



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 17, 2023

Matthew T. Summers  
Calabasas City Attorney  
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790 E. Colorado Blvd., Suite 850  
Pasadena, CA 91101-2109

Re: Your Request for Advice  
**Our File No. A-23-082**

Dear Mr. Summers:

This letter responds to your request for advice on behalf of Michael Harrison, Planning Commissioner for the City of Calabasas (“City”) 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 Planning Commissioner Harrison have a disqualifying financial interest in the City’s decisions regarding either the Cruzan Park Apartments or the Caruso Affiliated mixed-use housing development projects where his law firm rents office space located within 500 feet of each project?

### CONCLUSION

Based on the facts provided, following the expiration of its sublease in 2014 Commissioner Harrison’s law firm has had a month-to-month tenancy and therefore it does not meet the Act’s definition of a real property interest subject to the conflict of interest rules. (Regulation 18233.) As

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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 18104 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.

to the Park Apartments Project land use decisions, the facts do not support a finding that it is reasonably foreseeable that the decisions would have a material financial effect on his business or his business as a source of income under the standards set forth in Regulation 18702.1(a)(2) or Regulation 18702.3(b), as discussed below. Therefore, he is not prohibited from participating in the Park Apartments Project land use decisions. No decisions are available for analysis regarding the Caruso Affiliated development, and he may wish to seek additional advice as needed.<sup>2</sup>

### **FACTS AS PRESENTED BY REQUESTER**

#### *Commissioner Harrison*

Commissioner Harrison is the sole owner of the law firm, Harrison & Harrison, with office space located on the City's 23901 Calabasas Road. The parcel containing the office space is located within 500 feet of each of the proposed development projects. The firm first rented this space under a sublease agreement with the lessee, Szabo Accounting Corporation, which ran from February 1, 2013, to January 31, 2014. The terms called for rent to be paid on a monthly basis. The sublease provided the law firm with the option to renew for an additional year period ending January 31, 2015, and with a second option to renew the sublease for the period ending March 31, 2016, "so long as the options are exercised at least 60 days prior to the end of the lease's term."

Since the expiration of the sublease on February 1, 2014, and continuing through the present, it is Commissioner Harrison's understanding that his firm has occupied the office space under a tenancy at will, with a continuing tenancy "basically month-to-month" subject to landlord consent and possible rent increases at any time.

In response to our request for additional information as to whether there was any "holdover" or "extension agreements" between the parties to the sublease, Commissioner Harrison states:

Pursuant to paragraph 2 [of the Sublease agreement], the term ended on January 31, 2014. I have never exercised an option to renew the Sublease nor has the Sublease been amended. There is no holdover or extension agreement or any other kind of agreement. Therefore, I am here as a tenant at will, on a month-to-month basis. I pay rent at the beginning of every calendar month. The Sublessor (my landlord) has raised the rent periodically for the following month (with less than 30 days' notice).

#### *Development Projects before the City*

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<sup>2</sup> We caution that our conclusion is based on the facts provided and the economic interest identified. We note that officials are also prohibited from accepting gifts exceeding the Act's gift limit and may be disqualified from decisions with a foreseeable financial effect on any source of gift. Accordingly, our conclusion applies only to the extent Commissioner Harrison and his law firm are paying market value for the lease of the office. Any discount in the rental price may constitute a gift to Commissioner Harrison implicating other provisions of the Act.

The City will be making land use decisions regarding two separate proposed mixed-use housing projects that are each on parcels within 500 feet of the Calabasas Road parcel containing Commissioner Harrison's law office space.

### *Park Apartments Project*

This is a proposed project by Cruzan, the property owner and developer, to construct a new 118,495 square-foot mixed-use building titled "The Park Apartments," comprised of 1,600 square-foot commercial space and 107 residential units, 26 percent of which are proposed to be designated affordable. The project site is 24100 Park Sorrento, currently a parking lot for the adjacent Civic Center Complex, and part of a larger shared public parking program for all uses within the Calabasas Park Centre Master Plan Area. The Master Plan Area includes the Calabasas City Hall, the Calabasas Library, the Calabasas Senior Center, several office buildings owned by Cruzan, a hotel, and a large retail complex owned by Caruso Affiliated (the site of the second, separate proposed project). The project site is within the Commercial Mixed-Use (CMU) zoning district, and within the Affordable Housing Overlay (AHO) zone.

The Planning Commission will be considering whether to recommend that the City Council approve, conditionally approve, or disapprove Cruzan's application for a Site Plan Review Permit, and related land use entitlements for the Park Apartments project. This project requires final approval by the City Council. You state that Commissioner Harrison's law firm is not a named party or subject of any of the anticipated land use decisions regarding the project.

