



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 1, 2021

Katherine Wisinki
Assistant City Attorney
City of Brentwood
150 City Park Way
Brentwood, CA 94513

Re: Your Request for Advice
Our File No. A-21-090

Dear Ms. Wisinki:

This letter responds to your request for advice on behalf of Brentwood Mayor Joel Bryant 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 Mayor Bryant take part in decisions regarding the potential extension of a franchise agreement for a private corporation’s continued use of an underground natural gas pipeline, a portion of which is located between 500 and 1,000 feet from Mayor Bryant’s residence?

CONCLUSION

Yes, decisions regarding the potential extension of the franchise agreement do not present a disqualifying conflict of interest under the Act because the decision would not change the development potential, income producing potential, highest and best use, character, or market value of Mayor Bryant’s real property.

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

Brentwood (“City”) is a general law city situated in Contra Costa County. Exercising the authority granted to cities under Chapter 2 (“Gas, Oil, Electric, and Water Franchises by Municipalities”) of Division 3 (“Public Utility Franchises by Local Governments”) of the California Public Utilities Code, the City granted a franchise to California Resources Production Corporation, a California corporation (“CRPC”), to operate and maintain an existing underground pipeline within the City’s municipal boundaries in 2017 (the “Pipeline”). The Pipeline is some 12” in diameter and had been in existence for approximately 26 years when the 2017 action was taken. A variety of companies had been granted franchises for use of the Pipeline prior to that time. The terms and conditions of CRPC’s use of the Pipeline was documented in a franchise agreement between the City and CRPC (the “Franchise Agreement”) and authorized via adoption of Ordinance No. 985.

In early 2021, prior to the expiration of the Franchise Agreement, CRPC communicated to the City its desire to seek a ten-year extension to the Franchise Agreement. Under the relevant provisions of the Public Utilities Code, the granting of an oil or gas franchise by a municipality is a multi-step process that requires the City Council’s adoption of a resolution of intention to grant the same, followed by a noticed public hearing, at which meeting the City Council, if it approves the franchise, must adopt an ordinance authorizing the use (see Public Utilities Code Sections 6201-6302). The City Council also authorizes the execution of a franchise agreement to dictate the terms and conditions of use. As the City’s mayor, Mr. Bryant could vote on the Resolution of Intention and Ordinance, as well as any further matters pertaining to the Franchise Agreement.

As noted above, the Pipeline was constructed many years prior to CRPC’s award of the franchise in 2017. In 1991, the City Council adopted Ordinance No. 482, granting Union Oil Company of California (doing business as Unocal) a 25-year franchise for the construction, installation, maintenance, operation, inspection, protection, repair, replacement, renewal, removal or abandonment in place of an oil and gas pipeline, not to exceed 12” in diameter, generally cutting a northwest to southeast path through the City. Construction of the Pipeline occurred shortly thereafter, resulting in a Pipeline that runs for three miles through the City, at least 4 feet beneath the surface. A portion of the Pipeline was relocated in 2006 to accommodate construction of State Route 4.

As reflected in the 1990 Decennial Census data, Brentwood’s population in 1991 stood at roughly 7,500 people. In the years between the original 1991 granting of the franchise to Unocal and CRPC’s 2021 request to renew the Franchise Agreement, the City developed rapidly. Though the official 2020 Decennial Census data has not yet been released, the California Department of Finance recently released its annual population estimates for all cities and counties in the state; Brentwood’s population is now estimated to be more than 66,000 people.

In the 30 years between 1991 and 2021, residential subdivisions, golf courses, commercial uses, and large-scale infrastructure projects were developed up above and around the Pipeline as the City’s growing population continued to grow. To wit:

- In 1993, a 940-unit single-family residential subdivision (“Shadow Lakes”), which also included an 18-hole golf course, open space, and approximately 5 acres of commercial land, was approved and subsequently constructed and occupied. Shadow Lakes’ southern boundary is

Balfour Road, a major arterial, beneath which the Pipeline runs for approximately one mile. Mayor Bryant's home is within Shadow Lakes and was built as part of this approval.

- In 1993, a 1,031-unit single-family residential subdivision ("Deer Ridge"), which had its own 18-hole golf course, open space, and approximately 4 acres of commercial land, was approved and subsequently constructed and occupied. Deer Ridge's northern boundary is Balfour Road.
- In 1995, a 511-unit single-family residential subdivision ("Summerset") was approved. Built in phases, Summerset likewise included an 18-hole golf course and open space. Its westernmost boundary is now a segment of California State Route 4, alongside of which the Pipeline runs as it heads south.
- In 2004, a 1,250-unit residential subdivision ("The Vineyards") was approved and later constructed. The Vineyards is bordered on the east by State Route 4, and the Pipeline along side of it. Over the course of many years, starting in 1989, the State Route 4 Bypass Authority oversaw the construction of a large, regional transportation project that replaced an outdated vehicle corridor with a new segment of the State Route designed to ease traffic congestion through expanding east Contra Costa County. The Pipeline runs just to the west of the State Route.

In addition to the projects listed above, the Pipeline is likewise flanked in other locations by a variety of commercial and medical uses, public parks, and smaller residential subdivisions. Separately, the City notes that there are other oil, gas, and natural gas pipelines that crisscross Brentwood. These pipelines are operated and maintained by public utilities, such as Pacific Gas & Electric, as well as a host of private companies, such as Chevron and Kinder Morgan. As a result, the existence and operation of a pipeline within 687 feet of Mayor Bryant's home is a feature he has in common with a sizable share of the Brentwood community.

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).)

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)."

Where, as here, 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 more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Here, the City is considering extending its contract with CRPC for a period of ten years, such that CRPC would continue to maintain and operate the oil and gas Pipeline it constructed under the initial 25-year franchise agreement. Though Mayor Bryant's real property interest is not explicitly involved in the contract, it is located with 687 feet of a portion of the Pipeline. Given that the Pipeline has already been in operation for more than two decades, it appears the extension of the franchise agreement would not affect the development potential, income producing potential, highest and best use, or market value of the property. Additionally, given that the Pipeline is at least four feet underground, it also would not change the character of Mayor Bryant's residence by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. Accordingly, the decision would not have a reasonably foreseeable, material financial effect on Mayor Bryant's real property and, therefore, he does not have a disqualifying conflict of interest and may take part in the decision under the Act.

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