



FAIR POLITICAL PRACTICES COMMISSION

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August 18, 2011

Jolie Houston
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Re: Your Request for Advice
Our file No. A-11-139

Dear Mr. Meriam:

This letter responds to your request for advice on behalf of Ronald D. Packard, Mayor of the City of Los Altos, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ We base our advice on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, we base our advice solely on the provisions of the Act and do not address the applicability, if any, of other conflict-of-interest laws.

QUESTIONS

1. Does Mayor Packard's real property fall under the indirectly involved provision for an "existing ordinance" of Regulation 18704.2(b)(1) in city council decisions regarding a "parking in-lieu fee?"
2. May the mayor participate in a decision to form an assessment district that would include the area in which Mayor Packard's property is located?

CONCLUSIONS

1. No. The "existing ordinance" exception to the general rule that decisions involving zoning or rezoning of real property are directly involved does not apply in this instance. Decisions relating to the proposed parking in-lieu fees do not involve a zoning ordinance.

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 18110 through 18997 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.

2. No. The mayor may not make, participate in making, or influence a decision to assess his own property.

FACTS

During the past eight years there have been at least four downtown committees approved by the city council of Los Altos to study and make recommendations regarding the city's downtown area. The Downtown Development Committee has recommended an Opportunity Study for parking downtown. An environmental impact report ("EIR") has been prepared for the Opportunity Study which is scheduled to come before the city council for certification at the next city council meeting. Whether the EIR is certified or not, the city council must consider whether a downtown parking in-lieu fee program should be adopted. Parking in-lieu fees are paid by developers who are unable to provide on-site parking in accordance with a city's parking ordinance.

After sending your request for advice, you have advised that the city council will also consider forming an assessment district that would include the area in which Mayor Packard's property is located.

Ronald D. Packard, who is the mayor of the City of Los Altos, owns an office building within the city's downtown triangle area. Mayor Packard owns an 18,000 square foot office building in downtown Los Altos that he leases to several different businesses, including his own. The building is not within 500 feet of any of the proposed parking garages studied in the Opportunity Study.

The Mayor would like to participate in decisions regarding the formation of a committee that would work with staff, downtown property owners and the business community to develop an ordinance providing for downtown parking in-lieu fees. He would also like to be a member of the committee. The committee would be responsible for making recommendations to the planning commission and the city council and may also recommend to the city council that an outside consultant be hired to assist the committee.

The proposed ordinance would apply to all city development projects in the downtown triangle area. You state that, for purposes of this letter, we assume that a "development project" would include all commercial, retail, mixed-use and residential projects in the downtown area. It is anticipated that any proposed parking in-lieu fee program would be contained in the city's ordinance regulations and apply to the various downtown triangle zones.

The proposed ordinance would not change Mayor Packard's zoning for his real property, but it may apply if he were to redevelop his office building in the future. However, redevelopment of his office building is highly unlikely due to its age and structural integrity.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

STEPS 1 & 2: IS MAYOR PACKARD A PUBLIC OFFICIAL MAKING, PARTICIPATING IN MAKING, OR INFLUENCING A GOVERNMENTAL DECISION?

As a city council member, Mayor Packard is a public official under Section 82048. Consequently, he may not make, participate in making, or otherwise use his official position to influence any decisions that will have a reasonably foreseeable material financial effect on any of his economic interests. Because he will be called upon to consider a proposed ordinance providing for a downtown parking in-lieu fee program and to establish an assessment district, he will be making, participating in making, or otherwise using his official position to influence a governmental decision.²

STEP 3: DOES MAYOR PACKARD HAVE A POTENTIALLY DISQUALIFYING ECONOMIC INTEREST?

A public official has a financial interest in a decision within the meaning of Section 87103 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 any of the official's economic interests. Under Section 87103(b), Mayor Packard has an economic interest in his downtown real property.³

² If a public official's office is listed in section 87200 ("87200 filers" include planning commission members) and he or she has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in regulation 18702.5(b)(1)(B), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. For closed sessions, consent calendars, absences and speaking as a member of the public regarding personal interests, special rules found in regulation 18702.5, subdivisions (c) and (d) apply. (Section 87105.)

³ Because you request advice only as to Mayor Packard's economic interest in real property, we do not analyze his economic interest in his business entity or sources of income.

STEP 4: IS MAYOR PACKARD'S ECONOMIC INTEREST DIRECTLY OR INDIRECTLY INVOLVED IN THE GOVERNMENTAL DECISIONS?⁴

In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision. (Regulation 18704(a).)

For governmental decisions that affect real property, the standards set forth in Regulation 18704.2 apply. (Regulation 18704(a)(2).) Real property in which a public official has an economic interest is directly involved in the governmental decision if it meets the standards in Regulation 18704.2(a)(1). The standards pertinent to your advice request are:

- The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision.
- The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.
- The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.

Mayor Packard's real property is located in the downtown area that is the subject of the governmental decisions and will be in the area subject to the assessment. Accordingly, his real property interest is directly involved unless an exception applies.

There is an exception to the general rule if a decision solely concerns the amendment of an "existing zoning ordinance" and is applicable to "all other properties designated in that category." (Regulation 18704.2(b)(1).) You state that the proposed committee would work with staff, downtown property owners and the business community *to develop an ordinance* providing for downtown parking in-lieu fees. The Commission has advised that a decision regarding the waiving of parking restrictions does not involve an existing zoning ordinance. (*Meriam* Advice Letter, No. P-10-203.) The decisions you have identified to come before the city council do not involve a zoning ordinance. Rather, they involve adoption of an ordinance regarding parking in-lieu fees. Consequently, Mayor Packard's real property will be directly involved in any governmental decision relating to downtown parking in-lieu fees, including the formation of a

⁴ If a public official's economic interest is not directly involved in a governmental decision, it is considered "indirectly involved." (Regulation 18704(a).)

committee that would study the adoption of such fees before the issue goes to the city council.⁵

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:jgl

⁵ You have stated that the city council may also consider the formation of an assessment district for parking fees. Although you have not specifically requested the Commission to address issues raised by these decisions, Mayor Packard's real property is directly involved in any decision regarding the formation of the assessment district because his real property is located within the proposed assessment district.