



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION 1102
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August 14, 2023

Peter Thorson
City of Jurupa Valley
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-23-120

Dear Mr. Thorson:

This letter responds 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 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 a councilmember from taking part in governmental decisions relating to a proposed mixed-use residential, commercial and industrial project on approximately 248 acres of mostly vacant land located between 500 and 1,000 feet of the councilmember’s residence?

CONCLUSION

Yes. The Act prohibits the councilmember from taking part in decisions relating to the project because it is reasonably foreseeable that those decisions would have a material financial effect on her residence. However, she may appear before the City Council or Planning Commission solely in regard to her interest in her real property under Regulation 18704(d)(2)(A), but she must refrain from otherwise taking part in the Project decisions and follow the recusal requirements as detailed below.

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 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.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney of the City of Jurupa Valley seeking this advice on behalf of Leslie Altamirano, a member of the Jurupa Valley City Council.

An application has been filed with the City for the approval of a large mixed-use residential, commercial and industrial project known as the “District at Jurupa Valley” (the “Project”). The Project site is approximately 248 acres of predominately vacant land located in the eastern portion of the City of Jurupa Valley, near the Santa Ana River and State Route 60 Freeway (“SR-60”). The Project includes the adoption of a Specific Plan that establishes the land uses, development standards, and implementation measures to which future projects located within the Project area must adhere.

The Specific Plan would permit development of up to 1,192 new residential units; approximately 3 million square feet of commercial and industrial land uses (including warehouse and distribution uses); a hotel with up to 160 rooms; and approximately 11 acres of parks and open space.

Councilmember Altamirano owns and lives in a single-family home on property zoned R-1 that is located 980 feet away from the nearest Project boundary. Her property is located immediately south of Ina Arbuckle Elementary School. Additionally, while Councilmember Altamirano’s property is located 980 feet from the nearest Project boundary, the residential land uses, it is located 1,470 feet from the commercial uses and 3,230 feet from the industrial uses. The only portion of the Project within 1,000 feet of Council Member Altamirano’s property is a small triangular piece of 20 feet.

The Project will not substantially alter the traffic levels in the vicinity of the Councilmember Altamirano’s property as traffic resulting from the Project will not utilize local residential streets in the vicinity of her residence. Further, all truck traffic would be directed to the north of the Project site and have no substantial impact on her property. In addition, the Project will provide all of its required parking on the Project site and will not affect the parking in the vicinity of Councilmember Altamirano’s residence. Finally, there will be no direct views of the Project from her property because it is separated by the Ina Arbuckle Elementary School and other residential uses, and there will be no substantial air quality impact on her property.²

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 including an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) Therefore, Councilmember Altamirano has a real property interest in her residence.

² You provided a link, <https://ceqanet.opr.ca.gov/2022040044/2/Attachment/FxdfE0>, to the Draft Environmental Impact Report (“DEIR”).

Foreseeability and Materiality

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. (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).)

Regulation 18702.2 provides the standards for determining when a government decision's reasonably foreseeable effect on an official's real property interest is material considering factors such as the proximity of the property subject to the decision to the official's real property parcel. The reasonably foreseeable financial effect is material whenever the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value. (Regulation 18702.2(a)(8).)

The personal residence of Councilmember Altamirano is located 980 feet from the Project boundary. Therefore, if the project would change any of the factors listed in Regulation 18702.2(a)(8), she will be disqualified from taking part in decisions concerning the project.

While you have provided facts indicating that the project may not substantially alter traffic levels, parking, view, or air quality, we must consider all foreseeable effects on the residence. We have advised on several occasions that the Act's conflict of interest provisions prohibit a city councilmember from taking part in decisions relating to a proposed large residential development project located on undeveloped real property between 500 and 1,000 feet from the official's residence because it is reasonably foreseeable that those decisions would have a material financial effect on the market value of the official's real property interest in a residence under Regulation 18702.2(a)(8)(E). For example, in a recent letter, we concluded it was reasonably foreseeable that decisions concerning a proposed project involving the construction of up to 1,500 single family homes, on 607 acres of vacant property located approximately 972 feet from an official's residence would have a material financial effect on the official's residence:

As planned, the project will eliminate 341 acres of vacant property in favor of low-density residential homes with a 4,000-square foot minimum lot size while designating 265 acres as open space to remain undeveloped, which would possibly improve the market value of nearby residences. Just as significantly, the project all but ensures that the currently vacant property is not available for other projects that may be more detrimental to the market value of nearby property, including commercial purposes or high-density housing. Because the project has the potential to protect or increase the market value of property within a close proximity, it is reasonably foreseeable that decisions will have a material

financial effect on the Vice Mayor's residence under Regulation 18702.2(a)(8)(E).

(*Mooney* Advice Letter, No. A-23-013.)³

The present situation is similar. The Project proposes constructing up to 1,192 new residential units, 3 million square feet of commercial and industrial space, a 160-room hotel and 11 acres of parks and open space on approximately 248 acres of predominately vacant land, which may change the market value of nearby properties. As in *Mooney*, the project would ensure that the vacant property is not available for other projects that may be more detrimental to the market value of nearby properties. Therefore, because it has the potential to protect or increase the market value of property within a close proximity, it is reasonably foreseeable that decisions concerning the Project will have a material financial effect on Councilmember Altamirano's residence under Regulation 18702.2(a)(8)(E).

Accordingly, the Act's conflict of interest provisions prohibit her from taking part in decisions relating to the Project and require him to recuse from those decisions pursuant to Regulation 18707. This regulation requires that she publicly identify her financial interest that gives rise to the conflict prior to consideration of the item, leave the room, and refrain from any participation in the decision before the City Council.

Making, Participating in Making, or Influencing a Decision

You have asked whether, if disqualified from taking part in decisions relating to the Project, Councilmember Altamirano may nonetheless express her views about the Project at community meetings or as a member of the public at Planning Commission and City Council public meetings.

A public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. Rather, the official is prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Regulation 18704 includes definitions for "making a decision," "participating in a decision," and "using official position to influence a decision." "A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person,

³ See also *Roberto* Advice Letter, No. A-21-043 [interim city manager prohibited from taking part in decisions relating to a proposed 130-unit residential development project located on 16 acres of vacant land about 600 feet from her residence based on its potential to protect or increase the market value of neighboring property]; *Diaz* Advice Letter, No. A-20-113 [councilmember disqualified from taking part in decisions to eliminate 45.17 acres of vacant property between 500 and 1000 feet from his residence in favor of 103 high-end and low-density single-family homes]; *Wisinski* Advice Letter, No. A-20-085 [councilmember disqualified from decisions relating to proposed residential project consisting of 510 units on undeveloped real property located 703 feet from councilmember's residential real property interest]; *Minner* Advice Letter, No. A-20-072 [councilmember disqualified from decisions relating to proposed mixed-use project including up to 620 residential units on largely vacant real property located 939 feet from councilmember's residential real property interest]; see also *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residences of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes].

obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency." (Regulation 18704(a).) "A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review."

(Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official: (1) Contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision; or (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact. (Regulation 18704(c).)

Because Councilmember Altamirano has a disqualifying conflict of interest, any conduct by her that meets the above definitions is prohibited.⁴ We note, however, that the Act does not prohibit her from appearing before the City Council or Planning Commission as a member of the general public if she is appearing solely with regard to real property owned entirely by her and/or members of her immediate family and she limits her comments to the potential effect the decision will have on her real property. (Regulation 18704(d)(2)(A).)

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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⁴ However, Councilmember Altamirano is not prohibited from appearing before other entities over which the City does not have authority or budgetary control so long as she does not purport to be acting in an official capacity.