



FAIR POLITICAL PRACTICES COMMISSION

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April 3, 2014

Mayor Rush Hill
c/o Mr. John Ramirez, Esq.
Rutan & Tucker, LLP

REDACTED

Re: Warning Letter
FPPC Case No. 12/24

Dear Mayor Hill:

The Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (the “Act”).¹ This letter is in response to a sworn complaint received in January 2012, which alleged conflicts of interest on your part—as a Newport Beach City Councilman and member of the Neighborhood Revitalization Committee (“NRC”). After investigation, the FPPC is closing its file on this matter with a warning letter as discussed below.

The complaint includes allegations about multiple parcels of real property in which you had an ownership interest in 2011. However, some of the allegations do not appear to rise to the level of a violation of the Act. This warning letter focuses on a conflict of interest that arose by virtue of your ownership interest in real property located within the vicinity of the West Newport Beach/Balboa Boulevard revitalization project.

Section 87100 provides: “No 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.”

¹ The 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.

Generally, a public official has a disqualifying conflict of interest when it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulations 18700-18709.) Economic interests include a public official's interest in real property. (Section 87103, subd. (b); Regulation 18703.2.)

The financial effect of a governmental decision is presumed to be material if the real property is located within 500 feet of the proposed boundaries of the area that is the subject of the governmental decision. (Regulations 18704.2, subd. (a)(1); and 18705.2, subd. (a)(1).) This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have *any* financial effect on the real property. (Regulation 18705.2, subd. (a)(1).) This is known as the "five hundred foot rule" or the "one penny rule."

Section 87105 provides that upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, the public official in question must do all of the following:

1. Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
2. Recuse himself from discussing and voting on the matter (or otherwise acting in violation of Section 87100).
3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

In this case, our investigation found that:

- In the first half of 2011, the Newport Beach City Council established the NRC and appointed you to be one of the committee members.
- At the time, you were a member of the city council and a licensed architect.
- The purpose of the NRC involved making recommendations to the city council as to which areas of Newport Beach were the highest priority for revitalization.
- On or about May 12, 2011, at an NRC meeting, you discussed your potential conflict of interest with some areas being considered for revitalization and stated that you were planning to request advice from the FPPC. (However, it does not appear that you requested advice until August.)
- On or about June 16, 2011, at an NRC meeting, you made a motion to approve recommendations for prioritization of several areas. The motion passed unanimously.
- On or about June 28, 2011, the city council approved the NRC's recommendations. You were among those who voted in favor of the recommendations, which designated "West Newport Beach – Balboa Boulevard, West Coast Highway" as one of the "Priority 1" areas for "Fiscal Year 2011/12."

(One of your fellow city councilmen recused himself from this vote because he owned property within 300 feet of the medians on Coast Highway.)

- At the time of your vote, you knew or should have known that the “West Newport Beach – Balboa Boulevard, West Coast Highway” project would involve road beautification along Balboa Boulevard within 500 feet of real property that you owned on Balboa Boulevard. The exact parameters of the road beautification were not a certainty, but they were reasonably foreseeable to you at the time.
- Your actions helped pave the way for a capital improvement project (with required funding in excess of two million dollars), which includes: “greening” of Balboa Boulevard through median expansion and planting, parkway and bulb-out planting, green screens at curb and residential walls, and improving pedestrian experience along Balboa Boulevard.

Your above-described conduct amounted to a conflict of interest within the meaning of Section 87100 and the “five hundred foot rule.”

However, in August 2011, you sent a written request for advice to the FPPC in which you asked about the potential for conflicts of interest involving multiple parcels of real property that you owned, including your real property on Balboa Boulevard that is described above. It appears that you began to recuse yourself from further voting on this matter at some point after this—before more substantial decisions were made regarding funding and contracts.² Also, you maintain that you had reason to doubt that your real property interests would be affected by the beautification of Balboa Boulevard because the boundaries of the project area were in flux in 2011, and landscaping on the section of Balboa Boulevard upon which your property fronts does not need much, if any, improvement.

Even though we are closing this matter with a warning letter, the information in this case will be retained and may be used against you should an enforcement action become necessary due to newly discovered information and/or failure to comply with the Act in the future. Failure to comply with the provisions of the Act in the future may result in monetary penalties of up to \$5,000 per violation.

Please note that our Legal Division and Technical Assistance Division can provide advice and assistance for issues which may arise in the future. You may contact either division by calling our toll-free number: 1-866-ASK-FPPC (1-866-275-3772). Also, you may refer to the FPPC website at www.fppc.ca.gov for current information.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable

² The one exception to this appears to be the city council meeting of November 22, 2011, where you voted in favor of funding for project management, analytics, facilitation, design services, economic/parking analyses, civil engineering/surveying, landscaping, and other miscellaneous services related to various priority areas for revitalization. One of the areas was West Newport Beach.

cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. Please feel free to contact me at (916) 322-5660 with any questions you may have regarding this letter.

Very truly yours,

REDACTED

Neal P. Bucknell
Senior Commission Counsel
Enforcement Division

cc: Mr. Robert C. Hawkins, Esq.