



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 26, 2023

Celeste T. Rodriguez
Mayor
San Fernando City Council
467 S. Maclay Avenue
San Fernando, CA 91340

Re: Your Request for Informal Assistance
Our File No. I-23-134

Dear Ms. Rodriguez:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your request does not concern a specific governmental decision, we are treating it as a request for informal assistance.²

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

1. Under the Act, as the Mayor and an elected City Councilmember of the City of San Fernando (the “City”), may you participate in governmental decisions related to the City’s Downtown Master Plan, given that you own a duplex located within 200 to 300 feet of the proposed Downtown Master Plan Area (“Area”)? Specifically, may you participate in the following decisions:

- a. Consideration and approval of the Downtown Master Plan?
- b. Any related environmental approvals required under the California Environmental Quality Act (“CEQA”)?

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

- c. Any subsequent changes to the City's land use and zoning regulations recommended by the Downtown Master Plan?

2. If you have a prohibitive financial interest in these decisions, may you nevertheless participate in these decisions to cast a tie-breaking vote, or if the decisions are segmented under Regulation 18706?

CONCLUSIONS

1. You are generally disqualified from participating in any decisions related to the Downtown Master Plan under the Act because the financial effect on your real property interests—namely, your personal residence and a vacant half-duplex unit, located 200 to 300 feet from the Proposed Master Plan—is presumed to be material. Under applicable regulations, it is reasonably foreseeable the decisions will have a material financial effect on your interests and you may not take part in the decisions unless there is clear and convincing evidence that the decisions will not have a measurable impact on your properties, or an exception to the Act's general provision applies. However, based on the limited facts provided, the decisions at issue are intended to attract and retain businesses, workers, and residents to the Downtown Master Plan Area, and create a unique local destination. Accordingly, there is insufficient evidence that the decisions will not have a measurable impact on your interests, and there are no indications that any other exception may apply.

With regard to the Public Generally Exception, we can express no opinion regarding the application of an exception outside of an identified and specific decision before the City. Generally, the Public Generally Exception may apply only if the decision will have a financial effect on a significant segment of the public and the effect on your interests is *not unique* compared to the effect on the significant segment. (Regulation 18703(a).) Based on your interests, a significant segment of the public includes: “[a]t least 25 percent of...all businesses ...real property, commercial real property, or residential property within the official's jurisdiction...”

Generally, the facts provided are insufficient to determine if the Public Generally Exception may apply to any of the decisions identified. Moreover, a financial effect on your interests may be unique in that your interests are in a very close proximity to the Downtown Master Plan Area, and you have multiple interests potentially affected by the decisions. For these reasons, we can only advise that the facts provided do not establish that the Public Generally Exception applies. However, if you need further assistance determining the applicability of the Public Generally Exception to any specific decision, you should seek further advice identifying the factual circumstances and nature of the that decision.

2. Due to each decision's relationship to enhancing the Downtown Master Plan Area in close proximity to your property interests, it does not appear that these decisions will be able to meet the requirements of Regulation 18706, based upon the information provided with this request. However, you may wish to seek additional advice, as needed, once the specific decisions are known. Additionally, the “legally required participation” exception does not permit you to cast a tie-breaking vote if you are otherwise disqualified.

FACTS AS PRESENTED BY REQUESTER

You have served on the City Council since your initial election in 2020; your term ends in November 2024. You also concurrently serve as the City's Mayor, having been elected by the other members of City Council to a one-year term in December of 2022. The City is a general law city covering an area of approximately 2.4 square miles in Los Angeles County, with a population of approximately 24,000 residents. The City Council is the City's governing legislative body, and its five members are all elected at-large.

A. The City's Proposed Downtown Master Plan

On April 17, 2023, the City approved the selection of a professional consultant tasked with preparing the Downtown Master Plan and on July 17, 2023, the City Council approved a comprehensive community outreach and engagement plan to solicit feedback from residents and business owners with respect to the development of a Downtown Master Plan via workshops, community meetings, and surveys over a period of approximately one year.³

The Downtown Master Plan will establish a strategy and approach for regulating development in the proposed Downtown Master Plan Area (the "Area"), including: attracting and retaining businesses, workers, and residents to the Area; creating a unique local destination and brand identity; creating a unified vision for the City's downtown; and establishing the right blend of development for the Area. Outreach is expected to begin in October.

