



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 3, 2024

Heather L. Stroud  
City Attorney  
City of South Lake Tahoe  
1901 Lisa Maloff Way  
South Lake Tahoe, CA 96150

Re: Your Request for Advice  
**Our File No. A-24-030**

Dear Ms. Stroud:

This letter responds to your request for advice on behalf of South Lake Tahoe City Mayor Cody Bass, Mayor Pro Tem John Friedrich, and Assistant City Manager Hilary Roverud 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.

## QUESTIONS

1. Is Mayor Bass prohibited from taking part in a City Council agenda item regarding the process for developing the Mid Town Area Plan (“Area Plan”), where property he owns including his residence; his business, Tahoe Wellness Center, Inc.; and commercially leased property is immediately adjacent to the proposed project boundary?

2. Is Mayor Pro Tem Friedrich prohibited from taking part in a City Council agenda item regarding the process for developing the Area Plan where his residence is approximately 375 feet outside the proposed project boundary?

3. Is Assistant City Manager Roverud prohibited from taking part in a City Council agenda item regarding the process for developing the Area Plan where her residence is adjacent to the proposed project boundary?

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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.

## CONCLUSION

1-3. Under applicable regulations, an official with a property interest within 500 feet of property that is the subject of a decision is prohibited from taking part in the decision unless: (1) there is clear and convincing evidence indicating the decision would have no measurable financial effect on the respective property or (2) the effect on the official's economic interests is indistinguishable from the effect on the public generally. Mayor Pro Tem Friedrich and Assistant City Manager Roverud each have a potential conflict of interest in the upcoming decision concerning the Area Plan given the proximity of their real property to the plan area. However, so long as the decision involves only the discussion of the general planning process and does not involve any specific development proposal, the public generally exception applies to Mayor Pro Tem Friedrich and Assistant City Manager Roverud, and they may take part in the decision. However, Mayor Bass also has multiple interests, and the facts presented do not establish that a significant segment of businesses will be affected in similar manner as Mayor Bass's interests without a unique effect on Mayor Bass's interests. Accordingly, the public generally exception does not apply to Mayor Bass and he may not take part in the decision.

## FACTS AS PRESENTED BY REQUESTER<sup>2</sup>

In the City of South Lake Tahoe, the Area Plan (formerly the "Bijou Al Tahoe Area Plan") is a high-level planning document governed by Tahoe Regional Planning Agency ("TRPA") regulations. According to the TRPA website, "area plans" are intended to reflect the community's vision for its future" and include land use goals and policies, zoning, and other regulations, permit requirements, development and design standards, and goals and policies regarding transportation, conservation, recreation, and public services. Area plans are developed by local jurisdictions and reviewed and approved by the City Council and TRPA through a public process. The intent of the Mid-Town Area Plan is to provide a single transformative land use plan that will replace the former adopted community plan, recreation master plan, and plan area statements and provide guidance for all future development.

The Area Plan update is necessary to facilitate redevelopment of the area by updating components that may include density, design standards, and goals and policies. The area covered by the proposed Area Plan includes commercial, recreational, and governmental service amenities such as the Harrison Avenue commercial corridor, Sierra Tract commercial corridor, South Lake Tahoe Middle School, South Lake Tahoe Police Department, El Dorado County Court, Sheriff's Office, Jail, and Juvenile Treatment Facility, Lake Tahoe Community College, the recreational and governmental facility area covered by the 56 Acres Master Plan, Recreation Center, Ice Arena, South Lake Tahoe Community Playfields, Bijou Community Park, Bijou Bike Park and Skate Park, and Bijou Golf Course.

Since the last request for advice in December 2022, there are some changed circumstances. In December 2023, Councilmember Bass was selected to be the Mayor and Councilmember Friedrich was selected to be the Mayor Pro Tem. In October 2023, former Development Services Director Roverud was promoted to Assistant City Manager. Also, since the last request for advice, the City Council voted not to hire a consultant to complete the Area Plan but instead to hire a Senior

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<sup>2</sup> Facts incorporated by Requester's reference to *Stroud* Advice Letter, No. A-23-001.

Planner to complete this project. Otherwise, the facts as set forth in the prior requests for advice remain the same.

Mayor Bass, Mayor Pro Tem Friedrich, and Assistant City Manager Roverud each own real property within 500 feet of the proposed project boundary:

Assistant City Manager Roverud and her spouse own an approximately 0.12-acre parcel containing a 1,711 sq. ft. single-family residence also in the Bijou Pines subdivision, immediately adjacent to, but outside of the proposed Area Plan boundary.

