



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 20, 2022

Sarah J. Knecht
City of Santa Barbara
740 State Street, Suite 201
Santa Barbara, CA 93101

Re: Your Request for Advice
Our File No. A-22-032

Dear Ms. Knecht:

This letter is in response to your request for advice on behalf of City of Santa Barbara (the City), Harbor Commissioners Adam Stanowich and Michael Harahan (the Commissioners), regarding the conflict-of-interest provisions of the Political Reform Act (the Act).¹ Please note that we are providing advice under the Act only, not under Section 1090 or any other body of law. We are not a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Our advice is based solely on the facts provided. Thus, our advice is as complete and accurate as the facts provided by the requester. If the facts relevant to your request for advice change, then you should contact us for additional advice.

QUESTIONS

Do the Commissioners have conflicts of interest in decisions to recommend approval of a Harbor District budget, which includes the setting of permit fees, because they hold slip permits and live-aboard permits issued by the City that are subject to monthly slip permit fees and slip transfer fees if they transfer the slip permit or add a slip permittee?

CONCLUSIONS

Based on the facts provided, decision regarding slip permit and live-aboard permit fees will apply by the same percentage to all slips regardless of slip size. Accordingly, the Commissioners can take part in these decisions under the public generally exception so long as the decisions are considered separately and will not impact the slip transfer fee decision. Under Regulation 18703(e)(1), the public generally exception applies because the slip permit and live-aboard permit fee proposals adjust the amount of the fees for broadly provided public services in an amount that

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 18104 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.

applies equally, proportionally, or by the same percentage to the official's interest and all businesses, properties, or individuals subject to the fee.

However, the Commissioners are prohibited from taking part in the slip transfer fee decision because it is reasonably foreseeable that the decision will have a material effect on the Commissioners' interests in their personal finances. Moreover, the public generally exception does not apply to the proposed transfer fee decision because the proposed fees would apply disproportionately depending on the size of the slip.

FACTS AS PRESENTED BY REQUESTER

The City of Santa Barbara is a chartered city located on the central coast of California. The City's "Harbor District" is a geographical area with 252 acres of tidelands and submerged lands including a wharf and a full-service harbor with 1,143 slips for berthing recreational and commercial vessels. The Harbor District also includes a wide variety of ocean dependent commercial and tourist establishments. The Harbor District is not a separate legal entity.

Day-to-day operations of the Harbor District are managed by the Waterfront Department under the direction of the City Administrator and City Council. A seven-member Harbor Commission established by the City Charter provides further oversight. The Commission members are appointed by the City Council and make recommendations to the City Council regarding operations and administration within the Harbor District. The City Council generally accepts the recommendations of the Harbor Commission.

A. The Commissioners' Interests.

Commissioners Stanowich and Harahan hold slip permits and live-aboard permits issued by the City that allow the vessels they own to berth in the Harbor District and allow them to reside on-board their vessels. Commissioner Stanowick has both a 30-foot and a 40-foot slip, while Commissioner Hanrahan has a 35-foot slip.

B. The Governmental Decisions.

The budget includes adjustments to the Harbor Department operational fees including fees for the slip permits, slip permit transfer fees and live-aboard fees. The next budget decisions to come before the Harbor Commission, including Commissioners Stanowich and Harahan, will be for recommendation to the City Council on the fiscal year (FY) 2024 Budget in the spring of 2023.² The proposed fee changes will be as follows:

- Slip permit fees increase of 5% for all slip sizes.
- Live-aboard permit fees increase of 5% for all slip sizes.
- Slip transfer fee changes based on the size of the slip held by the slip permittee.

² Although the slip permit, slip transfer fee and live-aboard permit fee adjustments for fiscal year 2024 will not be exactly as you indicated in the facts provided since these were based on the budget adjustments proposed in fiscal year 2023, the increases for the slip permit fee and the live-aboard permit fee will be in the 5% range and the adjustments to the slip transfer fees will be the same range.

