



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 2, 2017

Todd O. Litfin
City Attorney
City of Yorba Linda
611 Anton Blvd., Suite 1400
P O Box 1950
Costa Mesa, CA 92628-1950

Re: Your Request for Advice
Our File No. A-17-040

Dear Mr. Litfin:

This letter responds to your request for advice on behalf of Yorba Linda City Councilmember Beth Haney regarding her duties under 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. In addition, note that we are also 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.

QUESTION

Does Councilmember Haney have a conflict of interest in a governmental decision relating to the development of the Yorba Linda Town Center project or Yorba Linda Library/Arts Center ("Library") due to the proximity of her business's offices to the projects?

CONCLUSION

Based on the nature of the Councilmember's business and the facts surrounding the projects (as analyzed below), the Councilmember does not have a conflict of interest in the decision.

FACTS

Councilmember Haney is a Doctor of Nursing Practice, a Nurse Practitioner, a Fellow of the American Association of Nurse Practitioners, and an owner and CEO of Luxe Aesthetic Center, Inc.

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.

(“Luxe”).² Councilmember Haney’s interest in Luxe is greater than \$2,000. Luxe specializes in optimizing the health and appearance of its patients. Wellness services include a thorough health screening and exam along with incorporation of integrative medicine to help patients feel their best in the most healthful way with treatment plans that may or may not include medications. Luxe effectively addresses and treats the following conditions: facial lines and folds, crows feet, fine lines and wrinkles, skin laxity, submental fullness (aka double chin), uneven skin tone, photodamage (age spots, freckles, brown spots, facial vessels), rosacea (red, ruddy skin tone), melasma, acne, thin lips, and unwanted hair, and provides comprehensive wellness exams, lab work, and health education.

Luxe leases office space at 18619 Yorba Linda Boulevard in Yorba Linda (the “Property”) in the Home Ranch Shopping Center (“Home Ranch”). The lease for the Property is a multiyear lease with an option to extend, but does not entitle Luxe to sublet the Property. The lease is greater than \$2,000. Home Ranch has access entry on Yorba Linda Boulevard but has no direct access to either the Town Center Project or the Library Project.

(1) The Town Center Project is a commercial development located in Yorba Linda currently in the early stages of development with construction anticipated to occur approximately over the next two years. The developer of the Town Center is Zelman Development Co. (“Zelman”). Once complete, the Town Center will likely include a movie theatre (Regal Theatres), a specialty market (Bristol Farms), and other commercial and restaurant establishments. A large portion of the Town Center property was previously owned by the Successor Agency to the Yorba Linda Redevelopment Agency, but that property has already been sold to an entity controlled by Zelman, and the City has already approved the land use entitlements for the Town Center Project. In other words, the location of the Town Center Project was previously determined and approved by prior City Councils.

The Town Center Project has multiple traffic access entry points, including from Imperial Highway, Lakeview Avenue, Yorba Linda Boulevard, Main Street, and Lemon Street. During the construction and eventual operation of the Town Center Project, there will invariably be City decisions or approvals related to the Town Center Project. The closest edge of the Town Center Project is approximately 720 feet from Councilmember Haney’s Property.

(2) The Library Project is a proposed City-operated Library and Arts Center located at 4802 and 4852 Lakeview Avenue in Yorba Linda. The Library Project is currently in the design and public input stage with construction anticipated to be complete by 2019/2020. The Library Project will take traffic access off of Lakeview Avenue. The new Library will replace an existing Library which is located on Imperial Highway approximately three blocks west of the proposed new location. The previous City Council approved the location for the Library Project and the City has already entered into a contract with an architectural firm to commence the design of the project at the chosen location. During the design, construction and eventual operation of the Library Project, there will invariably be City decisions or approvals related to the Library Project. The closest edge of the Library Project is approximately 365 feet from Councilmember Haney’s Property.

² You clarified on February 14, 2017 that the Councilmember owns 49 percent of Luxe.

As to potential impacts from either the Town Center or Library Projects, the City has consulted with project-related engineers, planners, and architects in regards to the following:

- **Construction-Related Dust:** Dust impacts are generally localized to only those properties that immediately abut a development site. Councilmember Haney's Property does not abut either the Town Center or Library Projects. Furthermore, dust impacts associated with any grading project are mitigated to a level of "less than significant" through dust control measures that are consistently enforced on all projects.
- **Noise:** For the Town Center Project, Home Ranch was not identified as a noise sensitive neighboring property. Furthermore, the environmental review for the Town Center Project concluded that the overall noise impacts from the Project were less than significant with mitigation. For the Library Project, there could be some temporary construction noise, however it is unlikely that it would materially impact Councilmember Haney's Property.
- **Traffic:** Home Ranch has no common points of access or other direct links with either the Town Center or Library Projects. There will likely be some general increases in traffic in the surrounding areas, but it is unlikely to be material. For the Town Center Project, according to Project environmental documents, the traffic impacts were determined to meet the City's standards for levels of service at surrounding intersections near Councilmember Haney's Property. As for the Library Project traffic, as noted above, the Library is merely moving three blocks from its current location and any traffic impacts to the Property from the new library are unlikely to be material.

As to whether the Town Center or Library Projects will impact the amount of business for Luxe, those Projects could increase general economic activity in the overall area of this section of the City. However, Luxe is generally a "destination" business that customers frequent regardless of the nature of surrounding amenities. Furthermore, since there is no direct connection between the Projects and Home Ranch, it is unlikely there would be a material increase or decrease in business activity within Home Ranch. If there were increased or decreased business activity, it would likely be only incremental and occur over an extended period of time.