### *Caruso Affiliated Commons At Calabasas Project*

This is a proposed project by Caruso Affiliated for a mixed-use housing project located at 4799 Commons Way within the Commons at Calabasas retail center. While the pre-application entitlement process has been started by the developer, the precise proposed project description is not yet known and there are no pending decisions before the City at this time.

### *Potential Impacts*

Commissioner Harrison's law firm is located immediately across Calabasas Road, a four lane road, from the Caruso Project. It is located around the corner from the Park Apartments site. The law firm's office space is not part of the Master Plan shared parking area. The mixed-use projects are each anticipated to draw new businesses and potential customers to the area. If approved, each project is anticipated to affect traffic and increase parking demands in the surrounding area, particularly during the construction period. You do not believe that any project decision will impact either Commissioner Harrison or his spouse's income,<sup>3</sup> and to your knowledge the law firm was not hired by, nor were any promises made regarding income from, any person or entity with a goal related to either of the proposed projects.

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<sup>3</sup> No facts were provided regarding Commissioner Harrison's spouse's source of income and we do not analyze this issue.

## ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will 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. (Sections 87100 and 87103.) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include pertinent to these facts:

A business interest in any business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any management position (Section 87103(d)).

An interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).)

A source of income interest in any source from whom the official receives \$500 or more in value in the 12 months prior to when the decision is made including a pro rata share of income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Sections 82030 and 87103(c).)

### *The Law Firm's Tenancy*

Commissioner Harrison has a financial interest in any real property interest held by the law firm. The Act defines an "interest in real property" to include "any leasehold, beneficial or ownership interest, or an option to acquire such an interest." (Section 82033.) A real property interest does not include "the interest of a tenant in a periodic tenancy of one month or less." (Regulation 18233.) Commissioner Harrison states that he is currently a tenant at will, on a month-to-month basis. Based on this provided fact, Commissioner Harrison's law firm's tenancy does not meet the definition of a real property interest under the Act, and we need not further consider his law firm's tenancy for purposes of a conflict of interest analysis.

### *The Law Firm & Clients of the Law Firm*

Commissioner Harrison has a financial interest in his law firm as a business entity and as a source of income. As the sole owner of the law firm, Commissioner Harrison also has a source of income interest in any client that has paid or promised \$500 or more to the firm within the 12 months preceding the relevant governmental decision. You have not provided any facts regarding any business clients, and we do not further analyze this interest. We note that Commissioner Harrison would likely be disqualified from taking part in any project decision to the extent that it is reasonably foreseeable that the decision would have a material financial effect on a law firm client. He may wish to seek additional advice to the extent that any decisions regarding the projects may have a financial effect on a client of his firm. The following analysis examines whether it is reasonably foreseeable that a decision would have a material financial effect on his business and business as a source of income interest.

### *Foreseeability and Materiality*

A financial effect on a financial interest is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here, 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 18701(b).)

### *Business & Business as a Source of Income*

Regulation 18702.1 provides the materiality standard for a business and a business as a source of income.<sup>4</sup> (See Regulation 18702.3(a)(4).) For a business entity not explicitly involved in the decision, Regulation 18702.1(a)(2), provides that the decision's reasonably foreseeable financial effect is material if the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets and liabilities, in an amount equal to or more than \$1,000,000, or five percent of the entity's annual gross revenues, and the increase or decrease is at least \$10,000. Alternatively, the financial effect may also be deemed material if the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000, or one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

Additionally, Regulation 18702.3(b) provides that "[a]ny reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal." Therefore, the Act will prohibit Commissioner Harrison from taking part in either project decision if the decision will achieve or aid a goal of the law firm, or a client that is a source of income, and he is promised income for achieving this goal.

### *Park Apartments Project*

The Park Apartments Project decision would allow development of a parking lot into commercial space and 107 residential units. This will bring new business and potential customers to the area. Construction will impact traffic and parking in the area. However, there are no facts indicating that the approval or disapproval of the project will affect the law firm's annual gross revenues, assets or liabilities in an amount of at least \$10,000, or its expenses in an amount of at

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<sup>4</sup> Note that Regulation 18702.3 sets forth the materiality standards with respect to an official's source of income interest. Regulation 18702.3(a)(4) provides that a decision's reasonably foreseeable financial effect on an official's source of income interest in a business entity is material if the business entity "will be financially affected under the materiality standards of Regulation 18702.1."

least \$2,500. Additionally, the facts state that the law firm was not hired or promised any income by any person with a goal related to the project. Therefore, Commissioner Harrison will not have a prohibitive business or business as a source of income interest in the project under these facts.

*Caruso Affiliated Commons At Calabasas Project*

No specific project decisions are available for analysis at this time; however, the above standards may provide some guidance. Commissioner Harrison may wish to seek further advice regarding specific project decisions that may implicate his law firm, a client of the law firm or any other financial interest, as needed.

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

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