C. Permit Fees and the Harbor Budget.

The live-aboard permits are, like the slip permits, monthly license permits that continue monthly until terminated. Currently, there are 105 live-aboard permits issued in the Harbor; the Coastal Plan allows 114 of these permits to be issued. The costs of these permits are adjusted annually as part of the Harbor Department budget. A primary duty of the Harbor Commission is annual review and recommendation to the City Council of the Harbor Department budget. The Commission reviews, approves, and recommends adoption of the budget to the City Council. Commissioners Stanowich and Harahan sit on the Harbor Commission and are asked to review and act on the Harbor Department budget when presented to them.

The Waterfront Department is structured as an enterprise fund within the City budget. All revenues and expenditures within the Harbor District must remain within the District to support its activities. The annual budget is prepared by staff and presented to the Commission. A primary component of the budget is a schedule of fees and charges to be imposed for the upcoming fiscal year for the use of all public facilities within the Harbor District including slips, parking fees, storage of recreational watercraft and many other things. The Santa Barbara Municipal Code requires that all such fees be established by City Council resolution.

Fees for the use of slips in the Harbor represent a significant portion of the Waterfront budget. Approximately 1,100 slip permits are issued for the berthing of vessels in the Harbor. Slip permits are issued as month-to-month licenses that continue until terminated. In fiscal year 2022, Slip Permit fees ranged from \$190 to \$2,004 per month depending on the size of the slip held by the slip permittee. Additionally, the City imposes a slip permit transfer fee when a slip permit is transferred from one person to another or when another person is added to a slip permit. The slip transfer fee is calculated per foot of vessel and ranges from \$4,000 for a 20-foot vessel up to \$52,500 for a 100-foot vessel.

D. Slip Transfer Fee Changes.

The City allows slips, and the slip permits associated with the slips, to change hands on the private market. The larger the slip, the greater the market value of the slip and associated slip permit on the private market. The City recoups some of the value from the transfer through the slip transfer fee. In prior years, the smaller slips had been paying a slip transfer fee that was proportionally higher than the slip transfer fee paid by larger slips.

The intent of the changes to slip permit transfer fees is to move towards a more proportional and fair structure where each slip transfer fee is proportional to the private market value of the slip permit. The proposed fee changes from FY 2023 to FY 2024 are part of a proposed gradual schedule of fee changes over five years, which will ultimately result in fees increasing for slips 50 feet in length or greater and lowering fees for slips 35 feet or lower. Thus, the proposed slip transfer fees will result in a decrease from \$13,200 to \$11,550 for Commissioner Stanowick's 30-foot slip and a decrease from \$19,950 to \$17,500 for Commissioner Harahan's 35-foot slip. The fee for Commissioner Stanowick's 40-foot slip will not be changed.

The policy for the fee change was created in a subcommittee composed of three Harbor Commissioners of which neither Commissioners Harahan nor Stanowich were members. Once the subcommittee decided upon the policy, staff determined the numbers to apply to each slip size

category to achieve the policy objective over time. The slip transfer fee will be presented by staff to the Harbor Commission as part of the fiscal year budget deliberations for consideration. The staff recommendation is not based on a set formula but rather on an effort to achieve the goal outlined. The Commission has the discretion to accept, reject or modify staff's recommendation.

ANALYSIS

A. The Act.

The Act's conflict of interest provisions prohibit 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 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Here, relevant to the facts provided and decisions relating to the permits at issue, the Commissioners have interests in their personal finances and those of immediate family members. (Section 87103.)

The Harbor Commissioners are "public officials" under the Act because the Harbor Commission "makes substantive recommendations and, over an extended period, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency." (Regulation 18700(c)(A)(iii).) In this case, the Harbor Commission makes recommendations, on all matters pertaining to the Harbor District, to the City Council and those recommendations are routinely accepted by the City Council. The Harbor Commissioners have interests specified in Section 87103 as set forth in the facts above.

A financial effect is presumed reasonably foreseeable where the official's financial interest is explicitly involved as a named party in, or subject of, the decision. (Regulation 18701(a).) Based on the facts provided, the proposal involves fees applicable to all slips in the harbor. While interests are not typically considered explicitly involved in decisions regarding permit fees applicable to all similar interests, an interest may be considered explicitly involved if the fee applies to a narrow group of interests. (See *Houston* Advice Letter, No. A-14-207.)

A governmental decision's reasonably foreseeable financial effect on a public official's financial interest in personal finances, or those of his or her immediate family, is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 1872.5(a).)

