



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 11, 2024

Patrick T. Donegan
City Attorney
City of Rolling Hills
18101 Von Karman Avenue, Suite 1000
Irvine, California 92612

Re: Your Request for Advice
Our File No. A-24-107

Dear Mr. Donegan:

This letter responds to your request on behalf of Rolling Hills City Councilmember Pat Wilson for advice 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

Under the Act, may Councilmember Wilson take part in Rolling Hills City Council decisions relating to utility services that have been shut off or curtailed at several dozen residential properties in the City, given that he owns two homes affected by the shutoffs?

CONCLUSION

Yes, although Councilmember owns two homes affected by the utility shutoffs, those shutoffs stem from accelerated land movement that have resulted in the proclamation of a state of emergency in a neighboring jurisdiction. Given the state of emergency and the City’s shared underlying circumstances, the public generally exception applies and Councilmember Wilson is not prohibited from taking part in decisions related to the land movement and utility shutoffs stemming

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.

from the land movement so long as the decision does not affect his property uniquely from other properties subject to the shutoffs.

FACTS AS PRESENTED BY REQUESTER

The City of Rolling Hills (“City”) is a small residential community comprised of 687 homes and 62 vacant residential lots. Recently, due to public safety issues related to land movement in the area, utilities such as Southern California Edison (“SCE”) and the Southern California Gas Company (“SoCalGas”) have turned off service to certain residents in the City. Specifically, SCE has de-powered 51 homes and SoCalGas has curtailed service for 37 homes in the City.

Councilmember Pat Wilson owns two homes in the City, both of which are subject to the SoCalGas and SCE service turn-offs. That is, neither of Councilmember Wilson’s homes have electricity or gas service.

In the upcoming days and weeks, the City Council will meet and discuss options in dealing with the utility service shut offs in its City. Among other things, the City Council will deliberate on the best course of action in dealing with SoCalGas and SCE to try and resolve the utility service shut offs and get these services reinstated for the City’s residents without service. These deliberations could include filing a formal action with the California Public Utilities Commission or commencing a lawsuit against one or both of the aforementioned utilities.

In a follow-up email, you confirmed that the City borders the City of Rancho Palos Verdes. Both cities are within or adjacent to the Greater Portuguese Landslide Complex. The Governor recently signed a proclamation of a state of emergency with respect to Rancho Palos Verdes based on accelerated land movement impacting the area and posing risks to public safety. The state of emergency notes, “the indefinite nature of the power shutoffs has the potential to threaten the habitability of impacted residences throughout the affected communities”

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 official’s 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 the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Such economic interests include “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Councilmember Wilson has an economic interest in his two properties.

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).”

Where, as here, 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.”

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 governmental 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. (Regulation 18702.2(a)(7).) The stated goal of the City’s potential decisions is to try and resolve the utility service shut offs and get these services reinstated for the City’s residents without service. Both of Councilmember Wilson’s properties are impacted by gas and power shutoffs. In other words, Councilmember Wilson’s properties are within the service area(s) that would be directly affected by such decisions. Given that the decisions would clearly impact the official’s properties, he is prohibited from taking part in the decisions unless an exception applies.

The Act does not prohibit an official from taking part in a decision if the financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally. The financial effect on a public official’s financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official’s interest if the official establishes the decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency. (Regulation 18703(e)(6).) We note that the Governor’s recent proclamation of a state of emergency expressly refers to Rancho Palos Verdes and does not reference Rolling Hills specifically. However, the state of emergency arises out of the same underlying circumstances—that is, accelerated and potentially dangerous land movement within and around the Greater Portuguese Landslide Complex. Like residents in Rancho Palos Verdes, Councilmember Wilson’s two properties have had utilities shut off as a result of such land movement. Consequently, considering the shared underlying conditions for which the state of emergency has been issued, the public generally exception applies under these circumstances. As such, Councilmember Wilson is not prohibited from taking part in decisions related to the accelerated land movement and its impact on properties in the City so long as the decisions do not have a unique effect on the Councilmember’s properties in comparison to other properties subject to the shutoffs.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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