



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 17, 2024

John W. Lam
City Attorney
Alvarez- Glasman & Colvin
13181 Crossroads Parkway North
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Re: Your Request for Advice
Our File No. A-24-036

Dear Mr. Lam:

This letter responds to your request for advice on behalf of City of Chico Councilmember Tom van Overbeek 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

Does Councilmember van Overbeek have a disqualifying conflict of interest as to participating, advising, providing input and direction to City staff, and ultimately voting on the Downtown Chico Complete Streets Project Plan (“Plan”)? If so, does the Act’s “public generally” exception apply to allow his participation?

CONCLUSION

Councilmember van Overbeek owns real property located within the boundaries of the draft Plan. Even to the extent the proposed Plan does not establish development criteria applicable to the property and without considering disqualification based on any other interests, 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.

Councilmember's property is located within 500 feet of the Plan area, and there is no clear and convincing evidence that the Plan would not have any measurable impact on the property. Accordingly, it is reasonably foreseeable that the financial effect of this decision on his property interest will be material, and he is precluded from taking part in the decision. Further, the facts presented do not establish that a significant segment of real properties within his jurisdiction will be affected in a similar manner, and the "public generally" exception does not apply to allow his participation in a decision concerning the Plan.

FACTS AS PRESENTED BY REQUESTER

The City of Chico is located in the County of Butte. The City has a current population of approximately 100,463 residents with a geographical size of approximately 34.62 square miles. The City is divided into seven voting districts. Councilmember van Overbeek is an elected member of the Chico City Council (the "City Council") and represents District 6. Councilmember van Overbeek owns a two-story commercial office building ("van Overbeek Property") located in Downtown Chico ("Downtown") at 300 Main Street and 115 West 3rd Street. It is located on the south corner of Main Street and 3rd Street in Downtown and is designated as Commercial Mixed Use (zoned Downtown North). Councilmember van Overbeek purchased the van Overbeek Property in 2014. The estimated fair market value of the van Overbeek Property exceeds the \$2,000 direct interest in real property threshold set forth in Section 87103(b).

The van Overbeek Property is located in Downtown, which is recognized in the City's General Plan as the heart of the community and center of cultural activity. The City is currently in the process of conducting public outreach to better identify and refine the scope and design principles for this area under the Plan. The van Overbeek Property, and the Plan area, are within District 5.

The Plan is an initiative aimed at improving the infrastructure and accessibility of Downtown Chico with a focus on creating streets that cater to the needs of all users, including pedestrians, cyclists, motorists, and public transit users. The Plan involves redesigning streets to incorporate features such as wider sidewalks, bike lanes, improved crosswalks, and enhanced landscaping. The overarching goal is to create a more vibrant, safe, and inclusive downtown area that promotes alternative modes of transportation and encourages economic development. The Plan's boundaries cover a central portion of Downtown.

Public outreach has focused on targeting the diverse stakeholders and the public at large to garner insights that relate to a broad range of topics, including, but not limited to, the following:

- on-street parking
- sidewalk widths
- public parking
- biking facilities and connectivity
- pedestrian/biking safety enhancements
- design aesthetics
- public landscaping

It is anticipated that the bulk of the Plan's improvements will focus on Downtown's Broadway Street and Main Street corridors between 1st Street and 9th Street. With public input, City

staff will prepare a proposed Plan for the City Council's input and consideration. If approved by the City Council, the Plan will serve as the planning document for implementation and the basis for various state and federal funding grant applications. Engineering and construction consistent with the Plan would only begin after funding is secured by the City. Improvements proposed under the Plan will likely have a temporary impact on traffic, parking, and pedestrian travel during construction.

The van Overbeek Property is located in District 5 and within the current boundaries of the draft Plan. Council member van Overbeek is the elected representative of District 6, which has no real properties of any type located within the draft Plan. According to data from the City's GIS system, there are 2,986 commercial real properties in the City, and 335 commercial properties in District 6. There are 230 commercial real properties in the current draft Plan boundaries.

In follow up emails, you stated that none of the 335 commercial properties in District 6 are located within the current draft Plan boundaries, and that there are no real properties of any type in District 6 that are located within the current draft Plan boundaries.

ANALYSIS

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official's 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.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103.)

Councilmember van Overbeek has an economic interest in the van Overbeek Property. You have also indicated that the property is a commercial office building. Accordingly, it also appears that Councilmember van Overbeek may have interests in one or more business entities as well as potential interest in the business entities, and customers or tenants of the business entities, as

sources of income. However, we do not have sufficient information to provide analysis of these interests and a further analysis is unnecessary because of the conclusion reached below.

Foreseeability and Materiality

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. An interest in real property is the subject of the decision and explicitly involved in the decision anytime the decision affects the property as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Where 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."

Pursuant to Regulations 18701(a) and 18702.2(a)(1), an interest in real property is explicitly involved in the decision and the effect of the decision on the interest is both foreseeable and material if the decision involves the adoption of or amendment to a development plan or criteria applying to the parcel.

For a property not explicitly involved in the decision, 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).)

Here, Councilmember van Overbeek has an economic interest in the van Overbeek Property, located within the boundaries of the draft Plan area, and decisions for the draft Plan would, at a minimum involve making changes to both on-street and off-street parking, sidewalk widths, and pedestrian access of the area in which the property is included. It is unclear if the plan or criteria will establish any development criteria applicable to the parcel, but even assuming it does not, Councilmember van Overbeek would be disqualified because his property is located within 500 feet of the Plan area, and there is no clear and convincing evidence that the Plan would not have any measurable impact on the property. As such, it is reasonably foreseeable the financial effect of these decisions on Councilmember van Overbeek's property interest is material under applicable Commission regulations. Thus, he is precluded from taking part in these decisions, unless an exception applies.

Public Generally Exception

A governmental decision's financial effect on a public official's financial interest is 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 the official's financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public is:

- (1) At least 25 percent of:
 - (i) All businesses or non-profit entities within the official's jurisdiction;
 - (ii) All real property, commercial real property, or residential real property within the official's jurisdiction; or
 - (iii) All individuals within the official's jurisdiction.
- (2) 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).)

A unique effect on a financial interest includes a disproportionate effect on:

- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- (2) The official's business entity or real property resulting from the proximity of a project that is the subject of a decision.

(Regulation 18703(c).)

A "significant segment of the public" is 25 percent of real properties within the official's jurisdiction, which is defined as either the City Council district the Council Member represents, or the City as a whole. (Regulation 18703(d).) There are 335 commercial properties in the Councilmember's district, District 6, and none are located within the current draft Plan boundaries. The van Overbeek Property, and the Plan area, are within District 5. As no properties within District 6 are included in the plan, at least 25 percent of real property, or commercial real property within the City must be affected by the decision with no unique effect on the councilmember's property for the public generally exception to apply.

Under the circumstances provided, the improvements identified would have a disproportionate effect on commercial properties in comparison to noncommercial properties because the improvements include parking, design aesthetics, and improved accessibility, all of which support commercial uses in the area more so than other noncommercial uses. Accordingly, for the public generally exception to apply at least 25 percent of the commercial real property within the City would have to be similarly affected by the decisions. However, in this case, only 230 of the City's 2,986 commercial real properties (7.7 percent) will be similarly affected by the Plan. Thus, the standard for the application of the public generally exception is not met, and

Councilmember van Overbeek is prohibited from taking part in the decision pertaining to the Draft Plan.

If you have other questions on this matter, please contact me by email at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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