



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

June 12, 2019

Serita R. Young
Artesia City Attorney
Richards Watson Gershon
355 South Grand Avenue, Suite 4000
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-19-050

Dear Ms. Young:

This letter responds to your request for advice on behalf of Artesia City Councilmember Rene Trevino 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 any other conflict of interest laws. 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 if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does the Act prohibit Councilmember Trevino from taking part in governmental decisions relating to the City of Artesia's potential establishment of proposed "Mixed Use Overlay Zones" ("MUO Zones"), or decisions relating to the City's potential rezoning of all real properties currently zoned to allow manufacturing and industrial uses located within the City, given that the Councilmember's residence is located nearby a proposed MUO Zone, his place of business is located nearby another proposed MUO Zone, and his place of business is located in the immediate vicinity of properties currently zoned to allow manufacturing and industrial uses?

CONCLUSION

No. The Act does not prohibit the Councilmember from taking part in decisions relating to the City's potential establishment of the proposed MUO Zones, or decisions relating to the City's potential rezoning of all real properties currently zoned to allow manufacturing and industrial uses located within the City, because it is not reasonably foreseeable that those decisions will have a material financial effect on his financial interests at issue.

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 AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Artesia and the authorized representative of Artesia City Councilmember Rene Trevino. The City is in the process of updating its land use and planning regulations. As part of that process, the City Council may establish a number of proposed MUO Zones in various locations throughout the City. A City flyer promoting a community workshop on October 15, 2018 regarding the proposed MUO Zones provided the following background information on overlay zoning:

Overlay zoning is a regulatory tool that creates a special zoning district superimposed on an existing zone. The overlay zoning imposes area-specific development standards and conditions in addition to those imposed on the existing underlying zone. This tool can be applied to special areas to guide development and encourage or discourage specific types of construction. Additionally, overlay zoning can be used to limit and/or restrict the number of stories and height a development may have within an overlay zoning district.

City staff has recently asked the City Council for direction on the preparation of a General Plan amendment, Zoning Code amendment, and any environmental analysis required by the California Environmental Quality Act ("CEQA") necessary to advance the potential establishment of the proposed MUO Zones.

The Councilmember rents his residence pursuant to a long-term lease that will expire in February 2020. The Councilmember's residence is zoned Single Family Residential. While the Councilmember's residence is not itself within a proposed MUO Zone, it is located approximately 250 feet from real properties currently zoned Multi-Family Residential or Commercial General which are included within a proposed MUO Zone.

The Councilmember is President, Chief Executive Officer, and Secretary of South Coast Interiors, a California corporation. The Councilmember owns 80 percent of South Coast Interiors, and that investment is worth \$2,000 or more. South Coast Interiors is a vinyl retail, general furniture repair, and upholstery business that specializes in medical furniture. The Councilmember will aggregate more than \$500 from South Coast Interiors in the 12 months prior to the decisions at issue. South Coast Interiors leases its place of business within the City on a month to month basis. Although South Coast Interior's place of business is not within a proposed MUO Zone, it is located within approximately 850 feet of real properties currently zoned Multi-Family Residential or Commercial General which are included within a proposed MUO Zone.

In connection with the update of its land use and planning regulations, City staff may also propose amendments to the City's General Plan and Zoning Code which would rezone all real properties within the City currently zoned to allow manufacturing and industrial uses to make those properties' uses more compatible with mixed-use and commercial zones nearby. The properties currently zoned to allow manufacturing and industrial uses are located in the northwest and southern portions of the City; all those properties are substantially more than 1,000 feet from the Councilmember's residence; some of those properties which are located in the southern portion of the City, however, are within approximately 250 feet of South Coast Interiors' place of business.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision's effect on one or more of the official's interests distinguishable from its effect on the public generally. (Sections 87100 and 87103.) An official's interests that may give rise to a disqualifying conflict of interest are identified in Section 87103, and include all of the following:

- A business interest in any business entity in which the official has an investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- A real property interest in any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- A source of income interest in any source of income to the official aggregating \$500 or more in the 12 months prior to the decision at issue. (Section 87103(c).)
- A gift interest in any donor of a gift or gifts to the official aggregating \$500 or more in value in the 12 months prior to the decision at issue. (Section 87103(e).)
- An interest in his or her personal finances and those of immediate family members. (See Section 87103.)

