



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 15, 2016

Colin Doyle, Architect
8130 Frankel Lane
Sebastopol, CA 95472

Re: Your Request for Advice
Our File No. A-16-252

Dear Mr. Doyle:

This letter responds to your request for advice 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.

QUESTIONS

1. May you appear before the Sebastopol City Council to present an application for rezoning on behalf of a client of your architecture firm, where you are a member of the Sebastopol Planning Commission?
2. May you appear before the Sebastopol City Design Review Board on behalf of your client, in the event that the application is approved?

CONCLUSIONS

1. Yes, so long as the Planning Commission has no further input on the decision and you do not appear in your official capacity as a Planning Commissioner.
2. Yes. The Design Review Board is under the authority of the City Council, and not the Planning Commission, so you may appear on behalf of your client so long as you do not appear in your official capacity.

FACTS

You are a member of the City of Sebastopol Planning Commission. The Planning Commission is made up of seven appointees who must be a resident or business owner in the City.

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.

The Planning Commission makes recommendations to the City Council on items including zoning ordinances and development applications. You are also a licensed architect, and sole proprietor of the architecture firm, "Colin Doyle, Architect." You understand that you are prohibited under the Act from making, participating in, or influencing a decision before the Planning Commission on a matter in which you have a financial interest.

You recently submitted an application to rezone a client's property to allow for a higher density residential development to the Planning Commission. The Sebastopol Municipal Code, Zoning Amendment Procedure, Title 17, Chapter 17.300.030 provides that for a rezoning the City Council must first receive a Planning Commission recommendation, then set the matter for its own public hearing, and take action by adopting the proposed amendment in any part. General plan and zoning amendment matters are resubmitted to the Planning Commission only if the City Council proposes a "substantial modification" of the proposed amendment that was *not previously* considered by the Commission. (*Id.* at c.17.300.030(D)(2).)

In a subsequent telephone conversation, you stated that it is unlikely that the City Council would return this application to the Planning Commission for review of an unconsidered item, due to the lack of complexity involved. This decision involves the approval of a medium or high density rezoning. These options will be considered by the Commission in order to reach its recommendation.

You additionally provided the following background: the City recently updated its general plan and changed the definition of "high density residential." This definition change has caused an incompatibility between your client's property's current zoning and the newly increased density requirements for the property's High Density Land Use Designation. The City and the Planning Commission anticipate updating the zoning for properties that have been affected by this definition change, including your client's property. At that time, the Planning Commission would make a determination whether to rezone your client's property's to medium density or high density. Your client does not wish to wait for this eventual action, and has submitted an application requesting a high density rezoning to the Planning Commission. As noted above, the Planning Commission will make a recommendation on the application, and then it will proceed to the City Council for a final determination.

Following a decision on this matter, your client may come before the Design Review Board ("DRB") if your client pursues a project on this site. The DRB is an appointed body which reviews applications for design review which may be appealed to the City Council; or reviews appealed decisions made by the Planning Director or City Staff. (Sebastopol Municipal Code, Design Review Procedure, Title 17, c.17.310.030.) Decisions regarding design review are not appealable to the Planning Commission. (*Id.* at c.17.320.020.)

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests.

Section 87103 defines financial interests to include:

- Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more.” (Sections 87103(a).)
- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- Your personal finances, including those of your immediate family. (Section 87103.)

Assuming you meet the financial standards set forth above, you have a financial interest in your investment in your architecture business, as the owner and operator of the business, and in the business and its clients as a source of income. Next we determine if it is reasonably foreseeable that the decision will have a material financial effect on your financial interests.

Reasonably Foreseeable and Materiality

Regulation 18701(a) states that a financial effect is presumed reasonably foreseeable where the financial interest is explicitly involved as a named party or subject of the decisions. A financial interest is the “subject of a proceeding” if the decision involves the issuance or approval of an entitlement to the financial interest. (Regulation 18701(a).) As to materiality, Regulation 18702.1(a) states that a financial effect is material when the business entity initiates the proceeding in which the governmental decision will be made by filing an application, claim, appeal, or request for other government action concerning the business entity.

Where your firm has filed the application for rezoning, an entitlement, on behalf of a client, it is reasonably foreseeable that a decision on the application will have a material financial effect on your business, and your client who is a source of income.

Influencing a decision

a. Appearance before the City Council

As a public official you must not make, participate in making, or attempt to influence a decision in regards to the rezoning application before your agency, the Planning Commission. You must also not use your official position to attempt to influence a decision by contacting or appearing before *any agency subject to the authority or budgetary control* of the Planning Commission.

Regulation 18704 defines “making, participating in making, or using his or her official position to influence a governmental decision” as follows:

(a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

(b) Participating in a Decision. 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.

(c) Using Official Position to Attempt to Influence a Decision. A public official uses his or her official position to influence a governmental decision if he or she:

(1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her 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 his or her authority or on behalf of his or her agency in making the contact.

Here, the City Council is not under the authority of the Planning Commission. The City Council has final approval over the application and the Planning Commission is subject to the City Council’s authority. You may appear before the City Council to present the rezoning application so long as the Planning Commission has reached its final decision, and will provide no further input in the process. In making this appearance you must not act in your official capacity as a Planning Commissioner or purport to act on behalf of the Planning Commission. (Regulation 18704(c)(2).)

b. Appearance before the DRB

Similarly, the DRB is not under the authority or budgetary control of the Planning Commission. You may appear before the DRB on behalf of your client, so long as you do not do so in your official capacity.

c. Meet or Communicate with City Staff:

Your “agency” includes staff assigned to the Planning Commission as well as City staff that may be shared with Planning Commission. (See *Farrell* Advice Letter, No. 1-03-121.) Shared city staff are considered to simultaneously represent each of the multiple agencies they work under during a review process. If a City staff member is shared with your agency, the Planning Commission, you are prohibited from attempting to influence the shared staff member regarding a decision that is before the Planning Commission. You may otherwise communicate with non-shared City staff.

d. Submission of Architectural Documents

Additionally, Regulation 18704(d) provides that “making, participating in, or influencing a governmental decision” does not include the submission of architectural documents on your client’s behalf before the Planning Commission, so long as you do not make contact with the Planning Commission other than contacts with staff concerning the process or evaluation of the documents you prepared. Regulation 18704(d)(6)(A) states:

Architectural and Engineering Documents.

(A) Drawings or submissions of an architectural, engineering, or similar nature prepared by a public official for a client to submit in a proceeding before the official's agency if:

- (i) The work is performed pursuant to the official's profession; and
- (ii) The official does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the official.

Restrictions on Local Officials: Post government, appointed

Lastly, you inquired as to whether resigning from your position would allow you to appear before the Planning Commission on behalf of a client. As you noted, Section 87406.3, which governs post governmental employment restrictions for local officials, is not applicable to your appointed position. However, please note that your local agency may have an ordinance or policy which may otherwise restrict your appearance. (Section 87407.3(c).)

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

Sincerely,

Hyla P. Wagner
General Counsel



By: L. Karen Harrison
Counsel, Legal Division

LKH:jgl