Mayor Bass is the sole owner of Tahoe Wellness Center, Inc. (“TWC”). Mayor Bass has a direct investment worth \$2,000 or more in TWC and holds a position of management in TWC. Mayor Bass also owns more than 10 percent of Green Bijou Properties, LLC, a property management company. Green Bijou Properties owns two parcels, including the commercial parcel where TWC is located. That 1.04-acre parcel includes 17,545 sq. ft. of commercial building space. Green Bijou Properties leases other space on that parcel to businesses including a Mexican restaurant and donut shop. In a follow up email, you stated that the donut shop has gone out of business, but that Mayor Bass just signed a new lease with a ramen shop in that location. He also rents space to a chiropractor at this location. The other 0.35-acre parcel contains a total of 2,945 square feet consisting of an office used by TWC and Mayor Bass’s residence. Both parcels are within 500 feet of the proposed Area Plan boundary.

Mayor Pro Tem Friedrich and his spouse own an approximately 0.19-acre parcel containing a 2,175 sq. ft. single-family residence where they reside in the Bijou Pines subdivision, a densely developed neighborhood consisting of other single-family residences. The Friedrich residence property is approximately 375 feet outside the proposed Area Plan boundary.

The Senior Planner has been hired and has developed an outline of the planning process that will be discussed at the City Council meeting on May 7, 2024. City Council is not being asked for input on the specific contents of the Area Plan at this time and this item will not include discussion or review of specific projects or development criteria for identified properties or parcels. It is still the case that 15 percent of the residential units within the City are within 500 feet of the proposed Area Plan Boundary, and 25 percent of the commercial businesses are within 1,000 feet of the proposed Area Plan Boundary.

You have also provided an outline of the mid-town area planning process prepared by the Senior Planner for discussion at the May City Council meeting, which includes the following:

- Review and assessment of past and related planning efforts and community demographics. (There are currently multiple planning documents that govern land use within the proposed Area Plan boundary. The intent of the Mid-Town Area Plan is to combine several planning areas to create a comprehensive plan to facilitate revitalization of the Mid-Town Area into a recreation, arts, and community hub.)
- Preparation of an existing conditions report.
- Facilitation and solicitation of public engagement and input on the Area Plan, including engaging stakeholders and government agencies in information gathering, evaluation of options, and the overall development of the Area Plan.

- Drafting of the Area Plan with all required elements, including current conditions, conservation, land use, transportation, recreation, public services and facilities, development standards, implementation/infrastructure, housing, economic development, area-wide coverage management system, and parking strategies.
- Preparation of an environmental impact analysis in compliance with the California Environmental Quality Act (CEQA)
- Preparation of Final Area Plan
- Preparation of Meetings, including public noticing and outreach, as well as necessary presentations for Planning Commission, City Council, and Tahoe Regional Planning Agency (TRPA)

In a follow up telephone conversation, you confirmed that the specific language of the agenda item is not yet known.

### ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “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 the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests are:

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

(Section 87103.)

Mayor Bass, Mayo Pro Tem Friedrich, and Assistant City Manager Roverud each have economic interests in their residential real properties. All three officials’ residential properties are located within 500 feet of the proposed Area Plan boundary. Further, Mayor Bass has economic interests in his businesses, Tahoe Wellness Center, Inc. and Green Bijou Properties, as both business entities and sources of income, as well as interests in the two parcels owned by the Green Bijou Properties within 500 feet of the proposed Area Plan.<sup>3</sup>

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<sup>3</sup> Section 82033 defines “interest in real property” and provides in pertinent part that an individual’s real property interests include a pro rata share of the real property interests of any business or trust in which the individual owns, directly, indirectly, or beneficially, a 10-percent interest or more.

Mayor Bass may also have source of income interests in his businesses' clients as sources of income to his respective business interests. Under the Act, "[i]ncome of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10-percent interest or greater." (Section 82030.) As the sole owner of Tahoe Wellness Center, Inc., and a co-owner of Green Bijou Properties, Mayor Bass has a source of income interest in any source of income of \$500 or more to those companies. Sources of income to the businesses include a Mexican restaurant, a ramen shop, and a chiropractor.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[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, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6)."

Where, as here, an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold 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 property. (Regulation 18702.2(a)(7).)

