



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

October 8, 2020

Rasiah Advice Letter No. A-20-103 is SUPERSEDED by *Rasiah* Advice Letter No. A-20-103(a)

Prasanna W. Rasiah
Sr. Assistant City Attorney
City of Redwood City
1017 Middlefield Rd.
Redwood City, CA 94063

Re: Your Request for Advice
Our File No. A-20-103a

Dear Mr. Rasiah:

This letter responds to your request for advice on behalf of Redwood City Mayor Diane Howard 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.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.²

QUESTION

Under the Act, may Mayor Howard take part in decisions pertaining to three development projects requesting General Plan amendments within Downtown Redwood City, given that she has source of income interests who own real property near the project sites?

CONCLUSION

No, Mayor Howard may not take part in decisions pertaining to the three projects because there is clear and convincing evidence the projects, individually and collectively, would have a

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 This letter supersedes *Rasiah* Advice Letter, No. A-20-103, dated September 21, 2020. This letter is issued to address new and clarified facts.

substantial effect on the sources of income's business entity interest, including by affecting the market value and income-producing potential of the entity's real property.

FACTS AS PRESENTED BY REQUESTER

The Sequoia Hotel ("Hotel") is located in Redwood City ("City"). The Hotel is owned by Sequoia Hotel Main Street, LLC ("LLC") and is located at 800 Main Street. The Hotel has 54 rooms that have shared bathroom facilities and are rented on a weekly or monthly basis at below market rates. The LLC also rents ground floor retail space that is occupied by a craft butchery, a liquor/grocery store, an antique store, a bookstore, a nail salon, and a tobacco shop. The Hotel does not provide vehicular or bicycle parking.

Diane Howard is the City Mayor and serves on the City Council. She and her husband previously had an ownership interest in the LLC. Under the Purchase Agreement, dated March 1, 2018, the Howards sold their 4.34% interest in the LLC to a total of seven trust entities with a total of ten trustees (the "Buyers") for \$362,688.93. Extrapolating that figure, the total value of the LLC is approximately \$8.35 million. Beginning June 1, 2018, the Howards began receiving quarterly interest payments of \$4,533.61—over \$18,000 annually—according to the Promissory Note (the "Note") attached to the Purchase Agreement. The Note was due and payable in full on March 1, 2023. On September 30, 2020, the Note was repaid in full.

The Howards did not sell their shares to the LLC, but to the aforementioned Buyers. The Note was guaranteed by ten individuals and not secured by any property. Rather, the Note was payable from the individuals and their revocable trusts. The LLC was not a payor or guarantor of the Note and the Buyers did not pledge their interest in the LLC as collateral for the loan. A default in the payment of the Note would have given rise to an action against individual Buyers. It would not have given rise to a rescission of the sale nor have resulted in a transfer of a security interest in the LLC, a membership interest in the LLC, or the LLC's property.

Three projects are coming before the City Council, as set forth below:

Chase Project (2300 Broadway)

The project site is currently developed with a two-story Chase Bank and parking lot. The proposed project would develop 200,000 square feet of office space, 15,000 square feet of retail space, and 20,000 square feet of open space. The office would be 9 stories high. (The project would also develop 40 below-market rate units off-site.) The property between the Chase Project and the Hotel is developed, and includes Courthouse Square (a large public space), the Fox Theatre, a 20-screen movie theater, more than a dozen food establishments, a 93,000 square-foot four-story office building and other smaller office uses. The site is approximately 500 feet from the Hotel. The project would also include affordable housing (with a yet-to-be-determined number of housing units) located off-site from the rest of the project, approximately 2,600 feet from the Hotel.

Jefferson/Bradford Project (603 Jefferson and 750 Bradford)

The project site is currently developed with a one-story office building and a two-story Redwood City School District office building. The new project would consist of 170,000 square feet of office (7 stories), 68 workforce housing units (5 stories) and one-story of shared podium parking. The property between this project and the Hotel is developed with a Redwood City fire

station, four-story city parking garage containing more than 375 parking spaces, a multi-story office building, bank and credit union, at least six food establishments and several one-story office buildings and other miscellaneous uses. The Jefferson/Bradford site is approximately 650 feet from the Hotel.

Wells Fargo Project (1900 Broadway)

The project site is currently developed with a two-story Wells Fargo Building, parking lot, street, and parklet. The new development would consist of 234,000 square feet of office use, 54 below-market-rate housing for very low- and low-income tenants, and 8,700 square feet of public common space. The building would be 7 stories in height, with two levels of below-grade parking, including 25 public parking spaces. This site is directly across the street from the Hotel.

