



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 19, 2021

Richard F. Anthony
Deputy City Attorney
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

Re: Your Request for Advice
Our File No. A-21-142

Dear Mr. Anthony:

This letter responds to your request for advice on behalf of Long Beach City Councilmember Cindy Allen 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

May Councilmember Allen take part in City Council decisions related to the lease extension of the Long Beach Convention Center located within 500 feet of her residential real property?

CONCLUSION

Due to the proximity of Councilmember Allen’s real property, it is reasonably foreseeable the decisions related to the lease extension would have a material financial effect on the property and, consequently, Councilmember Allen is disqualified from taking part in the 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 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

In the City of Long Beach (“City”), City Councilmember Cindy Allen owns two residential condominiums within 500 feet of the City’s Convention Center. One is used as her personal residence and the other is occupied by her son.

The City recently received an unsolicited proposal from the current operator of the Convention Center. On October 12, 2021, the proposal was presented to the Long Beach City Council in closed session. Based upon *Webber* Advice Letter, No. A-21-035 and the fact that the proposal contained an offer to make capital improvements to the Convention Center, Councilmember Allen recused herself from the closed session.

Given the additional detail that is now available to the City, Councilmember Allen has requested additional advice regarding her ability to participate in negotiations and to ultimately vote on any new contract for the operation of the Convention Center. The planned process is to decide to either (i) negotiate with the existing operator for an extension to the term of its current agreement (which would include capital improvements paid for by the operator) or to decline the extension request and proceed to an RFP process to select the next operator of the Convention Center, which could include a long-term lease and possibly major remodeling or alterations to the property.

The Convention Center comprises approximately forty acres in the coastal area in Council District 2. The Convention Center is owned by the City and is currently operated by ASM Global (“ASM”), Inc. (formerly known as SMG) under a long-term agreement that will expire in 2023. In the past, the Convention Center has been a popular venue for conventions and meetings and has generated approximately \$500,000 in annual revenue for the City. As discussed in *Webber* Advice Letter, No. A-21-035, the City may decide to solicit proposals for an operator/lessor who would undertake renovations to the Convention Center to enhance its marketability and functionality.

ASM submitted a proposal to extend the term of its existing agreement. The proposal contains many components, including without limitation an extension of term, changes to the compensation and cost sharing structure, and a commitment by ASM to make certain one-time capital investments in the Convention Center. With respect to such capital investments, you clarified in a follow-up email that ASM suggested it would commit \$6 million towards Convention Center upgrades. ASM Global provided little detail about the nature of the improvements, but the funds would not be used for new development on portions of the property that are currently parking lots or otherwise undeveloped. Instead, the funds would be used for upgrading the existing facilities and/or minor expansion thereof.

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).) Councilmember Allen has a real property interest in the two condominiums she owns.

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 Allen’s condominiums are not explicitly involved in the decisions at issue.

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).)

Earlier this year, Councilmember Allen sought advice regarding her ability to take part in decisions related to the lease and potential renovation of the Long Beach Convention Center, as well as the lease and potential development of the adjacent “Elephant Lot,” both of which are located within 500 feet of her residential real property. In *Webber* Advice Letter, No. A-21-035, we advised:

It is reasonably foreseeable that the potential renovation of the Convention Center and renovation/development of the Elephant Lot financially affect nearby properties. Because Councilmember Allen’s condominiums are located less than 500 feet from those parcels, and in the absence of clear and convincing evidence of no measurable impact on Councilmember Allen’s properties, the reasonably foreseeable financial effects are considered material. Accordingly, the Act prohibits Councilmember Allen from taking part in decisions related to the proposed development sites.

The relevant facts presented here are substantially the same. The current Convention Center operator seeks to extend their lease and their proposal includes, among other terms, a commitment to make certain one-time capital investments in the Convention Center, including approximately \$6 million in upgrades. Again, it is reasonably foreseeable that such capital investments in the Convention Center could financially affect nearby properties. In the absence of clear and

convincing evidence of no measurable financial impact on Councilmember Allen's properties, the reasonably foreseeable financial effects are considered material and Councilmember Allen is prohibited from taking part in the decisions.

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