



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 25, 2015

Jeff Ginsburg
Councilmember – District 1
City of Redondo Beach
100 Paseo De La Playa
Redondo Beach, CA 90277

Re: Your Request for Informal Assistance
Our File No. I-15-170

Dear Mr. Ginsburg:

This letter responds to your request for advice regarding your duties as a Redondo Beach City Councilmember pursuant to the 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 questions are general in nature and you have not identified all your interests in question, we are treating your request as one for informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTION

May you make and participate in making decisions regarding the Legado Mixed-Use Project (the “Project”) a 4.275 acre project site within three-tenths of a mile from your building that is currently developed with a 110-room hotel and 28,354 square feet (sf) of retail space, including a vacant grocery store and 7,224 sf of other retail space?

CONCLUSION

Yes. You may make and participate in making the decisions regarding the Legado Mixed-Use Project because the project decisions will not have a reasonably foreseeable material financial effect on your property or your tenants.

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.

FACTS

You are a 50% owner of a 46,500 square foot office building located at 1611 S Catalina Avenue. You have a variety of tenants, primarily small service businesses. You noted you have one restaurant tenant operating in the building (Chez Melange) and a coffee shop (Sacks at the Beach). The building has onsite parking.

In the near future, you expect the Legado Mixed-Use Project will be presented to the city council. The project is proposed for 700 S. Pacific Coast Highway, Redondo Beach (southeast corner of Pacific Coast Highway and Palos Verdes Boulevard). The 4.275 acre project site is currently developed with a 110-room hotel (Palos Verdes Inn) and 28,354 square feet (sf) of retail space, including a 21,130 sf former Bristol Farms grocery store and 7,224 sf of other retail space.

The project proposes the demolition of all on-site retail space, the construction of a mixed-use (residential/commercial) development and renovation of the existing hotel. The mixed-use development application has been partially revised and now consists of 149 residential apartment units (a reduction from 180 units) and approximately 37,000 square feet of neighborhood-serving commercial development (a reduction from 37,600 square feet). A total of 649 parking spaces (an increase from 614) will be provided, with 587 parking spaces in an enclosed parking structure and 62 spaces in an existing surface parking lot. The project is designed to be a maximum of three (3) stories and 45 feet above existing grade (a reduction from four (4) stories and 56 feet).

You noted that the Project site is approximately three-tenths of a mile from your building (approximately 1,584 feet from the Project) and separated by the Pacific Coast Hwy. Based on the Revised Final Initial Study – Mitigated Negative Declaration analysis of traffic impacts, while there were concerns with the traffic resulting from the project, most of the increases were anticipated east of your property, along Pacific Coast Highway where the Project was situated.

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 interests specified in Section 87103. You have a variety of interests specified in Section 87103 as follows.

1. Any business entity in which you have a direct or indirect² investment worth \$2,000 or more (Section 87103(a)) or a business entity in which you are a director, officer, partner, trustee, employee, or hold any position of management. (Section 87103(d).)

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.)

Section 82005 defines a “business entity” as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. In prior advice you identified numerous businesses in which you have an interest. However, your question only concerns the large commercial office/retail building located at 1611 S. Catalina Avenue. Therefore, our advice is limited to possible conflicts of interest based on your ownership interest in this building.

2. Any real property in which you have a direct or indirect interest worth \$2,000 or more. (Section 87103(b).)

Section 82033 defines “interest in real property” to include “any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.” Based on this definition, you also have a real property interests in the large commercial office/retail building located at 1611 S. Catalina Avenue.

3. Source of income aggregating \$500 or more in value provided or promised to or received by you within 12 months prior to the time when the decision is made. (Section 87103(c).)

Your businesses are also considered a source of income to you. In addition, income of an individual includes a pro rata share of the income of a business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82030(a).) Thus, tenants in your office building are sources of income to you presumably of \$500 or more in the 12 months before the decision in question.

Foreseeability

The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. None of your interests appears to be explicitly involved in the decisions. However, we do not know the identity of the persons that lease property from you. If any of them are explicitly involved in the decision by virtue of being a named party, the subject of the decision, or owning property that may be subject to the decision as set forth in Regulation 18702.2(a)(1)-(6), the financial effect on those interests would be foreseeable.

For purposes of this analysis, we assume that your interests will not be explicitly involved in the decisions on the Project.³ In these cases, the foreseeability standard that applies is: “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.”

³ If our assumptions are incorrect, then our advice would differ and the conclusion contained in this letter cannot be relied upon. You should request additional advice.

Materiality

Investments in Business Entities and sources of Income: Regulation 18702.1(b) provides that an effect on a business entity (including a business entity that is a source of income)⁴ is material as follows:

“[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.”

In this case, there are a variety of facts that make it unlikely that the project will affect your business or your tenants.

- First, as you pointed out the distance is fairly significant and there are numerous intervening properties between your building and the Project.
- In addition, the Project will be on an existing commercial site. While the project will increase the current use of the property it will not be a brand new use.
- Your tenants are not likely to be affected by the changes in use that will result from the project. The traffic flow appears to be removed from your property and the street that your property is located. Rather the flow (as identified in the preliminary traffic study) seems to concern other major streets other than Catalina.

Thus, these facts support the conclusion that the development would not contribute to a change in the value of your privately-held business entity or your business tenants.

Real Property: Regulation 18702.2 provides the materiality standard for an interest in real property and lists multiple circumstances under which an effect on property will be considered material. Most broadly, an effect on your property will be material if the decision:

“(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.”

However, similar to the analysis of the potential effect on your business interest and sources of income, there are no specific facts about the magnitude or location of the project that suggest that the project would affect the value of your property. Again, traffic impacts do not appear to affect

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.

the address at which your property is located. If the facts should change (possible once then EIR is prepared), you should contact us for additional advice.

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

JWW:jgl