



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 6, 2025

Kristopher J. Kokotaylo
City Attorney
City of Newark
409 13th St., Suite 600
Oakland, CA 94612

Re: Your Request for Formal Advice
Our File No. A-25-065

Dear Mr. Kokotaylo:

This letter responds to your request for advice on behalf of Newark City Councilmember Julie Del Catancio and City Manager David J. Benoun 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 Catancio and City Manager take part in governmental decisions that will result in the levying of a \$25 assessment on their respective residences for the coming fiscal year?

CONCLUSION

Yes, given the low cost of the assessment, the financial effect is considered nominal, inconsequential, or insignificant and, therefore, does not create a disqualifying financial interest in the governmental decisions.

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.

FACTS AS PRESENTED BY REQUESTER

The California Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highway Code (the “Landscaping and Lighting Act”) allows local government agencies to form assessment districts for the purpose of financing the costs and expenses of landscaping and lighting public places. To form an assessment district, local agencies must (1) adopt a resolution describing any proposed new improvements or substantial changes in existing improvements and ordering the engineer to prepare a report and (2) approve the engineer’s report and adopt a resolution of intention. The resolution of intention declares the City Council’s intention to levy and collect assessments within the assessment district for the fiscal year. It also states whether the assessment is proposed to change from the previous year and sets a date, time, and place for a public hearing.

The City Council of the City of Newark previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act to establish Landscaping and Lighting District Numbers 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 (the “Districts”) in order to fund ongoing maintenance and improvements authorized under the Landscaping and Lighting Act. Sections 22620 et seq. of the Landscaping and Lighting Act, provides for the levy of assessments after the formation of the Districts.²

In order to levy the assessments, the City Council will need to take a number of actions including: 1) adopting a resolution directing staff to prepare and file an annual report (Streets & Highways Code § 22622); 2) adopting a resolution of intention to levy and collect assessments (Streets & Highways Code § 22624); 3) holding a public hearing and adopting a resolution which will constitute the levy of an assessment for the fiscal year referred to in the assessment (Streets & Highways Code §§ 22629 and 22631) (the “Actions”).

The Actions will occur for the levy of assessments for fiscal year 2025-2026. The Actions will include actions related to assessments for District 11 (the “Decision”). The Decision, if realized, will result in an assessment in the amount of \$25 per year equally to each real property within District 11, regardless of size. There will be no new proposed improvements or substantial changes to existing improvements associated with the Decision, which will be solely to take the necessary actions for the levy of the assessment. In a follow-up email, you confirmed that the governmental decisions at issue solely pertain to the coming fiscal year. Should the City wish to continue to levy the assessment, it would have to take the same actions involving the same governmental decisions each fiscal year.

Council Member Catancio and City Manager Benoun own their respective residences within District 11. Thus, each official’s respective property is subject to an assessment of \$25 pursuant to the Landscaping and Lighting Act.

² Our analysis and advice is limited to the question of whether Council Member Catancio and City Manager Benoun may take part in governmental decisions relating to the levy of assessments for District 11. We do not consider or address the permissibility of any prior conduct—which you have not provided facts regarding—relating to establishing the Landscaping and Lighting Districts, including District 11. (See Regulation 18329(b)(6)(A), (c)(4)(A).)

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.) Among those specified economic interests are 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).)

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).”

Under Regulation 18702.2(a)(3), 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 would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel. Notwithstanding Regulation 18702.2, the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant. (Regulation 18702(b).)

Here, Council Member Catancio and City Manager Benoun would be subject to a \$25 assessment as a result of the decisions. Given the very low amount of the assessment, the financial effect would be nominal, inconsequential, or insignificant. We further note that the facts indicate the assessment specifically pertains to the coming fiscal year, rather than a decision on an annual assessment in perpetuity. Therefore, although the decision would impose an assessment and, as such, ordinarily be considered to have a material financial effect on the officials’ respective real properties, under these circumstances the officials do not have disqualifying financial interests and, under the Act, they may take part in the governmental decisions.³

³ This conclusion is based on the current assessment amount of \$25. If there are any indications that the decision before the City Council may entail the consideration or discussion of any further increase to the proposed assessment amount, the conclusions reached herein do not apply, and the officials may wish to seek additional advice.

If you have other questions on this matter, please contact me at email.

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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