



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 1, 2015

Michael Jenkins
City Attorney
City of Hermosa Beach
Manhattan Towers
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266

Re: Your Request for Advice
Our File No. A-15-116

Dear Mr. Jenkins:

This letter is in response to your request for advice on behalf of Hermosa Beach City Councilmember Hany Fangary regarding his 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.

QUESTION

May Councilmember Fangary participate in decisions relating to the development application submitted by Pierside Properties, LLC (“PPL”)?

CONCLUSION

Yes. The councilmember does not have a disqualifying interest in the decision that would result in a conflict of interest.

FACTS

The City of Hermosa Beach is a general law city in Los Angeles County with a population of roughly 20,000. A privately owned, commercially developed parcel of property in the City located adjacent to the City-owned Pier Plaza called Loreto Plaza will be the subject of a development application in the near future. The property is owned by PPL.

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.

A distant relative of Councilmember Fangary (the husband of Councilmember Fangary's wife's first cousin – now deceased – hereafter the “applicant”) has an ownership or other interest in PPL, the entity that owns the property. Neither Councilmember Fangary nor his wife has a financial interest, or any other interest, in the property or PPL, nor any business or financial relationship with the PPL or the applicant. You note:

- The Councilmember has no interest in the PPL property and does not own property within 500 feet of the property.
- The Councilmember has no ownership or any other interest in PPL; he and his wife have no financial or business relationship with PPL or the applicant.
- Neither PPL nor the applicant is a source of income or gifts to the councilmember or his wife in the past 12 months.
- Neither the councilmember nor his wife anticipates receiving future income from PPL or the applicant.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) Specifically, Section 87100 prohibits any 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. Section 87103 defines a “financial interest” as follows:

“A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,^[2] or on any of the following:

“(a) Any business entity in which the public official has a direct or indirect^[3] investment worth two thousand dollars (\$2,000) or more.

² A public official always has an interest in his or her personal finances. A governmental decision will have an effect on this interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. The financial effect is material if the official or the official's immediate family member will receive a measurable financial benefit or loss from the decision. (Regulation 18702.5) Section 82029 defines “immediate family” as the spouse and dependent children. Regulation 18229.1 defines a “dependent child” or “dependent children” as a child (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.

³ “For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-

“(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

“(c) 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 five hundred dollars (\$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.

“(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

“(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [four hundred and sixty dollars (\$460)]⁴ 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.”

You provided the following facts about the councilmember, PPL, and the applicant:

- *Investments and business positions:* The Councilmember has no direct or indirect investment interest in PPL, nor is he employed by PPL.
- *Real property:* The Councilmember has no direct to indirect interest in the property that is the subject of the PPL application, or any property within 500 feet of the subject property.
- *Source of income or gifts:* Nether PPL nor the applicant has been a source of income or gifts to the councilmember or his immediate family in the past 12 months.

Since the Act only prohibits financial conflicts of interest, the councilmember would not have a conflict of interest in the PPL application.

percent interest or greater.” (Section 87103.)

⁴ The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to subdivision (f) of Section 89503. The quote above has been modified with the current figure.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl