



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 28, 2015

Joan A. Borger, City Attorney
Office of the City Attorney
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Re: Your Request for Informal Assistance
Our File No. I-15-110

Dear Ms. Borger:

This letter responds to your request 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.

Because your question is general in nature, we are treating this as a request for informal assistance.²

QUESTION

May Councilmember Gustav Larsson participate in decisions to approve a new developer for Block 18 of the Downtown Sunnyvale Specific Plan (“DSP”)?

CONCLUSION

Based on the facts provided, Councilmember Larsson may vote to approve a new developer, provided this decision does not have a foreseeable material financial effect on his financial interests and so long as it does not reopen, determine, affirm, nullify, or alter the previous decisions approving the DSP, the development plan for Block 18, or any other decision from which he may be disqualified.

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 the immunity provided by an opinion or formal written advice. (Regulation 18329(c).)

FACTS

Councilmember Gustav Larsson is a member of the Sunnyvale City Council as well as a Board Member of the Successor Agency to the former Redevelopment Agency of the City of Sunnyvale (“Successor Agency”). The Successor Agency is responsible for overseeing the redevelopment plan area of the Downtown Specific Plan (“DSP”). The purpose of the DSP, which was originally adopted in 1993 and then substantially revised in 2003, is to plan for the development of roughly 125 acres in downtown Sunnyvale. These 125 acres are divided into 23 “blocks,” each with their own development standards and distinct zoning regulations. A draft environmental impact report was prepared in March 2003, with a Final Environmental Impact Report document (the “EIR”) published in May 2003.

Councilmember Larsson owns a home in an established single-family neighborhood approximately 169 feet from the boundary of the DSP and approximately 863 feet from the boundary of Block 18.

Block 18 is in the center of the DSP, and is the only block that is a redevelopment plan area. The terms of the development plan for Block 18 are contained in the 2010 Amended Disposition and Development and Owner Participation Agreement (“ADDOPA”), an agreement between the private property owner and the Successor Agency. The ADDOPA describes the proposed project, parties’ obligations, financing structure, and continuing obligations. Property ingress, egress, and operations are dictated by terms in the Operation and Reciprocal Easement Agreement (“OREA”). The OREA describes the relationship between the four parties that own Block 18: Wells Fargo (the current developer), Macy’s, Target, and the Successor Agency. Currently, there are no immediate plans to modify either of these documents.

Redevelopment of Block 18 has been halted by litigation since 2009. Block 18 was the site of the former Sunnyvale Town Center Mall, but is currently half-constructed and dormant. The litigation which has halted work on Block 18 has been largely resolved by recent court decisions.

You have indicated it is likely that the Successor Agency will soon be faced with the decision of whether to approve a new developer for Block 18, consistent with criteria specified in Article 6 of the ADDOPA. Although no particular developer has been identified yet, you are seeking advice regarding whether Councilmember Larsson may participate in this imminent decision. It is possible that a new developer will complete the redevelopment consistent with the existing plans, but you recognize it is possible that a new developer may want changes made to the existing terms and have indicated that the Successor Agency is open to considering proposed modifications.

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.³

As a Board Member of the Successor Agency, Councilmember Larsson may soon be asked to make, participate in, or attempt to influence the Agency's governmental decision to approve a new developer for Block 18. You indicated that Councilmember Larsson has a financial interest in his home located 863 feet from the boundary of Block 18 and approximately 169 feet from the boundary of the DSP. The facts you have provided and the EIR for the DSP indicate that the development's scope, intensity, and proximity will lead to significant impacts that will have a foreseeable material financial effect on Councilmember Larsson's home. These impacts include improved aesthetics and streetscape⁴ elements at the nearby intersection of Olive and Carroll (a street that runs along the side of the councilmember's property).⁵ Accordingly, Councilmember Larsson has a conflict in decisions related to the DSP and redevelopment of Block 18, and may not make, participate in making, or use his official position to influence these decisions.

However, you also state that decisions have already been finalized regarding the redevelopment of Block 18. Therefore, your position is that the decision to approve a new developer would only implement those prior decisions.

Segmentation:

Regulation 18706 identifies circumstances in which an agency may segment governmental decisions. In some cases, "some large, complex decisions may be segmented into separate decisions so that even if an official has a disqualifying interest in one component of the series of decisions, he may still participate in other components in which he has no financial interest."⁶

Regulation 18706 requires that all of the following must apply:

"(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

"(2) The decision in which the official has a financial interest is segmented from the other decisions;

³ Section 87103; Regulation 18700(a).

⁴ These refer to visual elements of a street, including the road, adjoining buildings, sidewalks, street furniture, trees and open spaces that combine to form the street's character.

⁵ Regulation 18702.2(a)(10) and (12) identify cases in which effects on market value constitute a material financial effect.

⁶ *Whitman* Advice Letter, No. A-14-186; *citing Milich* Advice Letter, No. I-04-216, and *Merkuloff* Advice Letter, No. I-90-542.

“(3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official’s participation in any way; and

“(4) Once the decision in which the official has a financial interest has been made, the disqualified public official’s participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.”

Where a decision in which an official has a conflict of interest is “inextricably interrelated” to another decision, the official will be required to disqualify from both decisions. Regulation 18706(b) provides that “decisions are ‘inextricably interrelated’ when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.”

You indicate that the imminent decision to approve a new developer will be an implementation of the earlier redevelopment decisions if the developer is willing to work under the existing terms, without change or modification.⁷

You state that the final decisions have already been reached regarding the redevelopment of Block 18. Therefore, segmentation of the decision to approve a new developer would be possible so long as that decision does not reopen, determine, affirm, nullify, or alter the previous decisions approving the DSP, development plan for Block 18, or any other decision from which the councilmember is disqualified.

Accordingly, Councilmember Larsson may participate as a Board Member when the Successor Agency votes to approve a new developer, provided the decision is an implementation, and not a reopening, of previously finalized decisions, and the selection of the new developer does not have a foreseeable, material financial effect on Councilmember Larsson’s real property interest or any other financial interest.

Once a particular developer has been identified by the Successor Agency, you are encouraged to request further advice analyzing any specific conflicts that Councilmember Larsson may have.

⁷ During our telephone conversation on July 14, 2015, you stated that the Successor Agency is open to considering suggested modifications to the DSP, the ADDOPA or the OREA. Please note that decisions to approve modifications may be inextricably interrelated to the earlier decisions of the agency, as any changes to existing terms would require a reopening or alteration of the earlier decisions. Participating in such a decision would require additional analysis of any potential effects on Councilmember Larsson’s financial interests.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Neil Patrick Clark
Legal Intern, Legal Division

NPC:jgl