



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 21, 2022

Trisha Ortiz
Interim City Attorney
City of San Bruno
One Sansome Street, Suite 2850
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-22-096

Dear Ms. Ortiz:

This letter responds to your request for advice on behalf of City of San Bruno (“City”) Mayor Rico Medina, Councilmember Marty Medina, and Councilmember Michael Salazar 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.

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

May Mayor Medina, Councilmember Medina, and Councilmember Salazar participate in decisions regarding the proposed ordinance to authorize limited commercial cannabis operations, given that they each own and occupy a single-family residence located within approximately 500 feet from one or more specified zoning districts where the operations would be allowed?

CONCLUSION

Yes. It is not reasonably foreseeable the proposed ordinance decision before the City Council will have a material financial effect on either Mayor Medina’s, Councilmember Medina’s, or Councilmember Salazar’s residential real property interests. Based on the facts presented, the

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 18998 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.

City has provided clear and convincing evidence that the decision will not have any measurable impact on the officials' properties.

FACTS AS PRESENTED BY REQUESTER

The City Council is a five-member body which includes an elected Mayor. The current City Councilmembers were elected at large and not by district. The City's current ordinances prohibit cannabis businesses. On September 27, 2022, the City Council will consider adoption of an ordinance to authorize limited commercial cannabis operations (the "Ordinance").

As drafted, the Ordinance would permit commercial cannabis operations for cannabis retailers or cannabis distribution facilities (each being a "Cannabis Business") in specified zoning districts (each being a "Qualifying Zone"). The Qualifying Zones include the following zones: (i) the Central Business District (CBD), (ii) the Transit Oriented Development - Medium Density Mixed- Use District (TOD-1), (iii) the Transit Oriented Development - High Density Mixed-Use District (TOD-2), (iv) the Multi Use - Residential Focus District (MX-R), (v) Planned Development Zone (PD) Mills Park located on El Camino Real and San Bruno Avenue, and (vi) Planned Development Zone (PD) 111 San Bruno Avenue located at San Bruno Avenue and Huntington Avenue. The Qualifying Zones also include two additional zones that are separated from the others by Interstate 380: the Planned Development (PD) Zone for the Shops at Tanforan, located on El Camino Real and Sneath Lane, and the Industrial Zone (M-1) located north of Interstate 380 and east of the Caltrain line. This Industrial Zone would allow for one distribution facility.

The Ordinance, as drafted, establishes buffers to prohibit a Cannabis Business within 600 feet of specified sensitive uses, which mainly include day care centers, parks and schools ("Sensitive Use Buffers"). Further, the proposed Ordinance would allow no more than a total of three retail and one distribution Cannabis Business in the City. No Cannabis Business would be permitted as of right; rather, each Cannabis Business must apply for a conditional use permit and go through an application process to obtain an operator's permit. The City has not yet established the operator's permit application process.

Here, the proposed Ordinance does not authorize any Cannabis Business to commence operations at any specific location. That authorization would result from a later and separate application, along with a discretionary review, selection, and permitting process, which is yet to be determined. The proposed Ordinance merely adds Cannabis Businesses to the currently allowed uses in certain existing commercial zones. In a follow-up email, you confirmed that the proposed Qualifying Zones are existing, heavily trafficked and utilized, commercial and mixed use zones. Therefore, adoption of the proposed Ordinance would simply identify the areas in which Cannabis Businesses may apply for a use permit. There are 522 commercial parcels in the Qualifying Zones. Any of these parcels are theoretical candidates for the establishment of a Cannabis Business, except parcels in a Sensitive Use Buffer zone. The City is not currently considering any permits for the establishment of a Cannabis Business.

Mayor Medina, Councilmember Medina and Councilmember Salazar each own and occupy a single-family residence located within approximately 500 feet from one or more Qualifying Zones. Each of the officials' residences are located more than 1,000 feet from the Industrial Zone (M-1), in which one Cannabis Business distribution facility could be located. Therefore, you state

that the City is not requesting a determination regarding the possible distribution facility.² The residences are *not* located within the boundaries of the Qualifying Zones.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will 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).) Section 87100 prohibits a 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 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests that is distinguishable from the decision's effect on the public generally.

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts provided, those economic interests include "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103(b).) Accordingly, Mayor Medina, Councilmember Medina and Councilmember Salazar each have a potentially disqualifying economic interest in their respective residential real properties.

When a public official's economic interest is explicitly involved in a governmental decision, Regulation 18701(a) provides that "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial 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 financial interest, including any decision affecting a property interest as described in Regulation 18702.2(a)(1)-(6)." (Regulation 18701(a).)

Where the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) The decision at issue involves approval of an ordinance to authorize limited commercial cannabis operations within qualified zones. None of the officials' residences are located within the boundaries of these zones. As such, Mayor Medina's, Councilmember Medina's, and Councilmember Salazar's interests are not a named party in, or the subject of, the decision. Under Regulation 18701(b), they will have a financial interest in the

² We note that the financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property. (Regulation 18702.2(b).) As you have specifically not asked for a determination of a potential conflict regarding the distribution facility, and have not provided any facts that would rebut the applicable presumption, we do not analyze this aspect of the decision further.

proposed decision if there is a realistic possibility that the decision will have a material financial effect on their real property interests.

Regulation 18702.2 provides the materiality standard for real property interests, which varies depending on the proximity of the decision's impacts to the official's property interest. Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's parcel.

The facts presented indicate that decision at issue proposes to allow a limited number of cannabis businesses to be potentially located in already existing, heavily trafficked and utilized, commercial and mixed use zones. The proposed Ordinance would allow no more than a total of three retail and one distribution Cannabis Business in the City. At most, this Ordinance would allow a total of four cannabis-related business to operate within commercial and mixed use zones in the City, with impacts that are similar to other existing commercially allowed uses.

Based on the facts provided, there are no indications of changes to the official's residential properties that are likely to occur merely because these residences, which are outside the implicated zones, are within 500 feet of the zones. While the ordinance will open commercial and mix use zones to a limited number of cannabis businesses, there are 522 commercial properties within the identified zones all of which are presented as potential locations for future cannabis businesses. Also significant, the Ordinance does not approve the establishment or specific location of any commercial cannabis business. That is a separate extensive review and permitting processes.³ Due to the limited scope of the changes proposed to the allowed uses in existing commercial and mix uses zones, and the fact that any business seeking to operate within those zones would need to go through a separate permitting process, clear and convincing evidence has been presented that the decision will not have any measurable impact on the officials' residential properties merely because they are within 500 feet of the implicated zones. As a result, it is not reasonably foreseeable the decision on the Ordinance before the City Council will have a material financial effect on Mayor Medina's, Councilmember Medina's, and Councilmember Salazar's real properties. Therefore, Mayor Medina's, Councilmember Medina's, and Councilmember Salazar's interests in their residences would not preclude them from participating in or influencing governmental decision-making pertinent to the proposed Ordinance to authorize limited commercial cannabis operations in the City.

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

Sincerely,

Dave Bainbridge
General Counsel

³ Our conclusion is based on the facts provided. At this time, there is no indication that any specific parcel has been identified or discussed as a potential location. To the extent there have been any discussions by the City regarding a specific parcel as a potential location should the Ordinance be passed, you should seek additional advice.

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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