



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 7, 2024

Shanna Edwards
Deputy City Attorney
City of Brentwood
150 City Park Way
Brentwood, CA 94513-1164

Re: Your Request for Advice
Our File No. A-24-028

Dear Ms. Edwards:

This letter responds to your request for advice regarding 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

Under the Act, may City of Brentwood Mayor, Joel Bryant, participate in decisions surrounding a project site when his and his spouse’s mutual employer rents a facility that shares a property line with the project site?

CONCLUSION

The Act does not prohibit Mayor Bryant from taking part in the decision as there are no facts indicating that it is reasonably foreseeable the decision will have a material financial effect on his employer as a source of income, and there are no facts indicating that there is a “nexus” between Mayor Bryant or his spouse’s income and the project site. (Regulation 18702.3(a) and (b).)

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.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Brentwood (“City”) and are seeking advice on behalf of City Mayor Joel Bryant regarding a development project (“Project”) being considered by the City. Mayor Bryant seeks advice as to whether he has a conflict of interest in the decision due to his employer renting property that shares a property line with the Project.

The City is currently processing a land use application that seeks approval of the development of a residential use that would include 34 homes (including two duet units), a bio retention basin, and other associated improvements on a primarily undeveloped site, except for an existing single-family home and a barn structure. Specifically, the Project applicant has proposed a 34-lot vesting tentative subdivision as well as a design review approval. The Project was reviewed for the purpose of the California Environmental Quality Act (“CEQA”) through preparation of an Initial Study and Mitigated Negative Declaration. Thirty of the homes will be sold at market rate, while two of the duet units will be sold to households that qualify as very low income and two of the duet units will be sold to households that qualify as moderate income. Both the Brentwood General Plan and Brentwood Municipal Code envision the development of the site with residential uses.

The Project site is generally bound by Adams Lane to the west, the Orchard Grove residential subdivision to the south; Lone Oak Road to the east; and vacant land, The Rock Church and two single-family residences to the north. The City Council is the final approving body for the requested Project entitlements. The Project is not anticipated to involve any construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities such that The Rock Church, or the Family Life Center, will receive new or improved services that provide a benefit or detriment disproportionate to the other properties receiving these services.

The Rock Church is a nondenominational Christian fellowship that has entered a month-to-month rental agreement with another Christian ministry, the East Bay Pentecostals, a non-profit religious corporation that does business as the Family Life Center. Under this agreement, the Family Life Center holds religious services and devotional studies at The Rock Church location once a week. The Rock Church has approved land entitlements to construct a parsonage on its property when and if the church’s need for housing arises. Most of the members of The Family Life Center live in the East County area, which spans from Concord (26 miles from Brentwood) and Pleasanton (31 miles from Brentwood) to Discovery Bay (9 miles from Brentwood), although some members live as far as Sacramento (54 miles from Brentwood). Mayor Bryant and his spouse are both senior pastors employed by the Family Life Center and in this capacity leads services at The Rock Church once per week. Mayor Bryant does not maintain an office or other permanent space at The Rock Church and has no financial interest in The Rock Church’s holdings. His salary from the Family Life Center is not dependent on or otherwise related to the finances of The Rock Church.

ANALYSIS

Under Section 87100 of the Act, no public official at any level of state or local government shall make, participate in making or in any way attempt to use their 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 is "[a]ny source of income . . . 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(c).) You have identified that Mayor Bryant and his spouse have a source of income interest in their nonprofit employer, Family Life Center, a month-to-month lessee of The Rock Church.

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. Under this regulation, where a financial interest is a named party or the subject of a governmental decision before the official or the official's agency, it is presumed that the financial effect is reasonably foreseeable. 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). Under the facts provided, Family Life Center is not a named party nor a subject of the decision.

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 as follows: "[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." (Regulation 18701(b).)

Regulation 18702.3(a)(3) provides one applicable standard for determining whether the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a nonprofit source of income is material. It requires the examination of three areas of possible impacts on the nonprofit entity as a result of the decision: annual gross receipt or asset/liability changes, changes to expenses, and impacts on a real property interest. For the first category, the financial effect is material if the decision may result in an increase or decrease of the nonprofit organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or greater than \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is at least \$10,000. (Regulation 18702.3(a)(3)(A).) For the second, the effect is material if the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).) The third element found in Regulation 18702.3(a)(3)(C) is not applicable, as Family Life Center does not have a real property interest in this matter because an interest in real property does not include a periodic tenancy of one month. (Regulation 18233.)

For the first category: there are no facts indicating that Family Life Center will see an increase or decrease in its annual gross receipts, value of its assets or liabilities, in an amount equal to or greater than \$1,000,000; or an increase or decrease of at least \$10,000 in its gross receipts. (Regulation 18702.3(a)(3)(A).) For the second, there are no facts indicating that the decision may cause Family Life Center to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross

receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).) Accordingly, it does not appear reasonably foreseeable that the decision would have a financial impact meeting the materiality standards specified above. However, these are not the only materiality standards applicable.

Regulation 18702.3(b), “nexus test,” provides another applicable standard and states that the reasonably foreseeable financial effect on a source of income to a public official or the official’s spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source of income, and the official or the official’s spouse receives or is promised the income for achieving the purpose or goal. Under the facts provided, there is no indication that there is a nexus between the income received by Mayor Bryant or his spouse to serve as pastors and the proposed development project located near to the property leased by their employer. For this reason, we conclude there is not a nexus between the work Mayor Bryant and his spouse are paid to perform for Family Life Center and the decisions coming before him in his capacity as an elected City official.

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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