



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 24, 2017

Larissa Seto
Assistant City Attorney
P.O. Box 520
Pleasanton, CA 94566-0802

Re: Your Request for Advice
Our File No. A-17-098

Dear Ms. Seto:

This letter responds to your request for advice on behalf of Pleasanton Parks and Recreation Commissioner Bryan Bowers 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

Would the conflict of interest rules of the Act prohibit the Commissioner from attending and participating in meetings before the Downtown Specific Plan Task Force, Planning Commission, or City Council regarding the Downtown Specific Plan Update?

CONCLUSION

No. The Act prohibits the Commissioner from making, participating in making, and influencing the decisions regarding the Downtown Specific Plan Update based on the facts presented. However, appearing before the the Downtown Specific Plan Task Force, Planning Commission, or City Council would not be considered influencing the decisions, as contemplated by the Act, so long as the Commissioner does not act or purport to act on behalf of, or as the representative of, the Parks and Recreation Commission.

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.

FACTS

Commissioner Bowers serves on the City's Parks and Recreation Commission. Members of that Commission are subject to the City's local conflict of interest code. In Commissioner Bowers' Statement of Economic Interests, he lists in Schedule A-2 his business position with Fireside Investors, LLC, which owns the real property at 377 St. Mary's Street, Pleasanton.² That property is located within the boundaries of the Downtown Specific Plan. The Downtown Specific Plan is currently being updated by the City, and proposed actions will include Specific Plan amendments, related General Plan amendments for conformity, and zoning code updates (collectively the Downtown Specific Plan Update).

Commissioner Bowers acknowledges that (1) due to his business entity position with Fireside Investors, LLC and its ownership of real property in the Downtown Specific Plan area, he will not be involved in decisions regarding the Downtown Specific Plan Update, and (2) he does not otherwise qualify for the personal interest exception in Regulation 18704(d)(2).

Commissioner Bowers seeks clarification about whether he may attend City-hosted public meetings regarding the Downtown Specific Plan Update before the following:

- The Downtown Specific Plan Task Force;
- The Planning Commission; and
- The City Council.

On April 19, 2017, you confirmed that none of these agencies is subject to the authority or budgetary control of the Parks and Recreation Commission.

If he is unable to attend and participate in the meetings, the Commissioner proposes to sit in an adjacent conference room where these meetings are being held in a room where he would not be visible to officials or staff nor from the building lobby area. He would not address officials or staff as part of the public meeting, nor communicate with officials or staff during the informal time before or after the meetings or during breaks. You noted that the Task Force meetings are not video recorded, audio tapes do not record all speakers, and minutes are summary in nature. His interest is to simply hear what his fellow citizens and City officials are saying.

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

² Schedule A-2 is used to report investments in a business entity (including a consulting business or other independent contracting business) or trust (including a living trust) in which the official, the official's spouse or registered domestic partner, and the official's dependent children, together or separately, had a 10% or greater interest, totaling \$2,000 or more, during the reporting period and which is located in, doing business in, planning to do business in, or which has done business during the previous two years in your agency's jurisdiction.

or more of the public official's interests. Section 87103 also sets forth the interests from which a conflict of interest may arise under the Act. They include:

- Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a).)
- Any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Section 87103(b).)
- 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).)
- 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 donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$470 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(e).)
- Personal finances, meaning the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family.

You asked us to assume, as the Commissioner does, that his interest in Fireside Investors, LLC, creates a conflict of interest for him. You asked about the Commissioner's obligations upon disqualification.

(1) Responsibilities when a Conflict of Interest Exists under Section 87103.

As noted above, the Act's conflict-of-interest rules prohibit a 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. Regulation 18704 sets forth the following:

- 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. (Regulation 18704(a).)
- A public official "participates in making 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. (Regulation 18704(b).)
- Public officials are also prohibited from "influencing" a governmental decision. There are two rules as to whether a public official uses or attempts to use his or her official position to influence a governmental decision. (Regulation 18704(c).)

1. *Decisions of the Parks and Recreation Commission and any agency subject to the authority or budgetary control of the the Parks and Recreation Commission.* Applying Regulation 18704(a), the Act prohibits the Commissioner from contacting, or appearing before, or otherwise attempting to influence, any member, officer, employee, or consultant of his agency or any agency subject to the authority or budgetary control of his agency.
2. *Other agencies:* Applying Regulation 18704(b), the Act prohibits the Commissioner from acting or purporting to act within his or her authority or on behalf of the Parks and Recreation Commission in making the contact.

The City Council, Planning Commission, and Downtown Specific Plan Task Force all fall under Regulation 18704(b), set forth above. Thus, so long as the Commissioner does not act or purport to act on behalf of, or as the representative of, the Parks and Recreation Commission, he would be able to attend and participate in the meetings held by the Downtown Specific Plan Task Force, Planning Commission, and City Council, without any additional limitations.

(2) Application of Section 87105 and Regulation 18707.

Section 87105 requires that a public official that holds an office specified in Section 87200 (such as a city councilmember) and has a conflict of interest in a decision noticed at a public meeting, he or she must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in the decision as well as details of the interest 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. Section 87200 provides:

“This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.”

A position on the Parks and Recreation Commission is not an office specified in Section 87200; thus, the rule above would not apply even where the Commissioner is dealing with a conflict of interest in a Parks and Recreation Commission meeting.

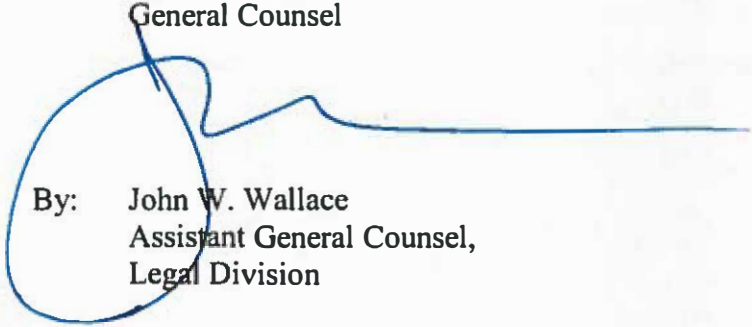
While not required to comply with Section 87105, compliance with a policy similar to Section 87105 may serve as an effective preventive measure. For example, in a case where a commissioner has a conflict of interest in an item on the Parks and Recreation Commission's agenda, it may be safer to have that commissioner leave the room to avoid the appearance of

influencing the decision. Regulation 18707(b)(4) explicitly provides that any agency may “adopt a local rule requiring a disqualified official to step down from the dais or leave the chambers.”³

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

³ If Section 87105 were to apply, the official would be permitted to sit in an adjacent conference room (where he would not be visible to officials or staff) in order to hear testimony with the limitations you note.