



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

October 6, 2020

David M. Snow  
Assistant City Attorney  
City of Beverly Hills  
350 South Grand Ave  
37th Floor  
Los Angeles, 90071

Re: Your Request for Advice  
**Our File No. A-20-116**

Dear Mr. Snow:

This letter responds to your request for advice on behalf of Beverly Hills Mayor Lestor Friedman, City Councilmember John Mirisch, and City Attorney Laurence Wiener, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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.

## QUESTIONS

1. Under the Act, may City Attorney Wiener and Councilmember Mirisch take part in decisions related to the potential approval of a “Mixed-Use Overlay Zone” that would permit mixed-use properties to be developed on certain parcels, including parcels within 500 feet of residential real properties owned by City Attorney Wiener and Councilmember Mirisch, respectively?
2. Under the Act, may Mayor Friedman take part in the Overlay Zone decisions, given that he leases commercial real property and operates his business within 500 feet of property that would be within the Overlay Zone?

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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.

## CONCLUSION

1. Yes, City Attorney Wiener and Councilmember Mirisch may take part in decisions related to the Overlay Zone because any effect the Overlay Zone might have on their nearby residential real properties is indistinguishable from the effect the Overlay Zone would have on the public generally, given that 38% of the jurisdiction's residential real property units are located within 500 feet of the Overlay Zone.
2. Yes, Mayor Friedman may take part in decisions related to the Overlay Zone because although redevelopment of solely-commercial property into mixed-use property would be possible if the Overlay Zone is implemented, there is nothing indicating the establishment of the Overlay Zone would change the termination date of his leased property, increase or decrease its potential rental value, change its actual or legally allowable use, or impact the Mayor's use and enjoyment of the property. Likewise, there is nothing indicating the decision would have a reasonably foreseeable, material financial effect on the Mayor's business, which operates out of the property.

## FACTS AS PRESENTED BY REQUESTER

In the coming weeks, the City Council for the City of Beverly Hills ("City") will be considering the adoption of a Mixed-Use Overlay Zone ("Overlay Zone"). As drafted, the Overlay Zone would permit mixed-use development, consisting of commercial and residential uses within one structure if the development meets specific standards. The Overlay Zone expands options for property owners who own commercially-zoned properties – essentially allowing them to propose new developments that either comply with the new mixed-use regulations contained in the Overlay Zone or comply with the underlying commercial use regulations.

For the most part, the development standards for mixed-use buildings included in the Overlay Zone allow for the same building envelope (i.e., mass and form) as the underlying commercial use regulations. The primary distinction is that the Overlay Zone allows for some of the floor area in a new building to be used as residential units (not just for commercial space). In addition, the draft Overlay Zone establishes height limits for a mixed-use building that are different than the height limits for a commercial-only building.

Commercial development in the area that would be subject to the Overlay Zone is generally limited to three stories and 45 feet in height either by right or with a use permit. An area along Olympic Boulevard to the north of Councilmember Mirisch's property currently is subject to by right height limit of the lesser of 2 story or 35 feet with a maximum density of 1.33 to 1, but if certain findings are made, a condition use permit could be approved to allow a structure up to 3 stories and 45 feet and/or a density of up to 2 to 1 could be approved. (Beverly Hills Municipal Code § 10-3-1632 B.)

Under the Overlay Zone, the height of a mixed-use building is based upon the heights allowed on neighboring residential properties. For example, a mixed-use project in the Overlay Zone on a site that is adjacent to a multi-family district allowing five stories could be taller than a mixed-use project in the Overlay Zone on a site that is adjacent to a multi-family district allowing only three or

four stories or adjacent to a single-family zone. The draft ordinance contains the following height limitations:

- Projects adjacent to single family zones or three-story multi-family zones are limited to three stories/45 feet
- Projects adjacent to four story multi-family zones are limited to four stories/45 feet
- Projects adjacent to five story multi-family zones or other commercial properties are limited to five stories/55 feet

The height limit in most of the underlying commercial district is currently three stories/45 feet.

Councilmember Mirisch owns and occupies a single-family residence located within approximately 200 feet from commercial properties that would be subject to Overlay Zone under the draft Ordinance. Councilmember Mirisch's property would not be subject to the Overlay Zone. City Attorney Wiener owns and occupies a single-family residence located within approximately 50 feet from commercial properties that would be subject to the Overlay Zone under the draft Ordinance. The City Attorney's property would not be subject to the Overlay Zone. Thirty-eight percent of all residential units within the City are located within 500 feet of properties that will be subject to the Overlay Zone.

Mayor Friedman is an attorney by profession and has a leasehold interest in an office space through August 2021. Under the draft ordinance, the Overlay Zone would not apply to the property where the Mayor leases office space. However, the Overlay Zone would apply to properties across the street from the property where the Mayor leases office space, including commercial properties within both 500 and 1,000 feet of the Mayor's office space.

With respect to the properties near Councilmember Mirisch's and City Attorney Wiener's residential real properties, you state "the properties that would be subject to the Overlay Zone already have the potential for the commercial development at a similar intensity as the proposed mixed-use development, at the same three story and 45 foot height under the proposed Overlay Zone, and are situated along existing commercial corridors." Similarly, with respect to Mayor Friedman's leasehold interest, you state that although "it is possible that nearby properties (across the street) may choose to use the new mixed use regulations to develop their properties in the future (instead of using the existing commercial regulations), . . . [i]t likely would be many years, if ever, before already built-out commercial properties would be redeveloped in a manner and quantity that would impact the commercial office market in the City and it does not appear that any future project in proximity to the leased space on a main commercial corridor would affect the Mayor's 'use and enjoyment' of his office space."

## 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:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- 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(a)-(c).) City Attorney Wiener and Councilmember Mirisch each have a real property interest in the respective residence each owns and occupies. Mayor Friedman has a real property interest in the commercial space he leases, as well as an interest in his legal firm as a business interest and source of income.<sup>2</sup>

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).” None of the real property interests at issue here are explicitly involved in the Overlay Zone decision.

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.”

#### City Attorney Wiener and Councilmember Mirisch

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property

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<sup>2</sup> We note that Mayor Friedman may also have interest in clients of his law firm as sources of income. However, because you have not identified any clients, we do not analyze the Mayor’s potential disqualification resulting from a financial effect on the Mayor’s interests in clients as sources of income. (See Section 87103(c).) If the decision may implicate a client, Mayor Friedman should seek additional advice.

line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)

Under Section 87103, a governmental decision's reasonably foreseeable, material financial effect on a public official's economic interest only constitutes a disqualifying financial interest if it is "distinguishable from [the decision's] effect on the public generally . . . ." 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 the official's financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) As amended on September 17, 2020, a "significant segment of the public" includes "[a]t least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence." (Regulation 18703(b)(2).)

Councilmember Mirisch and City Attorney Wiener both own residential real properties less than 500 feet from property that would be within the Overlay Zone. As noted above, under Regulation 18702.2(a)(7), the reasonably foreseeable financial effect of a governmental decision on an official's real property interest (other than a leasehold interest) is presumably material when the decision involves property located 500 feet or less from the official's property. However, analysis of Regulation 18702.2(a)(7) is not necessary here because, in any case, the "public generally exception" is applicable.

As discussed, a governmental decision affects a "significant segment of the public" when it affects "[a]t least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence." (Regulation 18703(b)(2).) Thirty-eight percent of all residential units within the City are located within 500 feet of properties that will be subject to the Overlay Zone and there is nothing indicating City Attorney Wiener's or Councilmember Mirisch's respective residential real properties would be uniquely affected. Thus, it is apparent that any potential financial effect the Overlay Zone decision might have on the residential real property owned by Councilmember Mirisch and City Attorney Wiener would be indistinguishable from the financial effect on the public generally.<sup>3</sup> (Regulation 18703(a).) Accordingly, neither official is prohibited under the Act from taking part in the Overlay Zone decision.

#### Mayor Friedman

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business that is a source of income, 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. (Regulations 18702.1(a)(2) and 18702.3(a)(4).)

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<sup>3</sup> As of writing this advice letter, Regulation 18703's recent amendment is still under review by the Office of Administrative Law and, as such, may not have taken effect before the City Council considers the Overlay Zone decision. Accordingly, we further note that the effect on 38 percent of all residential units within the City would also meet the "significant segment of the public" definition under Regulation 18703(b)(2) prior to amendment, which included 25 percent or more of all residential real property within the official's jurisdiction.

The reasonably foreseeable financial effect on a business entity is also material if 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. (Regulation 18702.1(a)(3).)

The reasonably foreseeable financial effects of a governmental decision on any real 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.

(Regulation 18702.2(c).)

Mayor Friedman is an attorney who leases commercial real property across the street from real property that would be affected by the Overlay Zone. Imposing the Overlay Zone would not change the termination date of the lease, nor would it change Mayor Friedman's actual or legally allowable use of the property. Hypothetically, approving the imposition of the Overlay Zone could impact Mayor Friedman's use and enjoyment of the property, or increase or decrease the potential rental value of the property, if, for instance, approval of the Overlay Zone spurred nearby development of mixed-use properties, affecting the market value of surrounding properties or bringing significant construction to the area. However, although redevelopment of commercial space into mixed-use space of a greater height (from a three-story limit for commercial space to a five-story limit for mixed-use space) would be possible, there is nothing indicating that redevelopment close to Mayor Friedman's leased property is planned or imminent. Accordingly, under the Act, Mayor Friedman does not have a disqualifying conflict of interest based on his leasehold real property interest.

Mayor Friedman also has an economic interest in his business as an attorney operating out of his leased office space. Again, however, with only the possibility of mixed-use redevelopment and no apparent planned development near the leased property, it does not appear that the potential approval of the Overlay Zone would result in a financial effect on Mayor Friedman's business that would meet the financial thresholds contained in Regulation 18702.1(a)(2)-(3), described above, in order for the effect to be considered "material." Accordingly, under the Act, Mayor Friedman also does not have a disqualifying conflict of interest based on his business entity interest.

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

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