The contemplated Area encompasses only around 0.28 square miles (approximately 182 acres), a small fraction of the City's overall land area. The proposed Area lies entirely within, but does not overlap with, the City's existing San Fernando Corridors Specific Plan 5 area ("SP-5"), which the City Council approved in 2017. The purpose of the San Fernando Corridors Specific Plan was to put into place regulations—including both mandatory development standards and recommended design guidelines—to transform the City's downtown and adjacent supporting districts into attractive, livable, and economically vital places, preserving and enhancing existing industrial uses while safeguarding existing, surrounding residential neighborhoods. While the Downtown Master Plan will not involve the approval of any specific development projects, it may result in changes to the City's land use and zoning regulations within portions of the SP-5 area that make up the Area.

At upcoming City Council meetings, the City Council plans to discuss the makeup of a technical advisory committee that will work with the consultant on development of the Downtown Master Plan. In addition to the formal act of adopting the Downtown Master Plan, the City Council may also be required to adopt other, related measures, such as taking action to satisfy the requirements of CEQA, or making changes to the City's land use and zoning regulations in the Area.

³ You recused yourself from both of these decisions.

B. Your Interests

You and your spouse jointly own a residential duplex property on Maclay Avenue in San Fernando, approximately 200-300 feet from the proposed Downtown Master Plan Area. The property is zoned “R-2,” a multiple-family dwelling land use. You and your family occupy one of the two residential units as your primary place of residence. The second unit is currently unoccupied, though you may rent it out in the future. Your duplex property is outside the Area and outside the larger SP-5 area. You state that, presently, it is unclear what changes would occur under the anticipated decisions or how such changes might impact your property.

C. Impact on the Public Generally

According to the facts provided, City staff estimates that there are approximately 6,503 residential dwelling units in the City altogether. Of those residential dwellings, around 1,441—approximately 22%—are located either within the proposed Area or within 500 feet of the proposed Area.

ANALYSIS

The Act’s conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official’s financial interests distinguishable from the decision’s effect on the public generally. (Sections 87100 and 87103.) The financial interests that may give rise to an official’s disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- Any real property in which the public official has a direct or indirect interest worth more than \$ 2,000 or more. (Section 87103(b)).
- 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)).
- 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).)

You have a real property interest in your duplex located within 200-300 feet of the proposed Downtown Master Plan Area, as well as a business and a potential source of income interest in the unoccupied second unit of your duplex. Because you are not renting this property at this time, you do not currently have a source of income interest in a tenant, and we do not further analyze this potential interest. We recommend you seek further advice, as needed, to the extent the decision may have a financial effect, outside of the effect on your rental property, on any tenant of the property who is a source of income of \$500 or more within 12 months of a decision.

Foreseeability and Materiality

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. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, 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. (Regulation 18701(b).)

Here, the decisions at issue involve the City's development and approval of the Downtown Master Plan, with related environmental approvals and possible land use or zoning changes within the Downtown Master Plan Area. There is no indication that either your real property interests or rental business interest will be a named party in, or the subject of decisions concerning the Downtown Master Plan. Thus, under Regulation 18701(b), you will have a financial interest in the decision if there is a realistic possibility that the decision will have a material financial effect on your real property, or rental business interest.

B. Real Property and Rental Business

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. For decisions involving real property, other than a leasehold interest, located 500 feet or less from the property line of the official's parcel, Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on the official's property is presumed to be material unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)

The facts here do not present clear and convincing evidence that the Downtown Master Plan decisions will not have any measurable impact on your residential property. Your duplex is currently located a mere 200-300 feet from the boundary of the proposed Area and the facts indicate that approval and implementation of the Downtown Master Plan may require changes to nearby zoning and land use regulations, which in turn could foreseeably affect the market value and the rental value of your duplex. Thus, there is a presumption that the reasonably foreseeable financial effect of any decision concerning the proposed Downtown Master Plan on your real property would be material. Therefore, unless an exception applies you have a disqualifying conflict of interest under the Act and may not take part in any decision concerning the Downtown Master Plan.⁴

Due to the above finding, we need not separately consider whether it is reasonably foreseeable that the Downtown Master Plan decisions will have a material financial effect on your rental property business. We note that for decisions involving a business entity not explicitly involved in a decision, including a business entity as a source of income,

⁴ Under the Act, you must recuse yourself from decisions pursuant to the recusal requirements outlined in Regulation 18707, which require a public identification of the interest and leaving the room for the duration of the decisions and discussions by the City Council.

