



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
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May 13, 2021

Christopher Diaz  
City Attorney  
Town of Colma  
2001 N. Main Street, Suite 390  
Walnut Creek, CA 94596

Re: Your Request for Advice  
**Our File No. A-21-057**

Dear Mr. Diaz:

This letter responds to your request for advice on behalf of Colma City Councilmember John Goodwin 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

Under the Act, may Colma City Councilmember John Goodwin take part in the City’s decisions regarding the potential sale of a City-owned townhome, given that he owns a townhome located 40 feet away?

### CONCLUSION

No. Under the Act, Councilmember Goodwin has a disqualifying conflict of interest given the proximity of his home, as there is no clear and convincing evidence that the sale of the townhome would not affect the market value of his own property.

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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 Town of Colma (“Town”) owns one townhome unit in a 63-unit private homeowners’ association development located in the Town. The Town’s unit is currently occupied by a renter. In the future, the City Council will consider whether to sell the unit, and once an offer is received, the City Council will negotiate with the potential buyer. The Town has determined that the sale of the Town’s unit is exempt from the requirements of the Surplus Land Act. The Town’s unit would be sold on the open market without any improvements or changes in use prior to sale. The proceeds of the sale would be deposited into the Town’s general fund.

City Councilmember John Goodwin owns and resides in one of the other private townhome units in the development, and his unit is located 40 feet from the Town’s unit. The Councilmember’s unit is separated from the Town’s unit by a different owner’s unit. The Town’s unit is not visible from the Councilmember’s unit because it is situated parallel to the Councilmember’s unit, and the line of sight from the Councilmember’s unit is blocked by an elevated porch that serves as a barrier between units. The Councilmember’s unit includes three bedrooms, two and one-half bathrooms, and a three-car garage, making it significantly larger than the Town’s unit which is a two-bedroom, two-bath unit with smaller square footage.

In follow-up emails, you clarified that, per the City Manager, the Town’s original goal in purchasing the residential unit was to lease it out as affordable housing. However, the Town is now looking to sell the property to replace lost reserves due to the pandemic and “would also like to directly get out of the affordable housing business.”

## 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 “[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).)

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 Goodwin’s real property is not explicitly involved in the decision 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."

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, Councilmember Goodwin lives within 40 feet of the Town-owned townhouse the City Council would potentially decide to sell and subsequently negotiate a selling price. Although the townhouse differs somewhat in size compared to Councilmember Goodwin's own property, the properties are similar enough that it is not clear whether the properties are in competition with one another. Further, even if the properties were not in direct competition with one another, the sale of the Town-owned townhouse could still impact the market value of Councilmember Goodwin's property by effectively establishing a higher floor for the market value of the larger home or by eliminating the Town-owned townhouse's potential use as affordable housing. Accordingly, we do not believe there is clear and convincing evidence the sale of the property and decision on sale price would have no measurable impact on Councilmember Goodwin's property. Under the Act, Councilmember Goodwin has a conflict of interests based on his real property and must recuse himself from the City Council's decisions on the matter.<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> Please note that when a public official who holds an office specified in Section 87200, including a city councilmember, has a disqualifying conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.)