



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 24, 2020

Arnold M. Alvarez-Glasman
City Attorney
City of Norwalk
13181 Crossroads Pkwy. North
Suite 400 - West Tower
City of Industry, CA 91746

Re: Your Request for Advice
Our File No. A-20-148

Dear Mr. Alvarez-Glasman:

This letter responds to your request for advice on behalf of Norwalk City Councilmember Margarita Rios (“Councilmember Rios”) 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

Under the Act, may Councilmember Rios take part in City Council decisions involving or affecting the redesignation and, ultimately, the development of a vacant 51-acre parcel of land located behind Councilmember Rios’s residence into park land?

CONCLUSION

No, under the Act, the development of the parcel into park land would have a reasonably foreseeable, material financial effect on Councilmember Rios’s property and, accordingly, she is prohibited from taking part in decisions contributing to the development of the parcel.

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

The City of Norwalk (“City”) is located in Los Angeles County. The City has a current population of approximately 103,949 residents and a geographical size of 9.75 square miles. Margarita Rios is currently an elected member of the Norwalk City Council (“City Council”). Councilmember Rios and her husband (who is not a public official) own their residence in Norwalk (“Rios Property”). The estimated fair market value of the Rios Property exceeds the \$2,000 direct interest in real property threshold set forth in Government Code Section 87103(b).

The City is currently evaluating the potential development of two separate properties adjacent to the Rios Property. These prospective property developments include the following:

1. Former Defense Fuel Support Point (“Tank Farm”): a currently vacant 51-acre site that was formerly an above ground fuel storage tank facility owned by the U.S. Air Force. The Tank Farm has been closed since 2001 and has undergone a clean-up of the site.
2. Holifield Park: a neighborhood park with playground facilities, baseball/softball fields, and open space.

The Rios Property line is immediately adjacent to the Tank Farm and is within 500 feet from the Tank Farm property line. The Rios Property is also located within 500 feet from the edge/property line of Holifield Park. The backyard of the Rios Property is the portion adjacent to the Tank Farm and Holifield Park properties. The street where the Rios Property is located is a residential street far from the main thoroughfares that surround or border the Tank Farm and Holifield Park sites. In addition to the natural buffer of the current configuration of the two properties adjacent to the Rios Property, there is a 50-foot roadway on the Tank Farm property that separates the Rios Property and the Tank Farm. This service road would remain in place so that subsurface monitoring equipment would not be disturbed. Both the Tank Farm and Holifield Park are visible from the backyard of the Rios Property.

The City is considering developing an unrelated property located approximately 1.5 miles from the Rios Property. If the City moves forward with the development of the related site, it may need to redesignate the Tank Farm from vacant land to park land use due to the potential use of park land adjacent to the unrelated site for a mixed-use development. California law requires that when a governmental agency utilizes existing park land for alternative uses, the City may be required to designate other land to substitute for the developed park land. Accordingly, the City Council may be faced with the decisions of whether to designate the Tank Farm as new park land for the City and/or whether to expand Holifield Park for additional park use. The City intends to prepare a General Plan Amendment that would change the land use designation to Open Space across the entire 51 acres of the Tank Farm.

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 is “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” Councilmember Rios has an economic interest in her real property.

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).” Councilmember Rios’s real property is not explicitly involved in the governmental decision 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 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 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).) Here, there is not clear and convincing evidence that the decision will not have any measurable impact on the official’s property. The redesignation of the Tank Farm property would allow for 51 acres of currently vacant land, formerly used for tank fuel storage, to be redeveloped into park land, which may include the construction of parking lots, sports fields and courts, picnic areas, restroom facilities, and additional infrastructure. Both the redevelopment process, involving a significant amount of construction, as well as the finished expansion of Holifield Park would foreseeably have an impact on the use and enjoyment of the Rios Property, as well as the property value. At a minimum, the redevelopment of Tank Farm would certainly affect the view from the Rios Property, given that both the Tank Farm and Holifield Park are visible from the Rios Property’s backyard.

The redesignation of the Tank Farm and/or the expansion of Holifield Park would make possible and mark a significant step in the development process of 51 acres of vacant land located behind the Rios Property. This decision would have a reasonably foreseeable, material financial effect on the Rios Property and, therefore, the Act prohibits Councilmember Rios from taking part in the decision. Additionally, given that it is foreseeable the development of land located 1.5 miles away from the Rios Property would necessitate the redesignation of the Tank Farm and/or expansion of Holifield Park, Councilmember Rios is prohibited from taking part in decisions related to the development of that land as well.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "KC" followed by a stylized flourish.

By: Kevin Cornwall
Counsel, Legal Division

KMC:aja