



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

November 5, 2015

Jolie Houston
Gilroy City Attorney
Berliner Cohen, LLP
Ten Almaden Blvd., 11th Floor
San Jose, Ca 95113-2233

Re: Your Request for Advice
Our File No. A-15-183

Dear Ms. Houston:

This letter responds to your request for advice on behalf of Councilmember Perry Woodward 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.

QUESTION

Does Councilmember Woodward have a conflict of interest under the Act, which would prohibit him from participating in any of the downtown Gilroy parking-related decisions?

CONCLUSION

For decisions you have identified requesting grants for a parking study, enforcing pre-existing parking limits, and providing alternate parking options for the downtown Study Area, it is not reasonably foreseeable that decisions will have a material financial effect on Councilmember Woodward’s properties and the Councilmember may take part in the decisions. Councilmember Woodward does, however, have a conflict of interest that prohibits him from participating in other decisions that you have identified. An analysis of each of the particular decisions is provided below.

FACTS

You are the City Attorney for the City of Gilroy. Gilroy staff identified an area of downtown that could benefit from a “Parking Management Plan.” The area identified is not a “Specific Plan,”

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.

and most of the decisions do not require changes to the City's Specific Plan. This area is identified as "Study Area" that has been the subject of a parking evaluation.

In September 2014, the City performed an evaluation of the downtown's parking management through a Metropolitan Transportation Commission ("MTC") sponsored parking utilization evaluation. This parking utilization study was conducted at no cost to the City and was offered in the interest of the City incorporating best practices in parking management planning in the future. City staff worked with MTC and their consultant to collect data and identify parking challenges in the downtown area (that report is not yet available). This report to the City Council will include several decisions related to the Plan and its future implementation and recommendations for decision for the City Council to make.

The Study Area is approximately 260 acres located in the heart of downtown Gilroy. The City's Downtown Specific Plan is approximately 280 acres and overlaps the Study Area, however, the Study Area is not part of the Downtown Specific Plan.

Councilmember Woodward owns two residential rental properties located in or near the Study Area. One property is located at 121 Fifth Street, near the intersection of Fifth Street and Egleberry Street. This property is located within the Study Area boundary. Councilmember Woodward's other property is located at 7661 Forrest Street, which is not in the Study Area but is within 500 feet of it. Both properties are over 500 feet from the proposed Railroad Street parking lot, which is within the Study Area. There is nothing unique about these two residential rental properties in terms of their size or value, when compared to other residences in the neighborhood.

The City Council's potential decisions include:

1. Provide interim parking improvements in the Study Area, such as an additional parking lot adjacent to 7400 Railroad, which is within the Study Area but over 500 feet from the rental properties;
2. Provide interim parking improvements in the Study Area, such as periodic parking enforcement as necessary to enforce two and four hour time limits;
3. Request a grant from the MTC to conduct a comprehensive downtown parking management plan and pilot project for the Study Area;
4. Request for a proposal to conduct a comprehensive parking management plan for the Study Area;
5. Adoption of a parking in-lieu fee resolution per the Zoning Ordinance for the Study Area. The Zoning Ordinance Section 30.31.25(b), Downtown Specific Plan Parking Requirements, provides the authority for the payment of in-lieu fees, but the fees have never been adopted;
6. (a) Scenario One: Adoption of a downtown parking assessment district and policy for the Study Area. The parking assessment district will apply to all of the parcels within the Study Area;

- (b) Scenario Two: Adoption of a downtown parking assessment district and policy for the Study Area. The parking assessment district will apply only to the mixed use and commercial parcels within the Study Area;
7. Adoption of new parking ratio requirements for the Downtown Specific Plan area, which will not apply to the residential uses within the Downtown Specific Plan area. The changes to the parking ratio requirements would apply to existing or proposed hotel, restaurant and office uses. This will require a Zoning Ordinance amendment and a Downtown Specific Plan amendment.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a government decision in which the official has a financial interest. (Section 87103.) A conflict of interest may arise only when the reasonably foreseeable financial effect of a government decision on a public official's interests is material. The financial interest you have identified is a real property interest in two rental properties in and near the Study Area.

You also appear to have interests in your rental business as a business entity and source of income, as well as your tenants as a source of income. (See Section 87103(a),(c).) Because the business is not explicitly involved in the decisions and any effect is not foreseeable or material, we do not address this interest further. (Regulations 18701 and 18702.1.) Additionally, we have no information about the tenants as sources of income to you, and whether they have business interests that the decisions may affect. To the extent that the tenants' interests in their leases may be affected, the same standard that applies to your interest in the real property would apply to them. (See Regulation 18702.3(a)(2).) We address your interest in the real property below.

Foreseeability

Generally, a financial effect is presumed to be reasonably foreseeable if the interest is "explicitly involved" in a decision. An interest is "explicitly involved" in a decision if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) A property is 'the subject' of a governmental decision if the decision includes any governmental decision affecting a real property financial interest described in Regulation 18702.2(a)(1)-(6). Councilmember Woodward's properties are explicitly involved in decisions 5, 6(a), and 7, above, because one 5 and 6(a) would impose an assessment or fee on his property and the other requires an amendment to the Downtown Specific Plan. (See Regulation 18702.2(a)(1), (3).)

If the interest is "not explicitly involved" in the decision, a financial effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. (Regulation 18701(b).) If a financial effect is not reasonably foreseeable, then there is no conflict under the Act. (Regulation 18700(d)(1).)

Factors to consider when a financial interest is not explicitly involved include:

- “(1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.
- “(2) Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
- “(3) Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.
- “(4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official’s financial interest might compromise a public official’s ability to act in a manner consistent with his or her duty to act in the best interests of the public.
- “(5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official’s financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.
- “(6) Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.”

(Regulation 18701(b).)

Based on the factors above, it is not reasonably foreseeable that decisions 1, 2, 3, and 4 will have a material financial effect on Councilmember Woodward’s properties. The decisions involve requesting grants for a parking study, enforcing pre-existing parking limits, and providing alternate parking options for the downtown Study Area. For some decisions, intervening events would have to occur for the decisions to even come into effect, such as obtaining the grant to conduct a study. Moreover, the studies and plans themselves do not present a foreseeable financial effect on the properties.

Materiality

A decision’s effect on a financial interest that is explicitly involved in a decision is presumed to be material if the decision involves amending a specific plan (Regulation

18702.2(a)(1)) or imposing an assessment or fee on the property. Decisions 5, 6(a), (b),² and 7 are therefore presumed to have a material financial effect on Councilmember Woodward's properties. If a foreseeable financial effect is material, a conflict exists under the Act and the Councilmember may not participate absent any exceptions.

Public Generally and Legally Required Exceptions

The Act prohibits an official from taking part in a decision only if the effect of the decision on the official's interest is distinguishable from the effect on the "public generally." (Section 87103.) Commonly referred to as the "public generally exception," Regulation 18703(a) provides the following general rule:

"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."

For purposes of this provision, a "significant segment of the public" consists of at least 25 percent of (1) the businesses or non-profit entities; (2) the real property, commercial real property, or residential real property; or (3) the individuals within the official's jurisdiction. (Regulation 18703(b).) The Study Area does not contain at least 25 percent of the business or residential real property in Gilroy. This exception therefore does not apply.

In certain circumstances, a public official may be "legally required" to participate in a decision. (Regulation 18705.) Under your facts, however, the City Council is able to make the decisions in which Councilmember Woodward has a conflict without his participation. This exception therefore does not apply.

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

² Decision 6(a) and 6(b) are inextricably interrelated (as alternatives) such that a conflict on one of the options necessarily creates a conflict as to both because of their interlinked nature.