B. Slip and Live-Aboard Fees

In this case, it is unclear whether the total proposed slip and live-aboard fee will be material because it depends on the final proposed percentage change and the existing rate for the slip size. However, it is unnecessary to determine if it is reasonably foreseeable that the permit fees will have a material effect on the Commissioners' respective interests in each of their personal finances. While the increases may meet the materiality standard depending on the final proposal, the Commissioners are not disqualified from taking part in the decision under the public generally exception.

Assuming it is reasonably foreseeable that the Commission's decision to approve changes to slip and live-aboard fees will have a material financial effect on Commissioners Stanowich and Harahan, who hold slip permits within the Harbor District, the Commissioners are not prohibited from taking part in the decision if the effect on their interests is indistinguishable from the effect on the public generally.

Regulation 18703(e) sets forth "Specific Rules for Special Circumstances" providing that the financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

(1) Public Services and Utilities. The decision sets or adjusts the amount of an assessment, tax, fee, or rate for water, utility, or other broadly provided public services that is applied equally, proportionally, or by the same percentage to the official's interest and all businesses, properties, or individuals subject to the assessment, tax, fee, or rate. This exception does not apply if the decision would impose the assessment, tax or fee, or determine the boundaries of a property, or who is subject to the assessment, tax, or fee. Under this exception, an official is only permitted to take part in setting or adjusting the amount of the assessment, tax, or fee, once the decisions to implement, and determine the property or persons subject to the assessment, tax, or fee, have already been made.

The limited public generally exception for public services and utilities applies to broadly provided public services. While permits for slips may not be broadly provided public services for purposes of decisions before the City, the Harbor Commission is specifically tasked with making recommendations for the operations and administration solely within the Harbor District, including management of the available slips within the District. Therefore, for purposes of decisions before the Harbor Commission, the management of the slips represents a broadly provided public service within the District's limited jurisdiction. Moreover, the governmental decisions regarding proposed slip permit fees and live-aboard fees involve a 5% increase for all slip sizes across the board. Even if the final proposal is not 5%, the final proposal will be within this range and apply by the same percentage to all slip sizes. These increases would, therefore, be "applied equally, proportionally, or by the same percentage to the official's interest and all businesses, properties, or individuals subject to the assessment, tax, fee, or rate." Thus, the financial effect on the Commissioners' slip permits and live-aboard permits would be the same as any other slip and live-aboard permittee in the Harbor District. The Commissioners are, therefore, not prohibited from taking part in these decisions provided they are considered separately and will not impact the slip transfer fee decision.

C. Slip Transfer Fee

Regarding the slip transfer fee, it is not necessary to determine if the official's interests are explicitly involved because the effect of the decision is foreseeable even under the standard applicable to interests not explicitly involved in the decision. In accordance with Regulation 18701(b), if a financial effect on an interest not explicitly involved in the decision can be recognized as a realistic possibility and more than hypothetical or theoretical, the financial effect is foreseeable. In this case, there is a realistic possibility that is more than hypothetical or theoretical that participating in budget decisions regarding the amount of the slip transfer fee will have reasonably foreseeable financial effects on the Commissioners who hold slips and will be subject to

the fee in the future should they decide to transfer their respective slips. Moreover, based on the proposed fee structure, the financial effect on either Commissioner, should the Commissioner want to transfer a slip (other than Commissioner Stanowick's 40-foot slip), is likely to exceed \$500 at the time of the transfer. Accordingly, it is reasonably foreseeable the slip transfer fees may result in a material financial effect on the Commissioners' respective interest in each of their personal finances, and the officials are prohibited from taking part in the decision.

Additionally, the public generally exception, as cited above, does not apply to the slip transfer fee decision. The proposed slip transfer fees do not involve a proposed percentage change that would apply across the board. Rather, these proposed fee changes would be implemented based on slip sizes. While the resulting fee is intended to ensure that the fee is proportionate to the market value of slip transfers, the change in the fee would not apply proportionally to the different slip sizes. Thus, the financial effect of the slip transfer fee decision on the Commissioners' financial interests is not indistinguishable from its effect on the public generally, and the Commissioners may not take part in the slip transfer fee decision.

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

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:aja