



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 23, 2021

Daniel G. Sodergren  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94566

Re: Your Request for Advice  
**Our File No. A-21-160**

Dear Mr. Sodergren:

This letter responds to your request for advice on behalf of City of Pleasanton (“City”) Housing Commissioner Kate Duggan 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.

## QUESTIONS

1. May Housing Commissioner Duggan participate in decisions related to approving the City’s Housing Sites Inventory for the City’s Housing Element Update, where her spouse is a member of a limited liability corporation (“LLC”) that owns properties on a proposed site and the parcels are located within 1,000 feet of another proposed site?

2. If no, may Commissioner Duggan participate in other aspects of the Housing Element Update, which include consideration of the Draft Housing Element Update and decisions on general housing policies and programs?

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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.

## CONCLUSIONS

1. No, based on the facts provided, it is reasonably foreseeable the decisions on the Housing Sites Inventory will have a material effect on Commissioner Duggan's interest, as the LLC's real property parcels are part of one proposed site, and therefore are the subject of the decision. Due to this finding, the potential conflict involving Site 14, located within 1,000 feet of the LLC's property, is not analyzed at this time.

2. No, under the facts provided and to the extent the LLC's parcels are included in the Sites Inventory as a part of the Draft Housing Element Update, it is reasonably foreseeable the Housing Commission's decisions on other aspects of the Housing Element Update will have a material financial effect on Commissioner Duggan's interest.

## FACTS AS PRESENTED BY REQUESTER

The City is currently updating its General Plan's Housing Element. As part of this process, state law requires the City to identify sites throughout the community that can be potentially rezoned residential for development of housing within the planning period and that are sufficient to provide for the City's share of the regional housing need ("RHNA") for all income levels. Based upon the City Council's adopted set of criteria for site selection, City staff has prepared a Preliminary Housing Sites Inventory ("Sites Inventory").

The Sites Inventory identifies 27 potential sites from various sources, including sites nominated by developer and property owners, sites with a known interest in housing development, and sites that may have redevelopment capacity based on their characteristics (such as location, size, and existing utilization or underutilization) and other analysis. City staff has identified sites for consideration at high, medium, and low-densities to meet not only the City's outstanding lower income housing needs but also the remaining moderate or above moderate income housing needs. The Sites Inventory is subject to approval by the City Council prior to its inclusion in the Draft Housing Element Update ("Draft Housing Element"). The Sites Inventory is first considered by the Housing Commission for comments, the Planning Commission for recommendations, and then the City Council for eventual final adoption. Once the Sites Inventory is approved by the City Council, it will serve as the basis of review under the California Environmental Quality Act ("CEQA") and will be incorporated into the Draft Housing Element. You clarified in an email that once the City Council approves a final list of sites, only those sites will go forward for the environmental review.

Concurrently with the environmental review taking place, the Housing Commission, Planning Commission and City Council will also consider general housing policies and programs, which apply City-wide. The policies will also serve as a basis of review under CEQA and be incorporated into the Draft Housing Element. In response to our request for additional information regarding these decisions, you noted that the general policy decisions will relate to the similar categories reflected in the goals, policies, and programs of the City's current 2015 Housing Element, and you provided a copy of this document. The 2015 Housing Element identifies 20 Goals and 48 Policies, with many accompanying programs for each policy.

When completed, the Draft Housing Element will be considered by the Housing Commission for its comments, presented to the Planning Commission for its formal recommendations, and the City Council for consideration and final approval after a public hearing process. In considering the Draft

Housing Element, the Housing Commission may comment on the entire Draft Housing Element, including the Site Inventory, and items such as designated housing densities.

Commissioner Duggan's spouse is a member of an LLC that owns five properties that are part of one of the proposed sites (Site 15 - Rheem Drive Area: Southwest Side) with a current General Plan designation of General and Limited Industrial and zoned for "Planned Unit Development-Industrial." The Sites Inventory notes that this site includes eleven total parcels developed with one-story light industrial/service (warehouse) commercial buildings and surface parking. The site fronts Rheem Drive, directly across from attached single family units and town homes. The buildings in the area were built in the early 1980's and are considered outdated and without having any major recent improvements. It is estimated the site could hold between 78 and 137 housing units, or 8 to 14 dwelling units per acre.