ANALYSIS

Section 87100 of the Act prohibits a 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. 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 official's financial interests. (Section 87103.) Under the Act, financial interests pertinent to your question are:

- Any real property in which the public official has a direct or indirect interest of at least \$2,000, including a leasehold interest (other than a term of one month or less) held directly by the official or the official's spouse or by any business entity in which the official or the official's spouse own an interest of 10 percent or more. (Section 87103(b).)

- Any business entity in which the public official has a direct or indirect investment worth at least \$2,000 or in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a) and (d).)
- Any source of income from which the official has received income of \$500 or more within 12 months before the decision. This also includes income from any client of the business entity of at least \$500, provided or promised to, or received by, the public official within 12 months before the decision is made. (Section 87103(c).)
- A public official's own personal finances, or those of a member of his or her immediate family.³ (Section 87103.)

Councilmember Haney has an investment interest in and is employed by Luxe (Section 87103(a) and (d).) Luxe is also a source of income to the Councilmember.⁴ (Section 87103(c).) Furthermore, because Section 82030(a) provides that income of an individual also includes a pro rata share of any income to a business entity in which the individual owns a 10-percent interest or greater share, and because the Councilmember owns 49 percent of Luxe, any source of income to Luxe of \$500 or more will also be a source of income to the Councilmember if the Councilmember's pro rata share of that income is \$500 or more. Moreover, as a 49-percent owner of Luxe, the Councilmember would also have an interest in any real property interests of Luxe where her pro rata share in the particular property would be worth \$2,000 or more.

Foreseeability

Section 87103 provides that a public official's interests are only disqualifying if it is reasonably foreseeable that the decision will have a material financial effect on one or more of those interests. The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. (Regulation 18701.) Where the interest is explicitly involved, a financial effect is presumed reasonably foreseeable. (*Id.* at (a).) The financial interest is explicitly involved when it is a named party in or the subject of the decision. (*Ibid.*) Luxe is not explicitly involved in the decisions in question.

Where the financial interest is not explicitly involved in a decision, the foreseeability standard is whether the financial effect can be recognized as a "realistic possibility and more than hypothetical or theoretical." (Regulation 18701(b).)

³ However, Regulation 18702.5 provides, with respect to the materiality standard for a disqualifying financial effects on an official's personal finances, that if the governmental decision also affects a business entity or real property in which the official has an interest, the personal finances standard does not apply and materiality is determined under the business standard in Regulation 18702.1 and/or the real property standard in Regulation 18702.2. Thus, we do not further analyze possible effects on personal finances.

⁴ You have not asked about potential conflicts of interest that may exist due to individual clients. Therefore, we do not further analyze this potential basis for a conflict of interest.

Materiality

Business Interests: Regulation 18702.1(b) sets forth the applicable materiality standard for a business interest.⁵ Regulation 18702.1(b) states in pertinent part as follows:

“For a governmental decision not identified in subdivision (a), the financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in . . . the value of a privately-held business entity.”

Nothing in your facts suggest that the decisions concerning the Projects near the Councilmember’s offices would have a financial effect on her business. For example, since there is no direct connection between the Projects and Home Ranch, where Luxe is located, it is unlikely there would be a material increase or decrease in business activity for Luxe. If there were increased or decreased business activity, it would likely be only incremental and occur over an extended period of time. You also noted that, since Luxe is generally a “destination” business, customers frequent it regardless of the nature of surrounding amenities. Given the nature of Luxe, it does not appear that a prudent person would find it is reasonably foreseeable that the Town Center or the Library Projects would contribute to a change in its value.

Real Property: As pertinent to your facts, Regulation 18702.2 provides that the reasonably foreseeable financial effect of a governmental decision on any real property in which an official has a leasehold interest is material whenever the decision will:

“(1) Change the termination date of the lease;

“(2) Increase or decrease the potential rental value of the property;

“(3) Increase or decrease the rental value of the property, and the official has a right to sublease the property;

“(4) Change the official's actual or legally allowable use of the real property;

“(5) Impact the official's use and enjoyment of the real property.”

None of these standards are implicated under your facts. The only one that may apply would be an affect on the use and enjoyment of the Luxe property. However, the closest edge of the Town Center Project is approximately 720 feet from Councilmember Haney’s Property. There are businesses and a parking lot between Luxe and the Town Center. Furthermore, since there is no direct connection with the Projects and Home Ranch, it is unlikely there would be a material increase or decrease in traffic for Home Ranch. The Town Center Project would not appear to affect Luxe to the extent that it would impact the use and enjoyment of the Property.

⁵ Regulation 18702.3 sets forth the standard for materiality applicable to the effect of a decision on an official’s interest in a source of income (such as Luxe), however it provides that if the source of income is a business entity, materiality is also determined pursuant to the standards of Regulation 18702.1.

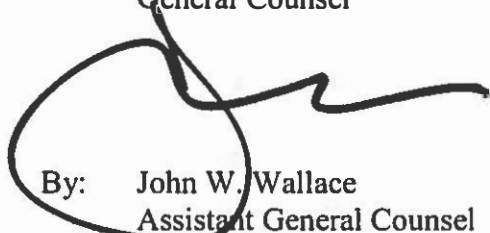
The closest edge of the Library Project is approximately 365 feet from Councilmember Haney's Property and will replace an existing Library located on Imperial Highway approximately three blocks west of the proposed new location. You stated: "As for the Library Project traffic, as noted above, the Library is merely moving three blocks from its current location and any traffic impacts to the Property from the new library are unlikely to be material." You also stated that parking would not likely be affected. Home Ranch has no common points of access or other direct links with either the Town Center or Library Projects.

Based on these facts, we conclude that Luxe and Luxe's lease will not be materially affected by the decisions.

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

Sincerely,

Hyla P. Wagner
General Counsel



By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl