STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 27, 2015

Eric S. Veil
Temple City Attorney
Burke, Williams & Sorensen. LLP
1600 Iowa Avenue, Suite 250
Riverside, CA 92507-7426

Re: Your Request for Advice
Our File No. A-15-126

Dear Mr. Veil:

This letter responds to your request for advice on behalf of Temple City Councilmember Nanette Fish regarding her duties under 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.

QUESTIONS

1. Will the Las Tunas Drive Project materially impact Councilmember Fish's financial interests in The Crest Lounge and the lease on the property on which it is located?

2. Does the "public generally" exception allow Councilmember Fish to make and participate in making decisions regarding the Project?

CONCLUSIONS

1. Based on your facts, it appears that the Las Tunas Drive Project will materially impact Councilmember Fish's financial interest in The Crest Lounge.

2. Because more than 25 percent of the businesses in Las Tunas are in the Las Tunas Drive project area or within 250 feet of it, and the councilmember's business will not be uniquely or

[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.

disproportionate affected, the public generally exception would apply and the councilmember may participate in the decision.

FACTS

Temple City is a suburban community of approximately 36,000 residents located within the San Gabriel Valley region of Los Angeles County. Las Tunas Drive is a major four lane arterial street running east/west bisecting the City. The City's commercial district straddles both the north and south sides of Las Tunas Drive. Surrounding the project area is an envelope, approximately 250 feet deep, of commercially zoned property occupied with businesses. According to the City's Community Development Department, the City has issued a total of 580 business licenses within City's boundaries, of which 268 were for businesses within the 250 foot envelope. The City has a total of 393 commercially zoned parcels within the City's boundaries, of which 224 are within the envelope around the project area. Thus, 46% of all licensed business and 57% of all commercially zoned parcels are within 250 feet of the project.

In June of 2012 the City Council authorized staff to undertake the project and budgeted for the anticipating new streetscape, beautification, and traffic safety improvements intending to make the area more of a downtown destination. The project boundaries are coterminous with the right-of-way for Las Tunas Drive. The project does not include any rezoning of property or expansion or other adjustment of land uses permitted or prohibited within the project area or adjacent properties. The project is now in the final stages of community outreach and design development. On June 10, 2015 the City Council considered a revised design for the project including roadway realignment, the addition of raised center medians, the addition of bike lanes and on-street parking, and landscaping to make the area more pedestrian-friendly.

Councilmember Fish's husband owns The Crest Lounge (a bar and grill) located at 5921 Temple City Boulevard (located to the north of Las Tunas Drive within the 250 foot envelope). Councilmember Fish's husband leases the property on which his business operates. Councilmember Fish does not have a personal ownership stake in the business and is not a lessee of the lease.

You stated that at this time it is unknown whether the public improvements that will be installed within the project area will increase or decrease the existing vehicular or pedestrian traffic enjoyed by the business. The current project design does not block traffic from traveling on Temple City Boulevard (the street on which the business is located) and it is unknown whether the improvement will ultimately redirect traffic from the business. Because the design is not final and has not been approved by the City Council, there is the possibility that the design could affect such traffic flow.

Due to her interests, Councilmember Fish recused herself from the June 10, 2015 Council meeting and did not participate in the discussion or decision regarding the project. Councilmember Fish has not participated in any community outreach or staff meetings regarding the project since her election in March of 2015.

ANALYSIS

Section 87100 prohibits public officials from participating in governmental decisions in which they have a financial interest. Section 87103 provides that a public official has a financial interest in a decision 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 his or her immediate family, or on any of the following:

> "(a) Any business entity in which the public official has a direct or indirect[2] investment worth two thousand dollars ($2,000) or more.
>
> "(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars ($2,000) or more.
>
> "(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
>
> "(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
>
> "(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [$460][3] or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503."

Councilmember Fish has three potentially disqualifying interests: (1) an indirect investment in her spouse's business, (2) the business is also a source of income to the extent her community property interest is $500 or more, and (3) her indirect interest in her spouse's lease of real property for the business.

Foreseeability

The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. Neither the business nor the leased property will be explicitly involved in

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[2] "For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater." (Section 87103.)

[3] The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to Section 89503(f). The quoted provision above has been modified with the current figure.

the decisions as contemplated by Regulation 18701(a). Thus, the applicable foreseeability standard set forth in Regulation 18701(b) is as follows: "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."

Materiality

Real Property: The materiality standard applicable to the councilmember's leasehold is set forth in Regulation 18702.2(b). The financial effect of the governmental decision is material if it will do any of the following:

> "(1) Change the termination date of the lease;
>
> "(2) Increase or decrease the potential rental value of the property;
>
> "(3) Increase or decrease the rental value of the property, and the official has a right to sublease the property;
>
> "(4) Change the official's actual or legally allowable use of the real property;
>
> "(5) Impact the official's use and enjoyment of the real property."

According to your facts, the councilmember's property is impacted solely by being in proximity to Las Tunas Drive. No facts suggest that any financial effect on the terms of the councilmember's indirect interest in her spouse's leasehold would result absent extraordinary circumstances. Thus, the councilmember would not have a conflict of interest based on the leasehold.

Business Entity: Regulation 18702.1(b) provides an effect is material if the business entity (including a business entity that is a source of income)[4] if the business:

> "[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."

Examples of decisions that may affect the value of a privately-held business entity include decisions that result in improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives. (Regulation 18702.1(b)(4).)

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[4] Regulation 18702.3 provides that for income received by the official or his or her spouse for goods and services provided in the ordinary course of business, including a salary, the financial effect is material if the business is: (1) a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or (2) the business will be financially affected under the standards as applied to a financial interest in Regulation 18702.1.

However, the financial effect must be more than nominal, inconsequential, or insignificant. (Regulation 18702(b).)

According to the November 2014, Traffic Impact Analysis, all of the options considered for the project at that time would impact the intersection of Las Tunas Drive and Temple City Boulevard, the intersection immediately south of the Crestwood Lounge (as well as other intersections on Las Tunas Drive). A prudent person would find it is reasonably foreseeable that the decision's financial effect on the business would contribute to a change in the price of the business entity.

Public Generally

"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 his or her financial interest is not unique compared to the effect on the significant segment." "A significant segment of the public is at least 25 percent of ... [a]ll businesses or non-profit entities within the official's jurisdiction." You stated that 46 percent of all business licenses and 57% of all commercially zoned real estate are within 250 feet of the project area. This constitutes a significant segment.

Moreover, you stated that the property and Crest Lounge are not directly affected by the plan and that there are no unique attributes to the Crest Lounge or the property on which it is located. Given the nature of the proposed improvements, it appears that the Crest Lounge and the property on which it is located would be affected very similarly, if not the same, as all other businesses and commercial property located near the project area. The project does not appear to have a unique or disproportionate effect on the councilmember's interests.

Consequently, the public generally exception will apply and the councilmember may participate in the decision.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel,
Legal Division

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