Regulation 18702.1, provides that the reasonably foreseeable financial effect of a governmental decision on an official's business 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.

Public Generally Exception

You have specifically asked whether you may participate under the "public generally" exception despite the finding of a disqualifying interest. Section 87103 of the Act prohibits an official from taking part in a decision that would have a disqualifying financial effect on an official's financial interest only if the decision's effect on that interest is "distinguishable from its effect on the *public generally*." (Section 87103, emphasis added.) A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is *not unique* compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes: "[a]t least 25 percent of...all businesses ...real property, commercial real property, or residential property within the official's jurisdiction..." or "[a]t least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental *decision is the official's primary residence*." (Regulation 18703(b); emphasis added)

Here, you have an interest in not just your primary residence, but also the vacant unit of your duplex; therefore, to meet the "significant segment" standard, you must establish that at least 25% of the City's real property or residential property would be affected by a decision. You are elected at-large. Thus, the entire City is your jurisdiction. You have indicated that approximately 22% of the City's residential real property is located either within the Area, or within 500 feet of the boundary of the Area.

However, outside of an identified and specific decision before the City, we cannot determine whether the Public Generally Exception applies. In this case, the facts provided are insufficient to determine if the Public Generally Exception might apply to decisions concerning the Downtown Master Plan. Additionally, the financial effect of decisions related to the Downtown Master Plan could be unique because your interests are located very close to the Downtown Master Plan Area,

and because you have multiple interests potentially affected by the decisions. Should you need further assistance in determining whether the Public Generally Exception applies to any specific decision going forward, we recommend that you seek further advice and identify the factual circumstances and nature of the that decision in your request.

Segmentation

You have asked whether any of the City's decisions concerning the Downtown Master Plan may be segmented per Regulation 18706 so that you may participate to a limited extent. Regulation 18706(a) provides that an agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all the following conditions apply:

- (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.

Absent more facts concerning specific decisions, we advise you generally that the City is permitted to segment decisions to facilitate your participation where you would otherwise be disqualified, if it may be done in accordance with the above requirements. However, it appears that the Downtown Master Plan decisions, environmentally-related decisions, and the related zoning or land use changes to the Area, would each implicate your real property interests located in close proximity to the Area. Therefore, at this time there do not appear to be issues that may be segmented from the decisions that affect your interests. We caution that you should seek additional advice concerning each specific decision before taking part in a segmented decision.

Legally Required Participation

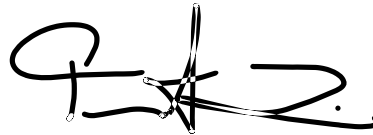
Finally, you have asked whether you may cast a tie-breaking vote on decisions related to the Downtown Master Plan in the event that you are disqualified under the Act, but the remaining unconflicted members of the City Council are deadlocked. Under what is commonly referred to as the "legally required participation" exception, Section 87101 provides that the prohibition of Section 87100 does not prevent an official from making or participating in the making of a decision to the extent the official's participation is legally required for the action or decision to be made. However, Regulation 18705 requires this exception to be narrowly construed and explicitly provides that the exception shall *not* be construed to permit an official who is otherwise disqualified

under Section 87100 to vote to break a tie. (Regulation 18705(c)(1).) Accordingly, under the Act, you are not permitted to vote to break a tie in any decision in which you have a prohibited conflict of interest. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By:

A handwritten signature in black ink, appearing to read 'T. Lewis', written over a horizontal line.

Toren Lewis
Counsel, Legal Division

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