



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 18, 2021

Leticia Ramirez
City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: Your Request for Advice
Our File No. A-21-074

Dear Ms. Ramirez:

This letter responds to your request for advice 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

Does the Act prohibit Mayor Pro Tem Vargas from taking part in decisions concerning a proposed specific plan given her solely owned company received over \$500 in income from a company whose owner has a 26% ownership interest in 12 acres of property located within the proposed specific plan area?

CONCLUSION

Yes. Because Mayor Pro Tem Vargas has a source of income interest in the owner of real property within the proposed specific plan area and any decision concerning that specific plan would have both a foreseeable and material financial effect on the owner’s real property, Mayor Pro Tem Vargas has a disqualifying conflict of interest and may not take part in such decisions.

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

You are the City Attorney for the City of Tracy seeking advice on behalf of Mayor Pro Tempore Veronica Vargas.

In 2002, the City approved a specific plan for 538 acres of land known as Tracy Gateway and annexed the land into the City. The 2002 Tracy Gateway Specific Plan included a concept development plan that contained a business park with office buildings, research and development facilities, retail uses, a hotel, and other commercial uses around a golf course.

Following annexation to the City, a final map affecting a portion of the area was approved. However, no significant development has occurred in the Tracy Gateway. In response to the lack of development, in 2018 the City Council retained a consultant to help property owners and the City re-evaluate land uses in the area and develop a new specific plan for the project under the new name of Westside Ranch Specific Plan. Administrative drafts of a new specific plan and a corresponding environmental impact report were completed in mid-2020. The draft specific plan included a land use plan that was a significant departure from the development plan included in the 2002 specific plan. The City is currently undertaking a public engagement process regarding the draft specific plan. The final specific plan will be presented to Council for approval in the near future.

Mayor Pro Tem Vargas is the chief executive and sole owner of Agora Land Consulting, Inc., a land entitlement consulting, design, planning, remodeling, permitting, and owner representative consulting business. Agora Land Consulting assists clients with projects outside of the City of Tracy. In 2020, Agora Land Consulting, Inc. received over \$500 in income from Patterson Petroleum LLC. Nachhattar Singh Chandi owns a 50% share of Patterson Petroleum LLC. Mr. Chandi, together with his wife, own approximately 26% interest in 12 acres of property located within the Tracy Gateway area.

Out of an abundance of caution, when the City Council received an update on the draft specific plan in April 2021, Mayor Pro Tem Vargas recused herself from participating in that item.

ANALYSIS

Under Section 87100, a public official may not make, participate in making, or use their official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).)

Section 87103 identifies interests from which a conflict of interest may arise including, as relevant to your facts: 1) “[a]ny business entity in which the public official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)); and 2) “[a]ny source of income . . . aggregating \$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(c)).²

² In addition, a public official’s personal finances are deemed to be directly involved in a governmental decision that will have any financial effect on his or her personal finances or those of his or her immediate family. (Section 87103.)

Here, Mayor Pro Tem Vargas has a business interest in Agora Land Consulting as its chief executive and sole owner. Also, assuming she received \$500 or more within 12 months prior to the relevant decision, she would have a source of income interest in Patterson Petroleum. Moreover, Regulation 18700.1(a)(2) provides that, in addition to a source of income interest in any business entity from which the official has received income of \$500 or more within the 12 months before the relevant decision is made, the official also has a source of income interest in any individual owning a 50 percent or greater interest in that business entity...” (Regulation 18700.1(a)(2)(A).) Because Mr. Chandi owns a 50% share of Patterson Petroleum, Mayor Pro Tem Vargas has a source of income interest in that individual.

Accordingly, Mayor Pro Tem Vargas has an identifiable interest in her business and sources of income interests in Patterson Petroleum and Mr. Chandi.

Foreseeability and Materiality

The standard for foreseeability varies depending on whether an interest is explicitly involved in the decision. Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An official’s financial interest is explicitly involved in a governmental decision if the interest is a named party in, or subject of, the decision. 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, or if the decision affects a real property interest described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).) For a financial interest that is not explicitly involved in a decision at issue, the financial effect of the decision on an official’s interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).) In this case, Mayor Pro Tem Vargas’s interest in Mr. Chandi as a source of income is not explicitly involved in the decisions at issue.

Nonetheless, for an interest in an individual not explicitly involved in the decision, Regulation 18702.3(a)(2) provides a decision’s effect on an official’s source of income interest in an individual is material if the official “knows or has reason to know that the individual has an interest in real property and ... [t]he property is a named party in, or the subject of, the decision as defined in Regulations 18701(a) and 18702.2(a)(1) through (6).” (Regulation 18702.3 (a)(2)(C)(i).) As set out in Regulation 18702.2(a)(1), property is the subject of the decision if the decision “[i]nvolves the adoption of or amendment to a development plan or criteria applying to the parcel.” (Regulation 18702.2(a)(1).)

Here, Mayor Pro Tem Vargas knows Mr. Chandi and his spouse own approximately 26% interest in 12 acres of property located within the specific plan area at issue, and Mr. Chandi’s property is the subject of any decision concerning the proposed specific plan under Regulation 18702.2(a)(1). Accordingly, because any decision concerning the proposed specific plan would have both a foreseeable and material financial effect on Mayor Pro Tem Varga’s interest in Mr. Chandi resulting from the effect on Mr. Chandi’s real property, Mayor Pro Tem Vargas has a

disqualifying conflict of interest under the Act and may not take part any decision concerning the proposed specific plan where she received \$500 or more within 12 months prior to the decision.³

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*

Jack Woodside
Senior Counsel, Legal Division

JW:dkv

³ Under the Act, Mayor Pro Tem Vargas must recuse herself from decisions pursuant to the recusal requirements outlined in Regulation 18707, which require a public identification of the interest and leaving the room for the duration of the decisions and discussions by the City Council.