



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 5, 2015

Steven L. Dorsey  
Norwalk City Attorney  
Richards, Watson & Gershon  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-15-074**

Dear Mr. Dorsey:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> 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. We also do not advise regarding past conduct; the advice below relates only to upcoming decisions.

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.

### FACTS

You are the city attorney for the City of Norwalk and you write on behalf of Mayor Leonard Shryock, Vice Mayor Luigi Vernola, and Councilmembers Cheri Kelley and Mike Mendez. The City Council will vote on the following:

- To approve an application for Community Development Block Grant (“CDBG”) and HOME Investment Partnership Program through the United States Department of Housing and Urban Development (“HUD”);
- To approve the 2015-2020- Consolidated Plan, FY 2015/16 Annual Action Plan, Analysis of Impediments to Fair Housing Choice and Neighborhood Revitalization Strategy;

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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 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.

- To approve the City's application for CDBG and HOME funding for 2015-2016; and
- To authorize City Manager to execute and transmit all required documents to the United States Department of Housing and Urban Development.

HUD requires that grant applicants submit a "Consolidated Plan" every five years and an "Annual Action Plan" each year to qualify for grant funds. The Consolidated Plan outlines the City's economic development, infrastructure, housing, and social service needs and priorities over the following five years. The Annual Plan lists specific activities that the City will undertake in the initial year of the grant program following. Federal rules and regulations apply funding caps for some activities, public-private partnership requirements, and compliance with national objectives. Staff works within this framework to develop the Annual and Consolidated Plans.

The City staff has identified a proposed plan area, called the Neighborhood Revitalization Strategy Area and a limited project within that area for the first year's Annual Action Plan (the "Annual Plan Area"). The budget for the first year's plan is limited and the goals are specific. The Annual Plan contemplates making funds available to applicants within the Annual Plan Area who meet the eligibility requirements to make exterior improvements to single-family dwellings and 1-4 unit rentals such as painting, stucco, landscaping, driveways, front doors, and fencing.

While staff may or may not have identified specific locations for the entire Consolidated Plan, some projects must occur within the 42% of Norwalk that is CDBG eligible. These include local street, curb, and gutter improvements; and graffiti removal. Other programs identified in the Consolidated Plan are not limited to residents of a particular area and will be available to all residents provided they meet eligibility requirements.<sup>2</sup>

In addition to those projects/programs listed above, within the Annual Plan Area, staff proposes two types of projects. One is physical rehabilitation in the designated project area to include projects such as beautification of both commercial and residential properties (as well as neighborhoods) and street and sidewalk rehabilitation for safer pedestrian throughways.

The other type is job training and creating, including partnerships to assist with micro-enterprise development and support for small business owners as well as establishing an Education, Career, and Business Resource center.<sup>3</sup>

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<sup>2</sup> Because these proposals are limited to eligible applicants or are general social services, and you have informed us that none of the councilmembers is eligible, we do not address them beyond acknowledging the decisions and finding no basis for a conflict of interest analysis.

<sup>3</sup> See footnote 2.

The Councilmembers have the following interests:

*Mayor Shryock*

Mayor Shryock's personal residence is located slightly more than 500 feet from the west boundary of the Annual Plan Area. He is also a high school teacher for a district that has offices and schools in the Annual Plan Area.

*Vice Mayor Vernola*

Vice Mayor Vernola has an ownership interest in numerous properties within the Annual Plan Area. He operates businesses on some of these parcels and leases others to third parties. Councilmember Vernola also owns a residence about 1,000 feet to the north of the Annual Plan Area.

*Councilmember Kelley:*

Councilmember Kelley has a community property interest in her husband's companies - Home Town Realtors and D E L Financial, Inc., both of which he owns as a sole proprietor. Her husband owns as separate property the property in which Home Town Realtors is located (11502 Rosecrans Boulevard). D E L Financial owns and occupies the property at 11508 Rosecrans Boulevard. Councilmember Kelley has a direct ownership interest in that parcel. These properties border the Annual Plan Area.

Councilmember Kelley also has a financial interest in two condominium units located outside and to the northeast of the Annual Plan Area. She leases these two units. Finally, Councilmember Kelley's personal residence is located just over 500 feet from the southern boundary of Annual Plan Area.

*Councilmember Mendez*

Councilmember Mendez has an economic interest in his personal residence located slightly more than 1,000 feet to the south of the Annual Plan Area.

## **ANALYSIS**

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a 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.) Under the Act, a public official's financial interests include:

- A business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- A source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c).) Income does not include salary from a government entity. (Section 82030(b)(2).)
- A source of gifts to him or her if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- His or her personal finances, including those of the official's immediate family -- this is the "personal financial effects" rule. (Section 87103.)

