



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 26, 2017

Kelso G. Barnett
328 First Street East
Sonoma, CA 95476

Re: Your Request for Advice
Our File No. A-17-287

Dear Mr. Barnett:

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. Please also note that we are 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. If this is not the case or the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does the Act prohibit you, a City of Sonoma Planning Commissioner, from taking part in governmental decisions relating to the proposed renovation of the Sonoma Cheese Factory given that a portion of the Sonoma Cheese Factory property is within 500 feet of your residence?

CONCLUSION

Yes. The Act prohibits you from taking part in those decisions because they would have a reasonably foreseeable material financial effect on your real property interest in your residence.

FACTS

The City's Planning Commission will soon consider whether to recommend approval of a proposed renovation and redevelopment of the Sonoma Cheese Factory, a renowned restaurant and retail business. The Sonoma Cheese Factory is located across West Spain Street from the Sonoma Plaza, within the City's Plaza Historic Commercial District, an area of the City characterized by historic buildings and thriving restaurant and retail businesses.

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 proposed renovation would enable the Sonoma Cheese Factory to become a specialty food marketplace. The Sonoma Cheese Factory would continue its existing business operations, and the renovation would provide additional commercial area enabling multiple owner operated vendors to sell their wares and a second restaurant to operate within the building. The renovation would increase the Sonoma Cheese Factory's total commercial area from approximately 11,400 square feet to approximately 25,000 square feet.

Although the proposed renovation would not provide any additional parking, it would "emphasize pedestrian connectivity and flow" by converting an existing, narrow walkway on the northeast corner of the Sonoma Cheese Factory property into an expanded and improved "pedestrian promenade." The existing walkway provides pedestrians with limited access to the front of the Sonoma Cheese Factory property and the Sonoma Plaza from the rear of the property, and the construction of the pedestrian promenade would expand that access. The pedestrian promenade would also incorporate various improvements, including an exterior courtyard, architectural elements, new entry portals, signage, lighting, and landscaping.

You are a City Planning Commissioner, and you own your residence, a condominium within a condominium complex. The southeast corner of your residence is approximately 450 feet from the northeast corner of the Sonoma Cheese Factory property as the crow flies. The portion of the that property within 500 feet of your residence is made up of the existing, narrow walkway. There is street parking on both sides of the street on which your residence is located, and diagonal street parking on both sides of West Spain Street. By automobile, your residence is approximately two city blocks (0.2 miles) from the Sonoma Cheese Factory.

ANALYSIS

The Act prohibits a public official from taking part in a governmental decision if that decision would have a reasonably foreseeable material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) The Act sets forth an official's interests that may give rise to a disqualifying conflict of interest in Section 87103. Of those interests, the decisions relating to whether to recommend approval of the proposed renovation of the Sonoma Cheese Factory and the facts presented implicate your real property interest in your residence and your interest in your personal finances and those of immediate family members.²

Foreseeability and Materiality

For a financial interest that is not a named party in, or the subject of, the governmental decision at issue, the financial effect of that decision on an official's financial interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical." (Regulation 18701(b).) Applying that standard, it is reasonably foreseeable that decisions relating to the proposed renovation of the Sonoma Cheese Factory could have a material financial effect on your real property interest in your residence.

² We do not further analyze your interest in your personal finances or those of immediate family members because the facts presented provide no indication that the decisions at issue would have any financial effect on that interest.

Regulation 18702.2 sets forth the Act's materiality standards for a decision's effect on an official's real property interest. As pertinent to the facts presented, Regulation 18702.2(a)(11) provides that the financial effect of a decision on an official's real property interest is material if the decision would have a "measurable impact" on "real property value located within 500 feet of the property line of the official's real property."

The proposed renovation of the Sonoma Cheese Factory would expand its total commercial area from approximately 11,400 square feet to approximately 25,000 square feet, an increase of over 119 percent. The renovation will result in additional traffic, demand for parking, and an increase in intensity of use in the area of the City surrounding the Sonoma Cheese Factory because it will draw owner-operated vendors, new restaurant workers, and additional customers to the business. Given that your residence is only approximately two blocks from the Sonoma Cheese Factory by automobile, the additional demand for parking resultant from the renovation could reduce the availability of the street parking available nearby your residence.

Moreover, the proposed renovation's conversion of the portion of the Sonoma Cheese Factory property which is within 500 feet of your residence from a narrow walkway into an expanded and improved pedestrian promenade, including an exterior courtyard, could significantly increase the intensity of use of that portion of the property. More pedestrians are likely to use the pedestrian promenade to access the Sonoma Plaza, and the use of that portion of the property as an exterior courtyard is likely to result in increased noise. Because the intensity of use of the portion of the Sonoma Cheese Factory property within 500 feet of your residence is likely to significantly increase as a result of the proposed renovation, the decisions relating to the proposed renovation could impact your residence.

Therefore, we conclude that the decisions relating to the proposed renovation of the Sonoma Cheese Factory would have a reasonably foreseeable measurable impact on your residence under Regulation 18702.2(a)(11). Accordingly, the Act prohibits you from taking part in those decisions because they would have a reasonably foreseeable material financial effect on your real property interest in your residence.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Matthew F. Christy
Counsel, Legal Division

MFC:jgl