



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 13, 2022

Andy Heglund  
Assistant City Attorney  
City of Ventura  
501 Poli St., Room 213  
Ventura, CA. 93001

**Re: Your Request for Advice  
Our File No. I-22-126**

Dear Ms. De La Hoya:

This letter responds to your request for advice on behalf of City of San Buenaventura's Deputy Mayor Joe Schroeder regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your inquiry is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

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

Is Deputy Mayor Schroeder prohibited from participation in the City's short-term vacation rental ("STVR") ordinance update process and decisions due to his financial interest in his residence in the City's Pierpont community?

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## CONCLUSION

Absent a specific proposal to review, we cannot make a final determination regarding the STVR ordinance decision and the official's ability to participate under the public generally exception at this time. As a general matter, given that 67 percent of all residential properties in the official's district are within 500 feet of a STVR permitted property, the public generally exception will apply and allow Deputy Mayor Schroder to take part in the decision to the extent that the decision will similarly affect all of these properties without having a unique effect on Deputy Mayor Schroeder's residence.

## FACTS AS PRESENTED BY REQUESTER

The City of San Buenaventura will be considering updating its current STVR ordinance and at this time it is unclear what changes may be considered and presented to the City Council for adoption.

The City has a seven-member city council, whose members are elected by district. Deputy Mayor Schroeder represents the constituents of District 7. His residential property is located in the Pierpont community and coastal section of the district. Deputy Mayor Schroeder's real property is eligible for a STVR permit; however, he has never applied for a permit and has never used his property as a short-term vacation rental. The bulk of the STVR permitted properties in the City are in close proximity to his residence, with more than ten permitted properties within 500 feet and more than 20 within 1,000 feet.

In a previous advice letter addressing the City's plans to update its STVR ordinance, *Diaz* Advice Letter No. A-21-100, we advised Deputy Mayor Schroeder that he could not take part in the decision, and that he had not established that the public generally exception applied to the facts presented. You now provide updated information for purposes of determining if the public generally exception may be applicable. You note that the official was elected to represent District 7, not the City at-large. Currently, the City has issued 197 STVR permits of which 145 are located in District 7. This district has approximately 5,109 residential parcels. You confirmed by telephone that all, or nearly all, of these parcels are eligible for STVR permits. In District 7, 67 percent of residential parcels are located within 500 feet of a parcel with an STVR permit. 87 percent of residential parcels are located within 1,000 feet of a parcel with an STVR permit.

## 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. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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)). Relevant to these facts, Section 87103 defines

financial interests to include an interest in real property in which the official has a direct or indirect interest of \$2,000 or more (Section 87103(b).)

### *Foreseeability & Materiality*

Regulation 18701 provides the standard to determine the foreseeability of a decision's financial effect on an official's financial interest. Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. (Regulation 18701(a).) An official's financial interest is explicitly involved in a governmental decision if the interest is a named party in, or subject of, the decision. (*Ibid.*) 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, and includes any governmental decision affecting a real property financial interest as described in the materiality standard for real property financial interests, Regulation 18702.2(a)(1)-(6). (*Ibid.*) Specifically, Regulation 18702.2(a)(5) states that a decision's financial effect is material when it "[i]nvolves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property."

Deputy Mayor Joe Schroeder has identified a real property interest in his personal residence currently eligible for this type of permit and located in an area that has a concentration of STVR permitted properties. To the extent that a decision may apply to the official's residence, such as a decision to create a limit on the number of permits allowed in the Pierpont community, his financial interest would be the "subject" of STVR ordinance decisions, and the reasonably foreseeable financial effect of the decision would be material. (Regulations 18701(a), 18702.2(a)5.)

Regulation 18701(b) provides the foreseeability standard where his property is not the subject of a decision, and states that a financial effect is reasonably foreseeable if the effect can be recognized as a "reasonable possibility" that is more than hypothetical. Regulation 18702.2(a)(7)-(8) and (b) provides the following materiality standards and states that the reasonably foreseeable financial effect of the decision on his real property interest is material if the decision:

(7) 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 property; or

(8) Involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

(A) Development potential;

(B) Income producing potential;

(C) Highest and best use;

(D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or

(E) Market value.

(b) 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.

As noted in our previous advice letter, it is reasonably foreseeable that STVR decisions may affect properties within 500 feet, or within 500 feet to 1,000 feet, of his residence and meet the above factors. It is reasonably foreseeable these types of decisions would thereby also have a material financial effect on his property.

#### *Public Generally Exception*

Given the above determinations, we next examine whether the “public generally exception” is applicable. A public official, otherwise disqualified from a decision because it is reasonably foreseeable the decision will have a material financial effect on the official’s interest, may still participate if the official demonstrates that the financial effect on the official’s interest is indistinguishable from the effect on the public generally. (Regulation 18703.) Under Regulation 18703(a), a decision’s financial effect on a public official’s financial interest is indistinguishable from the effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official’s financial interest is not unique compared to the effect on the significant segment.

Applicable to these facts, and where the only interest an official has in the decision is the official’s primary residence, Regulation 18703(b)(1)(C)(2) defines a “significant segment” as at least 15 percent of residential real property within the official’s jurisdiction. Regulation 18703(d) defines “jurisdiction” to include “the designated geographical area the official was elected to represent.”

Regulation 18703(c)(1) and (2) provide that a decision will have a “unique effect” on a public official’s financial interest if it will have a disproportionate effect on the official’s real property’s development potential, use or income producing potential; or on the official’s real property due to its proximity to a project that is the subject of the decision.

Deputy Mayor Schroeder has established that a significant segment of his jurisdiction will be affected by the STVR update decision. Deputy Mayor Schroeder’s jurisdiction is District 7, where there is a concentration of properties with STVR permits. Of the 5,109 residential parcels in the district, 141 have been issued STVR permits and all or nearly all of these properties are currently eligible for a permit. 67 percent of residential parcels in District 7 are located within 500 feet of a parcel with an STVR permit and 87 percent of residential parcels are located within 1,000 feet of a parcel with an STVR permit.

Nonetheless, absent a specific proposal to review, we cannot make a final determination regarding whether the public generally exception applies to any particular decision. As a general matter, we can only advise that considering 67 percent of all residential properties in District 7 are within 500 feet of a STVR permitted property, the

public generally exception will apply and allow Deputy Mayor Schroder to take part in the decision to the extent that the decision will similarly affect all of these properties without having a unique effect on his residence. However, we are unable to determine whether any particular decision may have a unique effect on Deputy Mayor Schroder's residence without the identification of decision before the official. The official may wish to seek further advice for specific STVR decisions affecting specific properties or areas in the City.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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