Additionally, a public official has an interest in the financial interests of his or her spouse as community property. (See Sections 82030 and 82034.)

#### *Reasonable Foreseeability and Materiality*

*Foreseeability:* Regulation 18701(b), as applied to your facts, provides that 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.<sup>4</sup>

*Real Property Materiality:* Many factors apply to determine whether a decision could have a material financial effect on real property. (See Regulation 18702.2.) As applies here, the financial effect will be material if the decision:

(6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision;

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<sup>4</sup> There is a different test where an interest is explicitly involved in a decision, which does not apply here. (Regulation 18701(a).)

(8) Would change the income producing potential of the parcel of real property. However, if the real property contains a business entity, including rental property, and the nature of the business entity remains unchanged, the materiality standards under Regulation 18705.1 applicable to business entities would apply instead;

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(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;

(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 18702.1. 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; or

(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

*Business Entities Materiality:* As applied to your facts, the reasonably foreseeable financial effect is material if a business entity:

“For a governmental decision not identified in subdivision (a), the financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of a privately-held business entity.”

*Sources of Income Materiality:* A financial effect on a source of income from the sale of goods or services in the ordinary course of business (including lease payments and salary) is material if:

“(1) The source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or

(2) The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively; or

(3) The source is a nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2; or

(4) The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1.

#### *Councilmember Mendez*

Councilmember Mendez has an economic interest in his personal residence located slightly more than 1,000 feet to the south of the Annual Plan Area. Because any improvements such as the beautification projects in the Annual Plan Area would not be 'distinguishable from improvements and services that are provided to or received by other similarly situated properties,' the decisions effects on these properties are not material.

#### *Councilmember Kelley*

Councilmember Kelley has a financial interest in the lessees in her condominium units. The condominiums are located outside the Annual Plan Area, and the lessees are not eligible to apply for funding from the Annual Plan. There are no facts to suggest that the standards above apply, we conclude that the decisions' effects on Councilmember Kelley's sources of income will not be material. If such facts come to light to support the above factor, your conclusion could be different.

Councilmember Kelley also has interests in a real estate sales company and a mortgage brokerage company. The properties border the Annual Plan Area, but for any of the beautification projects to have an effect on these interests, several other intervening decisions would first occur, including property owners applying for and receiving grants, the property owners wishing to sell their residences, and property sellers or buyers choosing her companies to represent them in the transactions. Given this, it is not reasonably foreseeable that her interests in these companies would be affected.

#### *Mayor Shryock*

Mayor Shryock's personal residence is located slightly more than 500 feet from the west boundary of the Annual Plan Area. Because any improvements such as the beautification projects in the Annual Plan Area would not be 'distinguishable from improvements and services

that are provided to or received by other similarly situated properties,' the decisions' effects on these properties are not material.

Mayor Shryock is a high school teacher for a district that has offices and schools in the Annual Plan Area. Income from a government entity is not considered "income" under the Act. (See 82030(b)(2).) Mayor Shryock therefore has no source of income interest based on this income alone.

#### *Vice Mayor Vernola*

Vice Mayor Vernola has ownership interests in numerous properties within the Annual Plan Area, most of which he leases to businesses. He operates businesses on some of these parcels and leases others to third parties. Because we do not have specific information about the businesses that Vice Mayor Vernola operates or the level of involvement in the Consolidated Plan that his lessees would have, we cannot conclusively determine whether the effects on these interests would be material.<sup>5</sup> The above factors should help him make that determination. Given the volume of his holdings, however, we would advise him against participating in the decisions absent a full analysis of his potential conflict of interest.

#### *Public Generally*

A public official may not have a prohibitive conflict of interest in a decision if he or she can establish that "a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment." (Regulation 18703.) Again, given the volume of Vice Mayor Vernola's holdings, the public generally exception would not apply because the decisions would have a disproportionate effect on his interests.

To recap the effects on each councilmember:

*Mayor Shryock*: no conflict of interest in the decisions.

*Vice Mayor Vernola*: likely conflict based on the amount of properties within the Annual Plan Area; unknown conflicts regarding sources of income and business entities. Public generally does not apply.

*Councilmember Kelley*: Likely no conflict of interest based on reasonable foreseeability and lack of materiality.

*Councilmember Mendez*: no conflict of interest in the decisions.

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<sup>5</sup> We also do not have information regarding whether the Vice Mayor is in a retail sales business. If so, see Regulation 18702.3(d) for an exception to the materiality standards in retail sales.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl