the Homeview neighborhood and provide community benefits that tradeoff or mitigate impacts, which could include greenways, open spaces and park amenities, high quality bike-ped facilities. You have not provided any facts to indicate that these decisions will not have a measurable impact on the Councilmember's property. Thus, based on the facts provided, Councilmember Latimerlo has a potentially disqualifying financial interest in the decisions necessary for annexation of the HIA and for the adoption of a draft specific plan for the HIA, and is prohibited from taking part in any decisions related to the HIA, unless an exception applies.

Public Generally Exception

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of their interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) In general, an effect on an official's interest is distinguishable from its effect on the public generally if a significant segment of the public is affected and the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).) A significant segment of the public includes "[a]t least 25 percent of . . . all real property, commercial property, or residential real property within the official's jurisdiction . . ." (Regulation 18703(b)(1)(B).)³ A unique effect is defined to include a disproportionate effect on an interest in real property resulting from the proximity of a project. (Regulation 18703(c).)

Here, Councilmember Latimerlo's property is located less than 500 feet from the HIA. The data you provided indicates that there are a total of 1,256 residential parcels within District 1. Of this total, 132 residential parcels, or approximately 10.6 percent, are within 500 feet of the HIA boundary, while 268 residential parcels, or approximately 21 percent, are within 1,000 feet of the HIA boundary. Accordingly, the official has not established that a significant segment is affected and the public generally exception does not apply in these circumstances.

To comply with the Act's conflict of interest recusal requirements, the Councilmember must announce her interest and leave the room for the duration of the discussion and the votes on issues relating to the annexation of the HIA and adoption of a draft specific plan for the HIA. (Regulation 18707.)⁴

³ Where the official's only interest is their primary residence, a significant segment includes at least 15 percent of the residential real property within the official's jurisdiction. (Regulation 18703(b)(1)(C).) However, as Councilmember Latimerlo also has a business and source of income interest, this lower threshold is inapplicable.

⁴ While Councilmember Latimerlo has a source of income and business interest in her voice instruction business and may also have source of income interest in the clients of her business, we do not analyze these interests in light of our conclusion that she has a conflict of interest based on her real property interest.

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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