



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 19, 2021

Amy R. Webber  
Deputy City Attorney  
City of Long Beach  
411 W. Ocean Blvd., 9th Floor  
Long Beach, CA 90802

Re: Your Request for Advice  
**Our File No. A-21-035**

Dear Ms. Webber:

This letter responds to your request for advice 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.

### QUESTION

May Councilmember Allen take part in City Council decisions related to the lease and potential renovation of the Long Beach Convention Center and lease and potential development of the adjacent “Elephant Lot,” both of which are located within 500 feet of her residential real property?

### CONCLUSION

Under the Act, it is reasonably foreseeable that the decisions would have a material financial effect on Councilmember Allen’s real property and, consequently, she is disqualified from taking part in decisions related to the projects.

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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.

## FACTS AS PRESENTED BY REQUESTER

The City of Long Beach (“City”) plans to issue a Request for Proposals (“RFP”) for the “visioning” of two City-owned properties. The two planned processes are:

1. An RFP to select the next operator of the Long Beach Convention Center, which could include a long-term lease and possibly major remodeling or alterations to the property; and
2. A plan for the development of a parcel adjacent to the Convention Center, currently used for parking (known as the “Elephant Lot”).

The Convention Center and the Elephant Lot comprise approximately forty acres in the coastal area in Council District 2. The Convention Center is owned by the City and is currently operated by SMG, Inc. under a long-term agreement. In the past, the Convention Center has been a popular venue for conventions and meetings and has generated approximately \$500,000 in annual revenue for the City. In order to maintain its competitive edge, especially in post-COVID times, the City wants to solicit proposals for an operator/lessor who would undertake renovations to the Center to enhance its marketability and functionality. The adjacent Elephant Lot is an approximately thirteen-acre vacant parcel that could accommodate a variety of uses more productive and attractive than parking. It is expected that the entire planning process for the proposed improvements may take several years to complete.

City Councilmember Cindy Allen owns two residential condominiums in the 545-unit Aqua development, located within 500 feet of the Convention Center and the Elephant Lot. One is used as her personal residence and one is occupied by her daughter.

## 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.” (Section 87103(b).) Councilmember Allen has a real property interest in the two condominiums she owns.

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 Allen’s condominiums are not explicitly involved in the 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 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).)

It is reasonably foreseeable that the potential renovation of the Convention Center and renovation/development of the Elephant Lot financially affect nearby properties. Because Councilmember Allen’s condominiums are located less than 500 feet from those parcels, and in the absence of clear and convincing evidence of no measurable impact on Councilmember Allen’s properties, the reasonably foreseeable financial effects are considered material. Accordingly, the Act prohibits Councilmember Allen from taking part in decisions related to the proposed development sites.<sup>2</sup>

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:dkv

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<sup>2</sup> We note that in some instances minor decisions related to the properties may be segmented from other decisions if not inextricably interrelated to more substantial decisions implicating the properties. In these cases, Councilmember Allen may be able to take part in the decisions as provided in Regulation 18706. However, whether a decision may be segmented will depend on the specific nature of the decision and is a determination that can be made only on a case-by-case base. At this time, there is no indication that the decisions identified can be segmented. If Councilmember Allen needs additional assistance regarding the possible segmentation of a specific decision, she may wish to seek additional advice identifying the decision in question.