These five properties are located within 1,000 feet of another proposed site (Site 14-St. Elizabeth Seton), a vacant lot surrounded by a park, medium density residential housing, a church and apartments. Site 14 is near the intersection of two major arterial streets, with a General Plan designation of Medium Density Residential. Its current Agricultural zoning allows for only one dwelling per five acres. The Sites Inventory states Site 14 is owned by the church and could hold an estimated 43 to 71 housing units, or 15 to 71 dwelling units per acre. The LLC's five properties are separated from Site 14 by the residential housing (attached homes and townhomes).

## 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 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 any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more. An "investment" includes "any partnership or other ownership interest owned directly, indirectly, or beneficially by the public official, or other filer, or his or her immediate family" doing business in the jurisdiction. (Section 82034.)<sup>2</sup>

Commissioner Duggan has identified a business entity interest in her spouse's LLC.<sup>3</sup>

### *Foreseeability and Materiality*

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,

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<sup>2</sup> "Immediate Family" is defined as the official's spouse and dependent children. (Section 82029.)

<sup>3</sup> To the extent Commissioner Duggan's community property share of income aggregating \$500 from the LLC, promised or received within the 12 months prior to the decision, she will also have a source of income interest in the LLC. (Sections 87103(c) and 82030(a).)

“[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.” It further provides that 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 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.”

Regulation 18702.1 provides materiality standards to determine when a reasonably foreseeable effect on a business interest, including a business interest that is a source of income, is material. (Regulation 18702.3(a)(4).) Under Regulation 18702.1(a)(4), where the business entity has an interest in real property, the effect is material if the property is either: (A) a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or (B) there is clear and convincing evidence the decision would have a substantial effect on the property.

*Housing Commission Decisions: Site Inventory, General Housing Policies, and Draft Housing Element*

The LLC in which Commissioner Duggan has a financial interest owns five parcels located in Site 15, identified in the City staff’s Sites Inventory as one that can be potentially rezoned for development of housing in the City’s updated Housing Element. Therefore, the LLC’s real property is the subject of the Housing Commission’s Site Inventory decision, and it is reasonably foreseeable the decisions on the Housing Sites Inventory will have a material effect on Commissioner Duggan’s interest. (Regulations 18701(a) and 18702.1(a)(4)(A).)<sup>4</sup> She may not participate in the Site Inventory decision, nor may she participate in the general housing policy decisions or the consideration of the Draft Housing Element, as these decisions appear inextricably interrelated to the Site Inventory decision. Absent facts to the contrary, the general housing policy determinations are likely to impact the consideration of Site 15 for potential rezoning to residential housing, and shape how that development may be defined. And, to the extent that Site 15 is included in the Draft Housing Element as a part of the Sites Inventory, and thus subject to consideration and comments

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<sup>4</sup> Due to this finding, we need not further consider the financial effect of the decision on the LLC’s real property relating to the inclusion of near-by Site 14 on the Sites Inventory at this time. You may wish to seek additional advice as needed in the event that Site 14 is included in the Draft Housing Element, and Site 15 is not. Note that Commissioner Duggan would have a prohibitive financial interest in any decision that affects Site 14 to the extent that there is clear and convincing evidence the decision would have a substantial effect on the LLC’s five parcels (Regulation 18702.1(a)(4)(B)); or otherwise result in an increase/decrease of the LLC’s gross revenue, value of assets or liabilities or expenses as set forth in Regulation 18702.1(a)(2) and (3).

by the Housing Commission as a part of its review, she may not participate in the Housing Commission's consideration of the Draft Housing Element.

We note that in some instances decisions can be segmented to allow for the participation of the official. Generally, under Regulation 18706 an agency may segment a decision in which a public official has a financial interest, to allow participation by the official in other, later decisions, provided the decision can be broken down into separate decisions that are not "inextricably interrelated," the decision creating the conflict is decided first and finally, and the official's participation in later, segmented decisions, does not result in a reopening of the decision in which the official has a financial interest. For example, because there are 27 sites for consideration within the Sites Inventory decision, it may be possible to segment this particular decision to allow her participation. Please seek additional advice, as needed, if you have questions regarding the segmentation of particular decisions.

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

LKH:dkv