Under the Redwood City Code, the City Council is empowered to decide whether to initiate amendments to its General Plan. The City is currently faced with deciding whether to proceed with requests to amend the General Plan. These requests have been submitted by development project applicants for the above projects and are part of the City Council's "Gatekeeper Process." The current General Plan contains development "caps" for the Downtown Precise Plan ("DTPP") area. The current cap for office space in the DTPP area is 574,667 square-feet, of which 4,492 square-feet is available. The three projects described above, in total, would amount to 604,000 square-feet of office space to the DTPP area.

At this early stage of the development process, the environmental impacts of the three projects are unknown, but will be evaluated if the City Council decides to "initiate" a General Plan Amendment, and after the land use application is complete and the project details (the "project description") are finalized. In addition to the General Plan Amendment discussed above, you anticipate the "Gatekeeper Process" for the three projects would also involve zoning amendments to the DTPP, architectural permits, affordable housing plans, and California Environmental Quality Act ("CEQA") documentation decisions. Under the CEQA, each of the projects will be evaluated for potential impacts in a variety of areas, such as air quality, cultural resources, noise, greenhouse gas emissions, and transportation/traffic. With respect to construction, project conditions or mitigation measures will commonly address such matters as infrastructure improvements, dust control, and utilizing construction equipment that meets specific emissions standards, but this has yet to be determined.

Substantively, the City Council will evaluate each project separately, examining each project's individual merits, rather than evaluating the projects together. Procedurally, the City Council can take action with respect to the General Plan amendment(s) either all at once or separately.

ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 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 certain specified economic interests. (Section 87103.) Among those specified economic interests are:

- (a) Any business entity in which the public official has a direct or indirect 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.

In our original advice letter, we noted—based on the facts provided—that Mayor Howard had an ownership interest in the LLC due to the Note she still held, as well as a source of income interest in the LLC based on the quarterly interest payments she and her husband received. Since then, however, you have clarified that Mayor Howard did not sell her ownership interest in the LLC to the LLC, but to a group of ten individuals (via seven revocable trusts)—the Buyers. You further indicated that the Note was repaid in full on September 30, 2020, after our initial letter was issued. Accordingly, while Mayor Howard does not have a source of income interest in the LLC, she does have source of income interests in the Buyers, who presumably each paid her \$500 or more in paying off the \$362,688.93 Note. The Note having been repaid in full on September 30, 2020, Mayor Howard will continue to have source of income interests in the Buyers until October 2021.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).” Neither the Buyers nor the LLC and its real property are explicitly involved in the governmental decisions at issue.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[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. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a source of income is material if the source is an individual and the official

knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the materiality standards in Regulation 18702.1.

Under Regulation 18702.1, the reasonably foreseeable financial effect of a governmental decision on a business entity interest is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000;
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500; or
- The official knows or has reason to know that the entity has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

(Regulation 18702.1(a)(2)-(4).)

In our initial letter, we wrote:

Based on the facts provided, we do not currently have sufficient information to analyze the effects of the decisions on the LLC's annual gross revenues or the value of its assets or liabilities. However, it appears reasonably foreseeable the effects may be substantial. Moreover, even without considering the effect on the LLC's annual gross revenues or the value of its assets or liabilities, individually, and collectively, there is clear and convincing evidence of a substantial effect on the LLC's real property as a result of the three development projects. Each of the projects would involve the creation of large buildings bringing a significant increase in the amount of office-space in the area. At a minimum, the construction of the new buildings (in total effectively doubling the office-space in the area), the inherent increase in foot traffic/walk-up business, an increase in competition for the Hotel due to a significant increase in affordable/workforce/below-market-rate housing units, and an increase in nearby parking, would all contribute to a change in the market value and income-producing potential of the LLC's real property. Similarly, the Chase Project's introduction of 15,000 additional square feet of retail space would also contribute to a change in market value of the LLC's commercial real property. Additionally, regarding the Wells Fargo Project, the construction of the building located across the street from the LLC's property would undoubtedly affect the LLC's property views and noise levels. Accordingly, under the Act, Mayor Howard is disqualified from taking part in the "Gatekeeper Process" for the three projects at

issue, including decisions on whether to amend the General Plan to permit additional office-space so that project development may proceed.

The above analysis remains applicable, despite the new and clarifying facts you have provided. Mayor Howard has source of income interests in individuals who each, in turn, have an interest in the LLC. The LLC's real property, the Hotel, would be substantially affected by the decisions at issue. Accordingly, under the Act, Mayor Howard continues to be disqualified from taking part in the decisions.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:aja