



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 16, 2023

Michael J. McDonnell  
Deputy City Attorney  
276 Fourth Avenue  
Chula Vista, CA 91910

Re: Your Request for Advice  
**Our File No. A-23-003**

Dear Mr. McDonnell:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</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

Does the City of Chula Vista Mayor, John McCann, have a disqualifying financial interest in either of his two properties located within 500 feet of the Casa Nueva Homeless Shelter that is the subject of proposed grant funds the City Council will vote on? If so, does the legally required participation exception allow Mayor McCann to participate in the vote?

### CONCLUSION

Mayor McCann has a disqualifying financial interest in his two properties located within 500 feet of the Casa Nueva Homeless Shelter and would therefore be required to recuse himself from the vote regarding grant funding for the shelter. Furthermore, the legally required participation exception would not apply, as a fifth member was recently appointed to City Council and the vote can occur if Mayor McCann recuses himself.

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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.

## FACTS AS PRESENTED BY REQUESTER

You are a Deputy City Attorney for the City of Chula Vista (“City”) seeking advice on behalf of Mayor John McCann. Mayor McCann has two properties within 500 feet of Casa Nueva Homeless Shelter (“Shelter”). You are seeking advice on whether Mayor McCann can participate in an upcoming decision regarding a project at the Shelter to make improvements.

The Shelter is owned by SBCS Corporation (“SBCS”) and provides housing and related assistance to domestic violence victims and their children. In 1994 the City and SBCS entered into a Housing Development and Loan Agreement Including Affordability Covenants (“Agreement”), which provided the City would loan certain funds to SBCS for the acquisition, rehabilitation, relocation, and related development operations for the Shelter. The Agreement includes a covenant restricting SBCS’s use of the Shelter to providing transitional residential housing for homeless families at below market rate through 2049.

Mayor McCann owns two buildings within 500 feet of the Shelter. The first, 433/435 Casselman Street (“Casselman Property”), is a multi-family building consisting of two units. The Casselman Property was built in 1957 and purchased by Mayor McCann in September 2012. The units are currently rented to third party tenants and generate a gross revenue of approximately \$39,600 per year. Other than required and customary maintenance and upkeep, Mayor McCann has no current plans to materially improve this property.

The second property located at 70 Fourth Avenue (“Fourth Avenue Property”) is a multi-family building consisting of 3 units. The Fourth Avenue Property was built in 1975 and purchased by Mayor McCann in April 2016. The units are currently rented to third party tenants and generate gross revenue of \$84,000 per year. Other than required and customary maintenance and upkeep, Mayor McCann has no current plans to materially improve this property.

The buildings used for the Shelter were built in 1972 and require repairs. The repairs include reconstruction of 26 housing units, roof repairs, replacement of grass and shrubs with drought tolerant plants, and general maintenance. Most improvements will be internal, with minimal cosmetic improvements. Total costs of the project are estimated to be \$1,621,341.

The City Council will vote on a resolution authorizing City grant funding payable to SBCS for \$416,451 for the project. At the time of your request, Mayor McCann was one of only four voting members on the City Council. You indicate that the vote requires a supermajority and that four votes are legally required to approve the resolution at issue. Moreover, there are no other authorized decision makers that can determine whether to provide the grant funds. However, while this letter was in review a new council member was appointed, filling the vacancy, and bringing the City Council to five members, which you confirmed over the phone.

## ANALYSIS

### *Conflict of Interest*

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 any

public official from making, participating in making, or otherwise using official position to influence a governmental decision in which the official has a financial interest. A conflict of interest exists whenever a public official makes, participates in, or uses official position to influence a governmental decision that has a reasonably foreseeable material financial effect on one or more of the official's interests as specified by Section 87103.

Section 87103 provides that a public official has a "financial interest" in a governmental decision 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 the official's immediate family, or on any of the official's economic interests, including:

An interest in any business entity in which the public official has a direct or indirect investment worth \$2,000 or more (Section 87103(a); Regulation 18702.1);

An interest in real property in which the official has a direct or indirect interest of \$2,000 or more (Section 87103(b); Regulation 18702.2) including a pro rata share of interests in real property of any business entity or trust in which the official or official's immediate family owns a 10-percent interest or greater (Section 82033);

An interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18702.3).

Based on the facts provided Mayor McCann has multiple interest implicated by the decision including two property interests, an interest in a rental business, and interests in the rental business and tenants as sources of income. However, in light of our conclusion below, we examine only Mayor McCann's interest in real property as it is unnecessary to further consider other interest.

Generally, under Regulation 18702.2(a)(7), an official has a conflict of interest when participating in any governmental decision that involves real property located within 500 feet of the official's real property unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.

Here, Mayor McCann has two properties within 500 feet of the Shelter, which is the subject of the grant funding that will be at issue before the Council. No facts were provided to indicate that there would not be any measurable impact on the Mayor's properties. Given the proximity of the Mayor's properties to the Shelter, Mayor McCann has a disqualifying conflict of interest. Absent any exception, it would not be permissible to vote on the resolution and he should recuse himself from voting on the matter.

#### *Legally Required Participation Exception*

Section 87101 allows an official, who is otherwise disqualified to participate in a governmental decision if the official's participation is "legally required." (Section 87101; Regulation 18708.)

This exception is narrowly construed and applies only when it is legally impossible for the decision to be made without the participation of a disqualified official, and where there is no "alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." (Regulation 18708(a), (c) and (d); *In re Tobias* (1999) 13 FPPC Ops. 5.) Typically, this

exception is invoked when, due to disqualification, an agency is unable to convene a “quorum” of its members.

You stated in your request for advice that four members of the Council are required to vote on the matter involving the Shelter. You provided additionally, over the phone, that there is not an alternative authorized body to make this decision. However, while this letter was in review, a fifth member was appointed to City Council. The vote can now go forward if Mayor McCann recuses himself. The legally required participation exception does not apply.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:   
Valerie Nuding  
Counsel, Legal Division

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