



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 2, 2025

Connor Hyland
Sr. Deputy City Attorn
2000 Main Street, 4th Floor
Huntington Beach, California 92648

Re: Your Request for Advice
Our File No. A-25-111

Dear Mr. Hyland:

This letter responds to your request for advice on behalf of the City of Huntington Beach (“City”) Councilmember Don Kennedy 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

May Councilmember Kennedy participate in the Specific Plan decisions involving the Project Property where Councilmember Kennedy’s primary residence is located beyond 500 feet, but less than 1,000 feet, from the Palm Goldenwest Specific Plan boundary to be amended and over 1,000 feet from the Project Property?

CONCLUSION

Yes, Councilmember Kennedy does not have a disqualifying interest in his residence and the Act does not prohibit his participation in the decisions, as the facts do not indicate that the decisions will change his parcel’s character by substantially altering traffic levels, intensity of use, parking, privacy, noise levels or air quality and is not likely to change its market value where it is in an established neighborhood and over 1,000 feet from the Project Property site affected by the decisions.

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

The City is a charter city in Orange County, California that has historically been home to several oil-producing facilities. The owner of a 92-acre property ("Project Property"), previously used as an oil production facility, is seeking to make an amendment to the existing Palm Goldenwest Specific Plan, which will require the following: a General Plan Amendment, Zoning Text Amendment, and a Local Coastal Program Amendment (the "Project"). The Project Property's site is within the Palm/Goldenwest Specific Plan, along with an existing 54 acres of residential properties, and 7.5 acres of parkland and open space.

Palm Avenue (up to the Surf Drive development area) and Goldenwest Street are two arterial streets that form the eastern and southern borders of the Specific Plan. These streets, along with the Pacific Coast Highway on the westerly border, and a small section of arterial Seapoint Street on the northern side, make up the Specific Plan area. Goldenwest Street provides direct access to the Pacific Coast Highway. (Palm Avenue does not directly connect to the Pacific Coast Highway or the Project area but runs to the northern border of the Specific Plan at Seapoint Street.)

The proposed Specific Plan amendments would alter the permitted uses and allow for future uses for the Project Property, including visitor-serving commercial facilities, trails, open space, and up to 800 residential units. The main entry to the Project Property is planned off the Pacific Coast Highway, with secondary entrances further south and north on the Pacific Coast Highway, as well as off Goldenwest Street, and Seapoint Street. The plans include adding traffic signals to Palm Avenue at Seacliff and a park off Palm Avenue across from Lexie Circle. A traffic signal would also be added to Goldenwest Street at Orange Avenue.

Councilmember Kennedy owns his primary residence, which is located approximately 575 feet from the Specific Plan boundary and over 1,000 feet from the Project Property. His property is located at the end of a cul-de-sac that backs up to a golf course. His residential street is two blocks from Palm Avenue (roughly 500 feet) and four blocks from Goldenwest Street (roughly 1,000 feet), the two arterial streets that provide access to his residential street. The area within 1,000 feet of his residence is fully developed and includes properties on the west side of Palm Avenue that are in the Specific Plan boundary. None of the properties would have their uses changed under the amendments that are proposed to allow for the development of the Project Property as described above. The zoning changes will only affect the 92-acre area within the Specific Plan. Moreover, all construction and improvements outside the 92-acre sites identified, including the proposed traffic signals, are also over 1,000 feet from his property.

Additionally, it is your understanding that the development will not significantly affect traffic levels near the official's house because the new residences to be built will have entrances off the Coast Highway, rather than Palm Avenue or Goldenwest Street. Given the distance from the majority of the construction, you do not think his parcel will experience noise, parking, or air quality issues from the development. However, you note that the Project Property site is currently a defunct oil well site, which will be cleaned up and turned into housing. This may impact property values in the area, as properties close to oil wells tend to have lower property values.

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 any real property in which the official has a direct or indirect interest worth more than \$ 2,000 or more. (Section 87103(b).)

Related to the Project decisions, Councilmember Kennedy has identified a real property interest in his residence, located 575 feet from the Palm Goldenwest Specific Plan area and over 1,000 feet from the Project Property.

Foreseeability and Materiality

We examine whether it is reasonably foreseeable that the Project decisions will have a material financial effect on the official's real property interest. Regulation 18701(a), which provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision, 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).²

There is no indication from the facts that the official's property is explicitly involved in the Project decisions under any of these factors. For financial interests not explicitly involved in a decision, as we have here, 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).)

To determine the material effect of the decisions on real property interests, we look to the applicable real property materiality standards in Regulation 18702.2. Relevant to these facts, Regulation 18702.2(a)(8) states that the reasonably foreseeable effect of a decision is material where the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, and the decision would change any of the following: the

² Under Regulation 18702.2(a)(6), the official's real property is the "subject of the decision" if the decisions regard street construction or improvements that will provide new or improved service that disproportionately affects an official's real property compared to other properties receiving the service. Although the plan appears to include improvements to nearby streets with new traffic signals, there is no indication that the other factors in this regulation are met.

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 its market value. (Regulation 18702.2(a)(8)(A)-(E).) However, where the decision involves property which is 1,000 feet or more from the official's property, the applicable materiality standard is stated in Regulation 18702.2(b):

The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.

Generally, the plain language of the materiality regulation requires that the distance be measured from the boundaries of the property that is the subject of the governmental decision. However, in certain circumstances, where the decision affects a clearly defined, specific and isolated site, such as a large tract of land, the Commission has interpreted the materiality regulations to allow the distance to be measured from that clearly defined and specifically affected portion. (See for example, *McLaughlin* Advice Letter, No. A-05-61.)

Here, based on the information presented, the official's residence is located over 1,000 feet from the Project Property and all related construction and improvements. While the decisions will require changes to the Palm Goldenwest Specific Plan and the official's property is within 500 to 1,000 feet of the plan boundaries, there will be no changes, construction, or improvements within 1,000 feet of the official's property. Moreover, the property uses within the developed portion of the Specific Plan within 1,000 feet of the official's residence will not be changed. Based upon these facts, the effect of the decision is limited to the clearly defined sites over 1,000 feet from the official's property, and the applicable materiality standard is Regulation 18702.2(b).

Pursuant to Regulation 18702.2(b), it is presumed that the financial effect on real property interest will not be material, unless the presumption is rebutted by clear and convincing evidence of a substantial effect on the official's property. The facts here show that the Project decisions will not have a substantial effect on Councilmember Kennedy's property, and the presumption is not rebutted. Therefore, it is not reasonably foreseeable that the Project decisions would have a material financial effect on the official's real property interest, and he does not have a disqualifying interest under the Act.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

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By: L. Karen Harrison
Senior Counsel, Legal Division