

July 14, 2014

Christine Dietrick
City Attorney's Office
990 Palm Street
San Luis Obispo, CA 93401 -3249

Re: Your Request for Informal Assistance
Our File No. I-14-102

Dear Ms. Dietrick:

This letter responds to your request for advice on behalf of San Luis Obispo Mayor Jan Marx regarding conflict of interest provisions of the Political Reform Act (the "Act").¹ Because your question is general in nature and does not refer to a specific governmental decision, we treat your request as one for informal assistance.²

QUESTION

Does Mayor Marx have a conflict of interest under the Act that would preclude her from participating in the City's negotiations or collaborative efforts with the California State Polytechnic University, San Luis Obispo ("University") in order to mitigate impacts of the University's decision to build a new dormitory and parking structure ("Project") on campus?

CONCLUSION

No. The Mayor does not have a conflict of interest, and may make or participate in making decisions involving negotiations or collaborative efforts with the University to mitigate impacts of the Project as they affect residents of the city as a whole.

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 18110 through 18997 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 immunity provided by an opinion or formal written advice (Section 84113; Regulation 18329 (c)(3).)

FACTS

The City of San Luis Obispo has a population of approximately 45,000 people. It has a local state university that is located adjacent to, but outside of, the City's boundaries.

The University has announced it may increase its student enrollment by up to 5,000 students over the next decade. Under the Project that has already been approved by the University, approximately 1,400 first-year students will be housed in a new dormitory "immediately adjacent to an existing low density neighborhood."³ The Project would also involve building a parking structure near the dormitory and replacement of current parking lots on the site.

The Mayor owns and resides in a home near the project site. The Mayor's residence is within 500 feet of the University property and within 585 feet from the closest boundary of the Project site.

The City does not have any discretionary approval authority over the Project. The city council, without the Mayor's participation, has participated in the environmental review process by reviewing and submitting formal comments and objections to the adequacy of the environmental analysis and proposed off-site mitigations in the Environmental Impact Report ("EIR") process. A City Planning and Traffic Engineering staff analysis identified, among other things, adverse noise, parking, and traffic associated with the Project. These concerns were reflected in formal comments submitted as part of the EIR.

In addition, the city council may hold town hall meetings or otherwise advocate to the University on behalf of City residents regarding the project impacts. The Mayor and the City Manager meet regularly with the University administration and student leadership to discuss town issues, including ways the University and City can work together to encourage good University/resident relations. The city council and the mayor wish to continue the open dialogue with the University to discuss collaborative efforts, not related to project approvals, to improve the town dynamics.

The existing and future collaborative efforts between the city council and the University include:

- Transit Service: The University, using parking revenues, is party to an existing agreement with the City to provide free transit services to students, faculty, and staff.
- Fire Service: The University and the City are parties to a multi-year contract to provide the University with fire protection, emergency medical services, and fire prevention training.

³ "Draft Environmental Impact Report for Cal Poly Student Housing South Project," page 3.

- Student Neighborhood Assistance Program (SNAP): The SNAP program, established by the City Police Department, recruits University students and students from Cuesta College to assist in responding to “party” noise complaints in the City.
- Memorandum of Understanding (MOU) on Law Enforcement: The City and the University are formalizing existing collaborative partnerships and clarifying the types and amount of support the University will provide to help the City address neighborhood issues. The MOU may address law enforcement staffing levels and expanded neighborhood education and enforcement initiatives.
- Traffic Monitoring Plan: The University has committed to biannual traffic monitoring at all major entrances to campus and will share this information with the City and the community.
- Parking Initiatives: The University is coordinating a joint parking initiative with the City and local neighbors to address campus parking policies and parking trends and regulations in the neighborhoods near campus.
- Open Space and Natural Resources Management: The University has committed to coordinate with the City and will explore formal partnerships towards the goal of open space protection and natural resources management. This may include University initiatives to designate agricultural and open space resource lands on University property through its Master Plan Update process.
- Pedestrian and Bicycle Circulation Improvements: The University will explore implementing additional bike lanes on campus and possible off-campus overpasses as part of the update to its Master Plan.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has an interest specified in Section 87103. A public official has a “financial interest” in a government 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. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a conflict of interest under Section 87100.

You indicate that the Mayor is a public official who is asking whether she may make or participate in the making of governmental decisions regarding collaborative efforts between the city council and the University involving the Project in light of the proximity of her residence to the University and Project site. Given these facts, we need not analyze the initial steps of the standard analysis. We address your questions concerning foreseeability and materiality.

Materiality and Foreseeability

Regulation 18705.2, as relevant to your facts, provides in pertinent part:

“(a) Except as provided in subdivision (c) below, the reasonably foreseeable financial effect of a governmental decision (listed below in (a)(1) through (a)(13)) 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:

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest; [or]

“(11) Would consider any decision affecting real property value located within 500 feet of the property line of the official’s real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18705.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official’s property.”

With respect to (a)(10), it is undisputed that the Project will have an impact on the character of the neighborhood where the Mayor resides, as an analysis by the City’s Planning Department and Engineering staff identified, among other things, “*adverse noise, parking, and traffic associated with the Project*” and these concerns were submitted as part of the environmental review process. (Emphasis added.)

However, as you noted, the City does not have any discretionary approval authority over the Project. This decision was solely within the University’s jurisdiction, and the University has approved the project. The decisions before the Mayor and the city council involve collaborative efforts to help mitigate the project impacts on the City as a whole. We find that the collaborative efforts you described—including agreements between the University and the City regarding transit, police, fire, and student services—would not have a reasonably foreseeable impact on the market value of the Mayor’s property as these agreements are designed to benefit the City and its residents in general, and to mitigate, or compensate for, Project impacts.

Moreover, under the test of (a)(11), it does not appear that the collaborative efforts will have a reasonably foreseeable measurable impact on the Mayor’s residence, even though it is within 500 feet of the University property, and within 585 feet from the closest boundary of the

proposed Project.

The collaborative efforts, as described, are agreements to provide resources and services to University students, staff and faculty, as well as to City residents to mitigate impacts of the Project and increased University student enrollment. These partnerships and agreements are not designed to provide increased or improved services to specific residents or neighborhoods, and therefore it would not be expected to have a reasonably foreseeable impact on the Mayor's property. So long as the collaborative efforts do not involve benefits that specifically address concerns particular to the neighborhood in which the Mayor resides, and apply to the city as a whole, she may participate in these discussions.

Accordingly, the Mayor does not have a conflict of interest, and may make, or participate in making decisions involving negotiations or collaborative efforts with the University to mitigate impacts of the Project.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl