



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 24, 2020

Joseph D. Smith, AICP
Director
City of Del Mar
Planning & Community Development

Re: Your Request for Advice
Our File No. A-20-109

Dear Mr. Smith:

This letter responds to your request for advice 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.

QUESTION

Does the Act permit you, as the Planning Director for the City of Del Mar, to take part in a decision to approve a tree removal permit application, when the tree in question is not visible, but located within 500 feet from a house you rent?

CONCLUSION

Yes, under the Act, the removal of a tree not visible from your rental house would have no effect on the property, including your use and enjoyment of the property. Therefore, the tree removal permit application does not present a disqualifying conflict of interest under the Act.

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 AS PRESENTED BY REQUESTER

You are the Planning Director for the City of Del Mar (“City”). You have approval authority for certain minor-level discretionary permits, such as administrative review permits, tree removal permits, sign permits, and encroachment permits. You recently moved into Del Mar and are renting a house. You have no other financial interest, including land, located in the City. Recently, you were presented with a tree removal permit application for your signature. The tree at issue is located up the street from the house you rent. It is not within view of the property, but is located within 500 feet of the property. You are seeking formal advice as to whether this would present a disqualifying conflict of interests under the Act.

ANALYSIS

Under Section 87100 of the Political Reform Act (“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 economic interests, including any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.²

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).” Your rental house is not explicitly involved in the tree removal permit application at issue here.

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.”

Assuming your house rental is for a period longer than month-to-month, it qualifies as an economic interest in real property. With respect to leased real property, Regulation 18702.2(c) provides: The reasonably foreseeable financial effects of a governmental decision on any real

² A leased property that is month-to-month does not qualify as an economic interest. (Regulation 18233.)

property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

Here, the approval of a tree removal permit would not change the termination date of the lease, increase or decrease the potential rental value of the property, or change your actual or legally allowable use of the property. Further, given that you have no view of the tree from your property, it appears it would not change your use and enjoyment of the property either. Accordingly, your approval or rejection of the tree removal permit application would not present a conflict of interest under the Act.

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