



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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July 29, 2021

Gregory G. Diaz  
City Attorney  
City of San Buenaventura  
501 Poli Street  
Ventura, California 93001-2697

Re: Your Request for Advice  
**Our File No. A-21-100**

Dear Mr. Diaz:

This letter responds to your request for advice on behalf of the City of San Buenaventura Deputy Mayor Joe Schroeder 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 Deputy Mayor Schroeder participate in the City Council’s review and possible changes to the City’s short term vacation rental (“STVR”) ordinance where he owns a residence in the Pierpont community, an area that contains the majority of the 125 permitted STVRs in the City?

### CONCLUSION

No. To the extent that the STVR decisions will affect his property or property in the 500 foot to 1,000 foot proximity of his residence, the decisions would have a reasonably foreseeable and material financial effect on his real property interest, and he has not established that the financial effect is indistinguishable from its effect on the public generally.

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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

Deputy Mayor Joe Schroeder was elected to the City Council in November 2020. He owns a residence at 1051 Driftwood Lane. His residence is in the Pierpont community in the coastal section of the City of San Buenaventura. Deputy Mayor Schroeder's real property is eligible for a STVR permit; however, he has never applied for a permit and has never used his property as a short-term vacation rental. He has expressed no interest in doing so as it is his personal residence. Within a 500 foot radius of his residence, there are currently thirteen short-term vacation rental permits. Within a 1,000 foot radius of his residence, there are currently an additional twenty-seven short-term vacation rental permits. In addition, there are three additional permits issued in relatively close proximity to the 1,000-foot radius.

The City allows STVRs for any "residential dwelling unit" by permit to the owner, and currently has 125 permits issued city-wide. The City has approximately 42,000 housing units and a population of 109,000. The majority of the STVRs are in the Pierpont community, which runs along the residential section of the City's coastline. The City plans to examine the entire community in updating its STVR ordinance. However, at this time it is not clear what the focus of the decisions will be, and it is possible that the City Council could leave the current ordinance provisions unchanged, could increase enforcement, add additional regulations, or impose zoning requirements.

You state that the City has no evidence that property values in the Pierpont community have been increased or decreased due to the STVR permits. The permits do provide a potential revenue stream to owners of STVR-permitted residences, but some argument is made that "unneighborly" behavior on the part of STVR guests as well as changes to parking, privacy and noise can decrease the value or desirability of properties located in proximity to STVR-permitted residences.

## ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a)). Relevant to these facts, Section 87103 defines financial interests to include an interest in real property in which the official has a direct or indirect interest of \$2,000 or more (Section 87103(b).)

Regulation 18701 provides the standard to determine the foreseeability of a decision's financial effect on an official's financial interest. Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. (Regulation 18701(a).) 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. (*Ibid.*) 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 the materiality standard for real property financial interests, Regulation 18702.2(a)(1)-(6). (*Ibid.*) Specifically, Regulation 18702.2(a)(5) states that a decision's financial effect is material when it "[i]nvolves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property."

Currently it is unknown the scope of the STVR decisions that will come before the City Council. Deputy Mayor Joe Schroeder has identified a real property interest in his personal residence currently eligible for this type of permit. To the extent that a decision may apply to the official's residence, such as a decision to create a limit on the number of permits allowed in the Pierpont community, his financial interest would be the "subject" of STVR ordinance decisions, and the reasonably foreseeable financial effect of the decision would be material.

In the event that a decision does not apply to his residence, we must examine if the decision will apply to property located near his residence. Regulation 18701(b) provides the foreseeability standard where his property is not the subject of a decision, and states, that a financial effect is reasonably foreseeable if the effect can be recognized as a "reasonable possibility" that is more than hypothetical. Regulation 18702.2(a)(7)-(8) and (b) provides the following materiality standards and provides that the reasonably foreseeable financial effect of the decision on his real property interest is material if the decision:

(7) 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; or

(8) 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.

(b) The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.

Of the 125 existing STVR permits in the City, Deputy Mayor Joe Schroeder's real property is within 500 feet of thirteen and within 1,000 feet of an additional twenty-seven permitted properties. While there may be differing opinions as to whether the proximity of a STVR-permitted residence has a negative impact or positive impact on a real property parcel, it is a reasonable possibility and thus foreseeable, that certain changes to the STVR ordinance would have a financial effect on the value of his property. For example, decisions on limiting the number of vehicles allowed for parking at a STVR would impact the character of a neighborhood. To the extent that any of the above factors in Regulation 18702.2(a)(7)-(8) or (b) apply, the reasonably foreseeable financial effect of the decision will be material as to his financial interest.

#### *Public Generally Exception*

A public official that has a reasonably foreseeable and material financial interest in a decision may still participate if the official demonstrates that the financial effect is indistinguishable from its effect on the public generally. (Regulation 18703.) Under Regulation 18703(a), a decision's financial effect on a public official's financial interest is indistinguishable if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment.

Applicable to these facts, Regulation 18703(b)(1)(B) defines a "significant segment of the public" to include at least 25 percent of all residential real property within the official's jurisdiction. Where the only interest an official has in the decision is the official's primary residence, Regulation 18703(b)(1)(C)(2) defines a "significant segment" as at least 15 percent of residential real property within the official's jurisdiction. Regulation 18703(c)(1) and (2) provide that a decision will have a "unique effect" on a public official's financial interest if it will have a disproportionate effect on the official's real property's development potential, use or income producing potential; or on the official's real property due to its proximity to a project that is the subject of the decision.

Deputy Mayor Joe Schroeder has not established that a significant segment of the public, here at least 15 percent of residential real property in the City, would be affected, due to the uncertain nature of the STVR decisions that may come before the City Council. Additionally, where 40 of the 125 permitted STVR properties are within 1,000 feet of his residence in the Pierpont community, he would likely be uniquely affected by the STVR decisions as compared to other residential homeowners in the City. Therefore, he may not participate in STVR decisions due to his real property interest, absent additional facts showing that a significant segment is affected by the decision(s) and that the effect on his real property interest is not unique. Please contact our office for additional advice as needed.

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

Sincerely,

Dave Bainbridge  
General Counsel

*L. Karen Harrison*

By: L. Karen Harrison  
Senior Counsel, Legal Division

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