A threshold issue exists as to whether the Councilmember has a real property interest in South Coast Interiors' month to month lease of its place of business located within the City. Section 82033 provides that an individual's real property interests include a pro rata share of the real property interests of any business entity or trust in which the individual owns a 10-percent interest or greater, and the Councilmember has an 80-percent ownership interest in South Coast Interiors. Regulation 18233 clarifies, however, that an "interest of a tenant in a periodic tenancy of one month or less" is neither an "interest in real property" nor a "leasehold interest." Therefore, the Councilmember does not have a real property interest in South Coast Interior's leased place of business because that lease is a month to month periodic tenancy.

With respect to the decisions at issue, the Councilmember has the following interests: a business interest in South Coast Interiors because the Councilmember has an investment interest in that business worth \$2,000 or more, and because he is an officer of that business; a real property interest in the Councilmember's leased residence assuming the Councilmember has an interest in that property worth \$2,000 or more; a source of income interest in South Coast Interiors because the Councilmember will aggregate \$500 or more from the business in the 12 months prior to the decisions at issue; and an official always has an interest in his or her personal finances and those of immediate family.

Foreseeability and Materiality

Regulation 18701(a) provides that a decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest. Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

None of the Councilmember's interests at issue are explicitly involved in the decisions relating to the potential establishment of the MUO Zones or rezoning of real properties currently zoned to allow manufacturing and industrial uses.

South Coast Interiors

Regulation 18702.1(b) provides that a decision's effect on an official's interest in a privately held business entity is material if a prudent person with sufficient information would find it reasonably foreseeable that the decision's effect would contribute to a change in the value of the business.²

South Coast Interiors' is a vinyl retail, general furniture repair, and upholstery business that specializes in medical furniture. Decisions relating to the potential establishment of the MUO Zones may affect the zoning of real properties located within 850 feet, and decisions relating to the potential rezoning of real properties currently zoned to allow manufacturing and industrial uses may affect the zoning of real properties located within 250 feet, of South Coast Interiors' place of business. The facts presented provide no indication, however, that the potential rezoning of any of those properties would contribute to a change in the value of South Coast Interiors. South Coast Interiors' business does not appear to be highly dependent on the intensity of use of, or the volume of foot or automobile traffic in, the surrounding area. Furthermore, the financial effect of the potential rezoning of properties nearby South Coast Interiors' place of business, if any, would be mitigated by the limited term of South Coast Interiors' month to month lease of its place of business.³ Therefore, it is not reasonably foreseeable that the decisions at issue will have a material financial effect on the Councilmember's interests in South Coast Interiors.

² Regulation 18702.3 sets forth the materiality standards applicable to a decision's effect on an official's source of income interest, and subdivision (a)(4) of that regulation provides that if the income is from the sale of goods or services and if the source of income is a business entity, materiality is determined pursuant to Regulation 18702.1. Regulation 18702.5 sets forth the materiality standard applicable to a decision's effect on an official's interest in his or her personal finances and those of immediate family members, and subdivision (c) of that regulation provides that if the decision also affects the official's business interest, materiality is determined pursuant to Regulation 18702.1. Therefore, we apply Regulation 18702.1 to determine whether the decisions at issue would have a disqualifying effect on the Councilmember's business interest in South Coast Interiors, his source of income interest in that business, and his interest in his personal finances and those of immediate family members.

³ We note that this reasoning is consistent with the exclusion of a periodic tenancy of less than one month from Regulation 18233's definition of either an "interest in real property" or a "leasehold interest."

The Councilmember's Residence

Regulation 18702.2(c) sets forth the materiality standard for a decision's effect on an official's leasehold interest, and provides as follows:

(c) Leasehold Interests. The reasonably foreseeable financial effects of a governmental decision on any real property in which a government official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the real property.

The Councilmember rents his residence pursuant to a long-term lease set to expire in February 2020. Based on the facts presented, there is no indication that decisions relating to the potential establishment of the proposed MUO Zones nearby, or the decisions relating to the potential rezoning of various real properties located substantially more than 1,000 feet from his residence, would: change the termination date of the Councilmember's lease; increase or decrease his residence's potential rental value; change the Councilmember's actual or legally allowable use of the property; or impact the Councilmember's use and enjoyment of the property. Therefore, it is not reasonably foreseeable that the decisions at issue would have a material financial effect on the Councilmember's leasehold interest in his residence. Accordingly, the Act does not prohibit the Councilmember from taking part in those decisions.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Matthew F. Christy
Counsel, Legal Division

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