



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 4, 2025

Olivia R. Clark  
for BEST BEST & KRIEGER LLP  
500 Capitol Mall, Suite 2500  
Sacramento, California 95814

Re: Your Request for Advice  
**Our File No. A-25-083**

Dear Ms. Clark:

This letter responds to your request for advice on behalf of City of Atwater (“City) Mayor Michael Nelson regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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 Mayor Nelson participate in the City’s proposed parking ordinance decision, which involves changes to every parking requirement applicable to land use in the City, where his business specializes in preliminary environmental assessments, is a consultant on a project, and the decision will allow a developer client’s project to move forward?

### CONCLUSION

No, Mayor Nelson has a conflict of interest in the decision. It is reasonably foreseeable that the decision will have a material financial effect on his source of income interest in his developer client under the “nexus test,” because his business is a consultant to the developer client on its medical office project, the decision will aid the developer’s goal of moving forward on the project,

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<sup>1</sup> 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.

and Mayor Nelson's business will receive the \$2,400 from the developer for the project work if the parking ordinance is approved. The public generally exception does not apply to the official due to the unique impact the decision will have on Mayor Nelson's business in that it will allow the developer client's project to move forward, and will potentially create new clients with newly viable projects for his business.

### **FACTS AS PRESENTED BY REQUESTER**

The City developed a comprehensive update to its parking requirements and regulations, of a magnitude that has not been done since it was originally adopted in 1979. The update applies to the entire City and is in line with current best practices in urban planning and land use in that it considers location, zoning, and land use plans, responds to changing mobility patterns and state housing mandates, while promoting walkability, mixed-use development, and efficient planning. Staff prepared an ordinance detailing the comprehensive parking requirements and regulations update. On May 21, 2025, the Planning Commission held a public hearing and resolved to recommend that the City Council approve the proposed ordinance. The City Council is expected to hold a public hearing and vote on the ordinance next.

City Mayor Michael "Mike" Nelson is the owner, manager, and sole employee of Nelson Enviro Services, LLC ("Enviro"). Enviro specializes in preliminary environmental assessments for development projects. Enviro is a consultant to a developer in the City ("Developer") for a medical office project. Under the current parking standards, the medical office project requires about 600 parking spaces, so it is not considered viable by the Developer and Enviro's services will not be needed. Under the revised parking standards, the project requires about 300 parking spaces, so the project will be viable, and Enviro's services will be needed. Enviro's contract for the project, if it moves forward, is approximately \$2,400.

Under the proposed parking ordinance, every single established parking requirement in the City is being changed in some way. Almost every established parking use has a decrease in parking requirements; these include parking requirements for residential properties, retail/offices, motels and hotels, warehouses, light and heavy manufacturing, health clinics, clubs and dance. Uses such as food, hospitals, health care homes, bowling, schools, and public buildings (library and museum) will likely have a decrease in parking requirements. Only churches and public assembly uses are noted for having a required increase under the proposed parking ordinance. You note that pending projects will likely be changed if the ordinance is approved, and there are almost certainly other businesses that will also see an increase in business as a result of the decision.

### **ANALYSIS**

Section 87100 prohibits any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 defines "financial interests" to include relevant to these facts:

- An interest in a business entity 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 to the official or promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

Additionally, under Section 82030, “income” to an official includes a pro rata share of any income of any business entity in which the individual has an ownership interest of 10 percent or greater. Mayor Nelson has a business entity and a source of income interest in his business, Enviro. As its sole owner, he also has a source of income interest in any clients of Enviro, to the extent Enviro has received or has promised income of \$500 or more from that client in the 12 months prior to the parking ordinance decision. Enviro is a consultant to the Developer on its medical office project and will pay Enviro \$2400 for the project if it moves forward. Therefore, he had a source of income interest in the Developer as well.<sup>2</sup>

#### *Foreseeability & Materiality*

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it 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). There is no indication from the facts that Enviro is the “subject of” the parking ordinance decision.

When an official’s economic interest is not explicitly involved in the governmental decision, as here, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b), which states “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.”

#### *Business Entity and Source of Income of Interest*

A governmental decision’s reasonably foreseeable financial effect on an official’s interests in a business entity and source of income not explicitly involved in the decision is material if the business will be financially affected under the materiality standards in Regulation 18702.1. (See Regulation 18702.3(a)(4).) Relevant to these facts, under Regulation 18702.1(a), the reasonably foreseeable financial effect of a governmental decision on an official’s interest in a business entity is material if:

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<sup>2</sup> Additionally, the facts state that Enviro is a consultant to the Developer for the medical office project, and thus is likely to have received \$500 in the past 12 months from this client.

- 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. (Regulation 18702.1(a)(2).)
- 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. (Regulation 18702.1(a)(3).)

Under the standard in Regulation 18702.1(a)(2), if the decision may result in an increase in Enviro's gross annual revenues in an amount equal to or greater than \$1,000,000 or five percent of Enviro's annual gross revenues, and the increase is at least \$10,000, Mayor Nelson will have a disqualifying interest in the parking ordinance decision due to his interests in Enviro. The facts indicate that at a minimum, his business will see an increased gross annual income of \$2,400 as a result of the decision. While this does not meet the above threshold, because of the broad changes in development criteria for every single property in the City, the impacts on Enviro will likely include additional increases in its gross annual revenues due to increases in clients with viable development projects that were not possible under the existing parking requirements. Mayor Nelson will also have a disqualifying interest in his source of income interest in the Developer to the extent that the decision will cause the Developer to have an increase in its annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than \$1,000,000 or five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. Again, this is likely because the Developer will be able to move forward on its medical office project.

However, we need not further consider this standard and whether it will be met due to our conclusion under the "nexus test." For an interest in a source of income, Regulation 18702.3(b), generally referred to as the "nexus test," states that the financial effect of a decision on a source of income is material under the following conditions:

Any reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal.

Mayor Nelson will have a disqualifying interest under the "nexus test" because Enviro is a consultant to the Developer on the medical office project, the decision will aid the Developer's goal of moving forward on the project, and Mayor Nelson's business will receive \$2,400 through a contract from the Developer if the parking ordinance is approved. Mayor Nelson's business and his client will benefit from the decision, and Mayor Nelson is disqualified from taking part in the decision.

#### *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 the official's

interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) 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 25 percent of all businesses or non-profit entities within the official's jurisdiction, all real property, commercial real property, or residential real property within the official's jurisdiction, or all individuals within the official's jurisdiction. (Regulation 18703(b)(1)(A-C).) Regulation 18703(d) defines "jurisdiction" as the designated geographical area the official was elected to represent or the area to which the official's authority and duties are limited if not elected." A "unique effect" on an official's financial interest relevant to these facts includes a disproportionate effect on the income producing potential of the official's business entity. (Regulation 18703(c)(1).)

A significant segment of the City's business entities and real property interests will be affected by the proposed parking ordinance due to the fact that it will impact almost every business's and real property's parking requirements. However, Mayor Nelson has not established that the effect of the proposed decision on his business, as an environmental consultant for development projects, is not unique compared to the significant segment of the City. The facts instead indicate that the financial effect on his interests will be unique. It is reasonably foreseeable that the proposed parking ordinance decision will create an opportunity for more development throughout the City and, thus, an opportunity for his business to have not only the Developer's project move forward, but for his business to have many new development projects for his business, existing clients and potential future clients. This is an effect on his financial interests that is not shared by the significant segment, many of which will have a financial effect limited to a single property or project, unless the business is involved in development. Therefore, the public generally exception does not apply, and Mayor Nelson may not take part in the proposed parking ordinance decision.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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