



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

March 28, 2022

Nancy Diamond  
Law Offices of Nancy Diamond  
822 G. Street, Suite 3  
Arcata, CA 95521

Re: Your Request for Advice  
**Our File No. A-22-012**

Dear Ms. Diamond:

This letter responds to your request for advice on behalf of Arcata City Councilmember and Mayor Stacy Atkins-Salazar 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

Does Mayor Stacy Atkins-Salazar have a conflict of interest which would prohibit her from participating in the City Council decision concerning the Gateway Area Plan?

### CONCLUSION

The Act prohibits Mayor Atkins-Salazar from taking part in decisions relating to the Gateway Area Plan because it is reasonably foreseeable that those decisions would have a disqualifying material effect on her business’s interest in its real property, located across the street from the Gateway Area Plan boundary.

### FACTS AS PRESENTED BY REQUESTER

The City of Arcata has initiated a planning process focused on residential and mixed-use development within a specific region of the City approximately 138 acres in size, known as the

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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.

“Gateway Area.” It implements a measure in the City’s General Plan Housing Element to allow for high density residential infill development in an area that was historically used for industrial purposes, and will result in the City Council’s adoption of an “area plan,” to be called the “Gateway Area Plan.” This planning effort was first initiated in late 2019 when the City Council adopted the City’s current Housing Element of its General Plan that included a specific measure mandating creation of the “Arcata Gateway Specific Area Plan, which will include [a] form-based code that allows high density infill development.”

Gateway Area Plan planning efforts since adoption of the Housing Element have to date occurred at the staff level. In its current draft, the Gateway Area Plan could allow for up to 3,500 new residential units in the Gateway Area. City staff currently anticipates initiating an environmental review process shortly and bringing the Gateway Area Plan to the City Council in December of 2022 for action. The Gateway Area Plan will become an element of the City’s General Plan. A separate process will be initiated after adoption of the Gateway Area Plan to develop the applicable Gateway Area zoning ordinance for eventual City Council approval. Development within the Gateway Area would then occur subject to the adopted zoning standards. Your request also includes information concerning the current number of actual addresses in relevant areas of the City. You indicate that there are currently 244 residential situs addresses within the Gateway Area, and 8,451 City wide, and that there are 283 commercial situs addresses located in and within 500 feet of the boundaries of the Gateway Area, and 1,041 City wide. Further, there are 346 residential parcels located in and within 500 feet of the boundaries of the Gateway Area, and 4,070 residential parcels City wide.

Mayor Atkins-Salazar and her husband own real property located outside and across the street from the Gateway Area project boundary, within 500 feet of the Gateway Area boundary. She lives at this location where she additionally owns and operates a dance studio business as a sole proprietor. Although eventual residential development in the Gateway Area as currently envisioned could increase enrollment at the dance studio, you assert that it is impossible to assess now what level of business impact, if any, she will realize.

In follow-up emails from Mayor Atkins-Salazar, she stated that her property is zoned Residential - Low Density, and that she was issued a Minor Use Permit by the Planning Commission in 2014 to construct the “school” in the residential zone. She also stated that the dance studio, “No Limits,” has a separate entrance, and that while it is accessible from her residence, the clients use a commercial entrance. The total square footage is around 6,500, of which the residence occupies about 3,500 square feet while the studio space comprises around 3,000 square feet. At this time, there are approximately 195 students and the gross annual receipts are approximately \$200,000.

## ANALYSIS

Sections 87100 and 87103 of the Act prohibit a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests distinguishable from the decision’s effect on the public generally. Section 87103 identifies an official’s interests that may give rise to a disqualifying conflict of interest under the Act. Based on the facts presented, Mayor Atkins-Salazar has the following interests with respect to decisions relating to the Gateway Area Plan:

- A business interest in No Limits because she owns and operates the business as a sole proprietor. (Section 87103(a).)
- An interest in real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more, as she owns here home and adjoining dance studio facility (Section 87103(a).)
- A source of income interest in “No Limits,” her dance studio business, as she has received income aggregating \$500 or more in value from this business within the 12 months prior to the decision. (Section 87103(c).)
- An interest in her personal finances and those of immediate family.<sup>2</sup> (Section 87103.)

### ***Foreseeability and Materiality***

Regulation 18701(a) provides that a governmental decision’s financial effect on an official’s financial interest is presumed to be reasonably foreseeable if the official’s interest is “explicitly involved” in the decision; an official’s interest is “explicitly involved” if the interest is a named party in, or the subject of, the decision; and an 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 interest. In addition, an official’s business interest is explicitly involved in any decision affecting the business as described in Regulation 18702.1(a)(1).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision’s effect on an official’s interest that is not explicitly involved in the decision, and provides that the effect on such an interest is reasonably foreseeable if it “can be recognized as a realistic possibility and more than hypothetical or theoretical.”

### ***Real Property Interest***

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Applicable to the Gateway Area Plan within 500 feet of Mayor Atkins-Salazar’s property, Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on an official’s real property parcel is material whenever the 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. No facts have been presented indicating that the decisions for the Gateway Area Plan would not have such an impact on Mayor Atkins-Salazar’s property. Therefore, under Regulation 18702.2(a)(7), it is reasonably foreseeable that the decisions concerning the Gateway Area Plan will have a material financial effect on her property. Accordingly, Mayor Atkins-Salazar is disqualified from taking part in the decisions relating to the Gateway Area Plan.<sup>3</sup>

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<sup>2</sup> Section 82029 defines “immediate family” as the spouse and dependent children.

<sup>3</sup> We do not further analyze the effect of the decisions related to the Gateway Plan on Mayor Atkins-Salazar’s other financial interests at issue because we have already determined that those decisions would have a disqualifying financial effect on her real property interest. We note that you have also inquired whether any exception to the Act’s

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

Sincerely,

Dave Bainbridge  
General Counsel

*Zachary W. Norton*

By: Zachary W. Norton  
Senior Counsel, Legal Division

ZWN:dkv

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conflict of interest provisions may apply including the exception for general plan decisions in Regulation 18702.2(d)(2) and the public generally exception in Regulation 18703. However, based on the facts provided, there is no indication that an exception applies.