



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 25, 2015

J. Christine Dietrick  
City Attorney  
990 Palm Street  
San Luis Obispo, CA 93401

Re: Your Request for Informal Assistance  
**Our File No. I-15-175**

Dear Ms. Dietrick:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance.<sup>2</sup> This advice applies only to the conflict of interest provisions of the Act and no other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Because your question is general in nature and does not specify specific governmental decisions, we are treating your request as one for informal assistance.<sup>3</sup>

### QUESTION

Does Councilmember Dan Carpenter have a conflict of interest under the Act that prohibits him from participating in the in the governmental decision to approve an update to the City Downtown Concept Plan (“Plan”) due to his real property interest within the Plan area, interest in the Bob and Dora Carpenter Family Trust (“Trust”), or the lessees of the real property?

### CONCLUSION

No. The Councilmember does not have a conflict of interest under the Act that prohibits him from participating in the decision to approve an update to the Plan because there is no reasonably foreseeable material financial effect of the decision on his real property interest within the Plan area, interest in the Trust, or interest in the lessees of the real property, based on the facts presented.

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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.

<sup>2</sup> *In re Oglesby* (1975) 1 FPPC Ops. 71.

<sup>3</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## FACTS

Councilmember Dan Carpenter is a member of the San Luis Obispo City Council. The Councilmember is the co-trustee and beneficiary of the Trust. The Trust owns real property located at 1127 Chorro Street and 1128 Garden Street within the City's jurisdiction and the area covered by the Plan. The property is zoned Downtown-Commercial, located within a historic district, and is fully leased.

In 1993, the City adopted the Plan as a conceptual visionary document for the downtown area. A principal goal of the City's Community Design Guidelines is "to implement the vision of the downtown Conceptual Physical Plan wherever feasible." The Plan is neither a Specific Plan nor an element of the General Plan, and the Council has not codified it in the Zoning Code or elsewhere. The Plan is not considered a regulatory document. Development projects and City initiated capital improvements need not be consistent with the Plan. However, the City consults the Plan for opportunities to incorporate design features or public realm improvements.

On August 18, 2015, the Council authorized the issuance of a Request for Proposals to update the Plan, and provided policy direction to guide the update. At this time, it is unclear what the scope of the updates will be and what changes it will include. However, the City has identified potential action items it will consider for inclusion in the update. Those action items include, among others, identifying potential locations for public spaces for gathering and socializing, identifying potential locations for public art, and addressing pedestrian needs in the downtown.

## 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. Section 87103 defines interests from which a conflict of interest may arise and includes among those interests:

- **Real Property:** Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)
- **Source of Income:** 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. (Section 87103(c).)

### *Foreseeability*

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. Under your facts, the

real property, the Trust, and the lessees at issue are not explicitly involved in the decision to approve the update to the Plan. Thus, as applied to the real property, the Trust, and the lessees at issue, Regulation 18701(b) provides: “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.”

*Materiality: Real Property*

Regulation 18702.2(a) provides the test for materiality: The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is material (as pertinent to your facts) whenever the decision:

- 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. (Regulation 18702.2(a)(6).)
- 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. (Regulation 18702.2(a)(12).)

Your facts provide that the Plan is considered a “conceptual visionary document,” and the background documents you provided indicate that the Plan “is a concept of how downtown should look and function in the future, from today’s vantage point.” Your facts state that City development projects and capital improvements need not be consistent with the Plan, and note that the City’s Community Design Guidelines provide that the Plan will be implemented “wherever feasible.” Furthermore, your facts state that, at this time, it is unclear what the scope of the update to the Plan will be and what changes it will require.

Because the Plan is conceptual in nature, implementation of any proposed improvements included in the update, such as construction or upgrades to City streets, sidewalks, or other infrastructure will require a further decision or decisions by the City Council. Therefore, the decision on whether to approve the update to the Plan does not involve the construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities; the parcel in which the Councilmember has an interest will not receive new or improved services; and the Councilmember will not otherwise receive a disproportionate benefit or detriment by the decision. Accordingly, the decision will not have a reasonably foreseeable material financial effect on the parcel in which the Councilmember has a financial interest pursuant to Regulation 18702.2(a)(6).

For the same reason, the governmental decision on whether to approve the update to the Plan would not cause a reasonably prudent person, using due care and consideration under the circumstances, to believe the decision was of such a nature that its reasonably foreseeable effect

would influence the market value of the Councilmember's property. There is no reliable benefit or improvement that will affect the Councilmember's property as a result of the approval of an update to the Plan; even if the update incorporates potential improvements into the Plan that will affect the Councilmember's property, a further decision or decisions by the City Council would be necessary for the City to actually undertake those improvements. Accordingly, there also is no reasonably foreseeable material financial effect of the decision on the parcel in which the Councilmember has a financial interest pursuant to Regulation 18702.2(a)(12).

*Materiality: Source of Income*

Regulations 18702.3(a)(4) and 18702.1(b) provide the test for materiality when the source is a business. In this case, the trust is a business and we assume the lessee is a business as well. For income received by the official for services provided in the ordinary course of business, the reasonably foreseeable financial effect is material if a prudent person with sufficient information would find it reasonably foreseeable that the decision's financial effect would contribute to a change in the value of a privately held business entity.

Under the facts presented, there is no apparent financial effect of the governmental decision on the Trust or the lessee for the same reasons noted above with respect to the property itself. Therefore, the decision would not cause a prudent person with sufficient information to find it reasonably foreseeable that the decision's financial effect would contribute to a change in the value of the Trust or lessee's business. Accordingly, there is no reasonably foreseeable material financial effect of the decision on the sources of income pursuant to Regulations 18702.3(a)(4) and 18702.1(b).

Based on the facts presented, we conclude that the governmental decision on whether to approve the update to the Plan will not have a reasonably foreseeable material financial effect on the Councilmember's real property interest within the Plan area, the Trust, or on the lessees of the real property, and therefore, the Councilmember does not have conflict of interest under the Act and may participate in the decision.

However, if there are new facts to consider, or if the scope or nature of the update or the Plan changes, you may request 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: Matthew F. Christy  
Counsel, Legal Division

MFC:jgl