



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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(916) 322-5660 • Fax (916) 322-0886

March 17, 2022

Glen R. Googins
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

Re: Your Request for Advice
Our File No. A-22-017

Dear Mr. Googins:

This letter responds to your request for advice on behalf of Chula Vista City Councilmember John McCann 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

Under the Act, may Councilmember McCann take part in City Council decisions regarding a proposed ordinance that would provide greater protections for tenants within the City, given that he and his wife own a business with 14 rental properties?

CONCLUSION

No, the Act prohibits Councilmember McCann from taking part in decisions regarding the proposed tenant protection ordinance because the ordinance would potentially impose restrictions on Councilmember McCann’s use of the properties. Additionally, the Public Generally Exception does not apply. Although more than 25 percent of the residential properties in the City would be

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 Cde of Regulations, unless otherwise indicated.

affected by the decisions, Councilmember McCann would be uniquely affected due to the number of rental properties he owns.

FACTS AS PRESENTED BY REQUESTER

In 2019, the State of California passed the Tenant Protection Act 2019 (“TPA”). The TPA prohibits landlords from terminating certain tenancies without just cause, requires the landlord to provide relocation assistance to the tenant in specific circumstances and mandates that certain information be provided to tenants, among other things. (See AB 1482; Civil Code Section 1946.2.) The TPA also allows local agencies to pass their own ordinances to provide more protective residential tenant provisions within their jurisdictions. In response to a City Council referral, City staff is in the process of drafting an ordinance (the “Proposed Ordinance”) that, if ultimately approved by the City Council would provide for greater tenant protections within Chula Vista. Key provisions of the current draft of the Proposed Ordinance include the following:

- Increased relocation assistance for tenants (existing State law requires payment of one month’s rent to the tenant, whereas the City’s proposed ordinance requires payment of two month’s rent to the tenant when certain tenancies are terminated);
- City authority to enforce violations of the proposed ordinance via required alternative dispute resolution, administrative fines or penalties, civil remedies, and/or criminal prosecution;
- Private remedies to tenants in the event the ordinance is violated, including court-awarded monetary penalties in private civil actions, affirmative defenses in unlawful detainer actions, and a provision for the award of attorney’s fees;
- Expanded prohibitions on harassing and retaliatory behaviors;
- Limits termination of a tenancy on the basis of a “substantial remodel” of the rental unit by requiring the substantial remodel to meet a certain cost threshold and necessitate that the unit be vacant for more than 60 days.

The Proposed Ordinance has gone through a number of iterations and is expected to be revised still further based upon stakeholder input and input from the City’s Housing Advisory Commission before it is ultimately presented to the City Council for consideration and approval. However, the ultimate Proposed Ordinance presented, even if somewhat modified, is expected to include versions of many if not all of the provisions set forth in the existing draft.

Regardless of its final form, the Proposed Ordinance is expected to meaningfully impact the costs of landlord operations and to place restrictions on their ability to evict and replace tenants in their rental properties. The actual cost increased are difficult to quantify at this time, however. The Proposed Ordinance will affect at least 25% of residential property given the number of rental units located in the City of Chula Vista.

Pursuant to the City’s municipal code requirements, City Council approval of the Proposed Ordinance will be required. The City has a five-person City Council. To approve the Proposed Ordinance, an affirmative vote of three of the five councilmembers is required. Council has not yet voted or acted on the Proposed Ordinance. Councilmember John McCann has not played any role in drafting the Proposed Ordinance.

Councilmember McCann and his spouse own a rental property business that is a source of income for the McCanns. The McCann rental property business owns and operates 14 rental properties. Under the Proposed Ordinance, Councilmember McCann's properties will be subject to the increased limitation on what constitutes a substantial remodel for purposes of terminating a tenancy. As a landlord, Councilmember McCann will also be subject to the expanded prohibitions on harassing and retaliatory behavior, and in the event of violation of the ordinance, to both the City enforcement measures and private tenant remedies. Councilmember McCann's properties may or may not be subject to the increased notice and relocation assistance requirements in the Proposed Ordinance, depending on whether the increased protections ultimately apply to properties with three units or more. Councilmember McCann is very likely to incur an increase in operating expenses as described above.

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 [their] official position to influence a governmental decision in which [the official] 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 are:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(Section 87103.) Councilmember McCann has real property interests in the rental properties, a business entity interest in his rental property business, and source of income interests in the business, as well as its tenants.

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).”

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 the issuance, denial, or revocation of a license, permit

or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property. (Regulation 18702.2(a)(5).)

Here, the Proposed Ordinance would involve land use entitlements placing restrictions on Councilmember McCann's rental properties. Although the precise terms of the Proposed Ordinance may change, the final version is expected to include provisions related to increased relocation assistance for tenants, expanded prohibitions on harassing and retaliatory behaviors by landlords, and limitations on eviction based on "substantial remodeling," among other changes. In short, the Proposed Ordinance is expected to impose certain restrictions and requirements on real property used as rental property. Accordingly, it is reasonably foreseeable the decisions would have a material financial effect on Councilmember McCann's rental properties.

Turning to exceptions to the Act's conflict of interest provisions, the Act permits a otherwise disqualified official from taking part in a governmental decision if the financial effect on a public official's interest is indistinguishable from its effect on the public generally. This is commonly known as the Public Generally Exception. Under applicable regulations, the Public Generally exception applies if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes at least 25 percent of all real property, commercial real property, or residential real property within the official's jurisdiction. (Regulation 18703(b)(1)(B).)

Here, the Proposed Ordinance will affect at least 25% of residential property given the number of rental units located in the City of Chula Vista. However, a decision would have a "unique effect" on a public official's financial interest if it would have a disproportionate effect on "[a]n official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest." (Regulation 18703(c)(3).) Here, Councilmember McCann and his spouse, through their business, own 14 rental properties. Therefore, although a significant segment of the public would be affected, the effect on Councilmember McCann's economic interests is unique.

Given the above, the Act prohibits Councilmember McCann from taking part in decisions regarding the Proposed Ordinance.²

² Due to this conclusion, we do not separately consider Councilmember McCann's remaining economic interests.

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

Sincerely,

Dave Bainbridge
General Counsel



Kevin Cornwall
Counsel, Legal Division

KMC:dkv