



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

March 23, 2016

Ruthann G. Ziegler
Attorney at Law
Meyers – Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-16-025

Dear Ms. Ziegler:

This letter responds to your request for advice on behalf of the City Heights City Council members 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.

QUESTION

Does the public generally exception apply to allow all members of the Citrus Heights City Council to participate in decisions related to sidewalk improvements in the jurisdiction?

CONCLUSION

Yes. Because the sidewalk improvements will affect at least 38% of properties within 500 feet of the planned improvements, the exception applies.²

FACTS

You are the City Attorney for the City of Citrus Heights writing on behalf of Mayor Jeannie Bruins, Vice Mayor Jeff Slowey, and Councilmembers Sue Frost, Steve Miller, and Mel Turner. The City is reconsidering its Pedestrian Master Plan (the “Plan”) and each city councilmember

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 Because we find that the public generally exception applies to all councilmembers, we do not reach a conclusion regarding whether the decisions on the sidewalk improvements would have a reasonably foreseeable material effect on any of the officials’ interests, though they may well not have. (See Regulation 18702.2(a)(6).)

owns property within 500 feet of proposed sidewalk improvements. The Plan will involve decisions related to:

- (1) Key pedestrian corridors in the City where improvements should be focused;
- (2) Specific infrastructure recommendations for paths, sidewalks, and crossing improvements;
- (3) Specific locations for focused improvements along key corridors; and
- (4) Future projects and studies for consideration and further analysis.

In addition, the Plan adopts a point system to prioritize improvement projects for future implementation. As improvement projects are completed in the future, lower ranked projects will move up the priority list. The Plan's priority list serves as a guideline and may change over time depending on walking patterns, land use patterns, implementation constraints and opportunities, and the development of other transportation-related improvements. Finally, the Plan estimates costs for proposed improvements, but does not authorize any expenditures - future action by the City Council will be required before particular improvement projects take place.

The Plan encompasses a large portion of the city and 38% of all real properties in the jurisdiction are within 500 feet of the proposed sidewalk improvements.

ANALYSIS

The Act prohibits a public official from making or participating in making a governmental decision in which the official knows or has reason to know he or she has a financial interest.³ (Section 87100.) A conflict of interest may arise only when it is reasonably foreseeable that the decision will have a material financial effect on the official or his or her immediate family "distinguishable from its effect on the public generally." (Section 87103.)

A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A "significant segment," as applied to the facts here, is at least 25% of all real property within the City of Citrus Heights. (Regulation 18703(b).) In this case, because the officials are potentially disqualified because they are within 500 feet of the sidewalk improvements, we find the number of real properties within 500 feet of the improvements a reasonable estimation of the properties the decisions will affect. Accordingly, the Plan will affect 38% of real property in Citrus Heights, satisfying the significant segment prong.

Regulation 18703(c) provides that a "unique effect" on a public official's financial interest includes a disproportionate effect on:

³ Each city councilmember has an interest in his or her real property. (Section 87103(b).) Because you do not mention any other financial interests, our analysis is limited to the councilmembers' property interests.

“(1) The development potential or use of the official’s real property or on the income producing potential of the official’s real property or business entity.

“(2) An official’s business entity or real property resulting from the proximity of a project that is the subject of a decision.

“(3) An 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.

“(4) An official’s interest in a business entity or real property resulting from the official’s substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

“(5) A person’s income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.


“(6) An official’s personal finances or those of his or her immediate family.”

The Plan will impact pedestrian corridors in the city, whether to improve existing sidewalks or add new sidewalks and paths. While each city councilmember has property within 500 feet of proposed Plan areas, there is no evidence that their properties will experience a disproportionate or unique effect. Because the public generally exception applies to all the councilmembers, each may participate in the decisions related to the Plan.

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl