



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 27, 2021

Paul Resnikoff  
Councilmember  
City of Campbell  
70 N. First Street  
Campbell CA 95008

Re: Your Request for Advice  
**Our File No. A-21-117**

Dear Mr. Resnikoff:

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

Under the Act, may you take part in City Council decisions regarding the construction of a new Police Operations Building located approximately 459 feet from your residence?

### CONCLUSION

No, the Act requires clear and convincing evidence the project would not have any measurable impact on your property located less than 500 feet away. Here, the available information indicates the project would involve construction that would increase noise levels. Further, the construction of a new \$20 million, 24,800 square-foot police building down the street from your house may affect nearby property values. Accordingly, we advise against you taking part in the decision.

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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 18109 through 18998 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

Several decisions will come before the Campbell City Council (“City”) regarding the construction of the new Campbell Police Department building and renovation of the existing Police Department space. The project will include decisions regarding design, environmental review, funding, alternatives, and ultimately construction.

You are the Vice Mayor of Campbell and a member of the City Council. Your residence is approximately 459 feet from the property containing the proposed new Police Operations Building. The neighborhood between the Police Operations Building and your residence is entirely residential property. In 2018, you sought guidance from the FPPC regarding your potential participation in decisions related to the project and were told there was insufficient information to overcome the presumption of a disqualifying conflict of interest.

Since receiving that verbal guidance, you have recused yourself from all discussions related to the project and the City has developed program documents, publicly reviewed concept plans including site improvements, publicly reviewed Schematic Design documents and progressed to the Design Development phase of the design. The City has also issued a Notice of Intent to adopt a Mitigated Negative Declaration environmental determination. These documents provide a much greater level of detail and clarity as to the project and its impacts than was available in 2018.

The project proposes to remove the existing Police Department Annex structure (portable building) and construct a new, two-story, approximately 24,800-square-foot Police Operations Building and new secure parking lot in the northwest corner area of the Campbell Civic Center, currently occupied by a surface parking lot. The Project also includes reconfiguration of the existing public surface parking lot service City Hall. The Initial Study notes that construction noise levels produced by the Project would typically range from 77 to 89 dBA at 50 feet from the source. Construction-generated noise levels drop off at a rate of about 6 dBA per doubling of the distance between the source and receptor. A Staff Report indicates Police Operation Building’s construction budget is approximately \$20 million. Lastly, both the Mitigated Negative Declaration and Initial Study indicate the Project “will not have a significant effect on the environment” as a result of the proposed mitigation measures.

## 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 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).)


Although the Mitigated Negative Declaration and the accompanying Initial Study indicate the Project "will not have a significant effect on the environment" as a result of mitigation measures, that conclusion does not end our analysis. In light of a decision's likely impacts on property within a close vicinity of a project, Regulation 18702.2(a)(7) requires clear and convincing evidence of no measurable effect on an official's real property. For example, the Initial Study notes that construction noise levels produced by the Project would typically range from 77 to 89 dBA at 50 feet from the source. Construction-generated noise levels drop off at a rate of about 6 dBA per doubling of the distance between the source and receptor. This would mean that the noise levels would be approximately 70 dBA at 459 feet away and 65 dBA even as far as 800 feet away, exceeding the existing ambient noise levels in the area, which are less than 60 dBA. In addition to potential measurable effects on noise levels, the construction of a new, \$20+ million, 24,800 square-foot Police Operations Building could also have an effect on the market value of nearby properties.

Given the size and cost of the project, as well as evidence indicating the construction would increase noise levels at your property, the facts presented fail to establish clear and convincing evidence of no measurable effect on your property. Under applicable Commission regulations, it is reasonably foreseeable that the Project would have a material financial effect on your property. Accordingly, we advise against taking part in decisions pertaining to the construction of the Police Operations Building.

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