



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

February 08, 2022

Robert Wishner
City Manager
6874 Alcedo Court
Chino, CA 91710

Re: Your Request for Advice
Our File No. A-22-002

Dear Mr. Wishner:

This letter is in response to your request for advice regarding 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 that 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

Does the Act prohibit you from accepting employment immediately with Sunjoint Development LLC (Sunjoint) as its Chief Executive Officer, administering Sunjoint's project in the City, or working on projects outside the City?

CONCLUSION

No. However, as discussed in detail below, the Act prohibits certain communications with, and appearances before, your former employer agency for one year.

FACTS AS PRESENTED BY REQUESTER

You have been city manager for the City of Walnut for 16 years. You have a total of 34+ years in local government. You are retiring effective February 1, 2022, and seeking employment in the private sector. You have received and accepted a job offer from the development firm Sunjoint as Chief Executive Officer.

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.

In 2020, Sunjoint received entitlements for development of 49 acres of land within the City, including 290 residential units and approximately 3 acres of retail. The development was approved by the planning commission and the City council during your tenure as city manager.

The scope of Sunjoint's job offer to you includes overseeing implementation of the development process and construction efforts as well as development in other areas of the region outside the City. The grading operation is underway and estimated to take about 20 months to complete. Little or no interaction with the City's legislative body will take place during the 12 months after you retire from the City.

ANALYSIS

Local One-Year Ban

Certain local governmental officials, including city managers, who leave governmental service are subject to the Act's one-year ban for local officials under Section 87406.3, also known as the local "one-year ban." This law prohibits certain former local officials from communicating with their former agencies, for compensation and in representation of another person, for the purpose of influencing any legislative or administrative actions, including quasi-legislative and quasi-judicial actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property. (Section 87406.3 (a).) The one-year prohibition under Section 87406.3 applies to city managers. (*Ibid.*)²

An official subject to the local one-year ban may not appear before or communicate with any officer or employee of either of the following:

- The local agency, or any committee, subcommittee, or present member of the local agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. (Regulation 18746.3.)
- Any local agency that is subject to the direction and control of the agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. This is known as the "pyramid concept." If a former official's local agency controls the budget, personnel, and other operations of another agency, the official is prohibited from appearing before or communicating with both agencies. (Regulation 18746.3.)

An appearance or communication is prohibited only if the former official is compensated, or promised compensation. (Regulation 18746.3.) "Compensation" is broadly defined to include

² Additionally, prior to leaving office, local officials may not take part in decisions with a financial effect on a prospective employer under Section 87407. All public officials leaving governmental service, including local officials, are subject to restrictions when negotiating prospective employment. Under Section 87407 and Regulation 18747, prior to separation from government service, a public official is prohibited from making, participating in making, or influencing a "governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment." In addition, the Act's conflict-of-interest provisions prohibit an official from making, participating in making, or influencing any governmental decision with a reasonably foreseeable material financial effect on the source of promised income. (See Sections 87100, et seq. and Regulations 18700, et seq.)

“remuneration or payment of any kind.” (*Souza* Advice Letter, No. A-06-114.) “Payment” is defined to mean a “payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Section 82044.)

Here, you indicate that grading operations will take about 20 months to complete, and you expect little or no interaction with the City’s legislative body will occur during the 12 months after you retire from the City. Whatever interactions you have on behalf of Sunjoint with the City – in your capacity as its Chief Executive Officer, in the course of administering Sunjoint’s project in the City, or working on projects outside the City – are limited by the foregoing local one-year ban on prohibited activities under the Act. But you are not otherwise prohibited from working for Sunjoint.

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

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:dkv