The Area Plan is intended to guide long-term planning and community vision for the future of the area, including land use goals and policies, zoning, permit requirements, development and design standards, and goals and policies regarding transportation, conservation, recreation, and public services. However, the details of the Area Plan are not yet developed. Mayor Bass, Mayor Pro Tem Friedrich, and Assistant City Manager Roverud each own residential real property located 500 feet or less from the site of the Area Plan. In addition, Mayor Bass owns more than 10 percent of Green Bijou Properties. Green Bijou Properties owns two parcels, located within 500 feet of the proposed Area Plan boundary. The 1.04-acre commercial parcel where TWC is located includes 17,545 sq. ft. of commercial building space, as well as the above mentioned commercial tenants. Absent clear and convincing evidence the decision would have no measurable impact on the properties, it is reasonably foreseeable the decisions will have a material financial effect on the real properties under Regulation 18702.2(a)(7) given that they are within 500 feet of the project. Thus, all three officials are prohibited from taking part in decisions related to the Area Plan, unless the Act's public generally exception applies.

You state that the City Council is not being asked for input on the specific contents of the Area Plan at this time and this item will not include discussion or review of specific projects or

development criteria for identified properties or parcels. However, given the planning process still appears to be in its early stages, and there is a lack of detail with respect to the Area Plan. In the *Stroud* Advice Letter, No. A-23-001, we advised that the city officials could take part in decisions related to the Area Plan to the extent the decisions were limited solely to selecting a consultant based on the consultant's qualifications and the logistics of completing the work and does not include the discussion or review of specific projects or development criteria for identified properties or parcels. In contrast, here, there is no indication of the scope of decisions that may come before the City officials, let alone clear and convincing evidence such decisions would not have measurable impact on the officials' economic interests. Accordingly, even without consideration of Mayor Bass' interests in any business entity, the Act generally prohibits all three officials from taking part in decisions pertaining to the Area Plan unless an exception applies.<sup>4</sup>

### *Public Generally Exception*

Under the "public generally exception," a public official that has a financial interest in a decision may still participate if the official demonstrates that the financial effect is indistinguishable from its effect on the public generally. (Section 87103; Regulation 18703.) A governmental decision's financial effect on a public official's financial interest is considered indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes at least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(2).) A significant segment of the public also includes at least 25 percent of all businesses or non-profit entities within the official's jurisdiction or 25 percent of all real property or commercial property within the jurisdiction. (Regulation 18703(b).) As relevant to Mayor Pro Tem Friedrich, and Assistant City Manager Roverud, whose only interests consist of their respective primary residences, 15 percent of the City's residential units are within 500 feet of the proposed Area Plan. As to Mayor Bass's interests, you state that 25 percent of the commercial businesses are within 1,000 feet of the proposed Area Plan boundary. The officials must also establish that the effect on their interests is not unique compared to the effect of the significant segment.

The facts indicate that the Area Plan would affect a significant segment of the public with respect to primary residences. So long as the decision involves only the discussion of the general planning process and does not involve any specific development proposal, there is also no indication of a unique financial effect on the residential property interest of Mayor Pro Tem Friedrich or Assistant City Manager Roverud. Thus, the public generally exception applies to Mayor Pro Tem Friedrich and Assistant City Manager Roverud, and they may take part in the decision.

Notwithstanding this conclusion, the application of the public generally exception to Mayor Bass's interest must be examined separately. In addition to his residential property interest, Mayor

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<sup>4</sup> In light of the conclusion that Mayor Bass is disqualified from the decision because it is reasonably foreseeable the decision will have a material financial effect on his multiple property interests within 500 feet of the property subject to the decision, we do not further analyze disqualification based on the potential financial effect on his interests in his business entities and sources of income.

Bass has interests in his business entities, the commercial real properties owned by his business entities, and multiple sources of income including his business entities and commercial tenants of the rental properties. For purposes of these business related interests, you have indicated that 25 percent of the commercial businesses are within 1,000 feet of the proposed Area Plan boundary. However, this fact does not sufficiently establish that a significant segment of businesses will be affected in a similar manner. More specifically, Mayor Bass' commercial property interests are located adjacent to the Area Plan boundaries and due to their proximity to the project will likely be affected to a greater degree than businesses that are further from, and up to 1,000 feet, from the project. Furthermore, with the Area Plan's goal of the revitalization of the surrounding area including a focus on parking, the facts indicate a unique affect on Mayor Bass's business entities and the commercial property leased to business entities and sources of income that may see significant increases in customer traffic thereby increasing the value of the underlying property differently than other businesses in the vicinity of the project. Accordingly, the facts provided do not establish that a significant segment of businesses within the jurisdiction will be affected in a similar manner as Mayor Bass's interests without a unique effect on Mayor Bass's interests. The public generally exception does not apply to Mayor Bass, and he may not take part in the decision.

If you have other questions on this matter, please contact me by email at [znorton@fppc.ca.gov](mailto:znorton@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

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