



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 25, 2024

Jennifer M. Lyon
Principal
City of Imperial Beach
8100 La Mesa Boulevard, Suite 200
La Mesa, CA 91942

Re: Your Request for Advice
Our File No. A-24-104

Dear Ms. Lyon:

This letter responds to your request for advice on behalf of City of Imperial Beach Mayor Paloma Aguirre and Councilmember Jack Fisher 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 the Act prohibit Mayor Aguirre or Councilmember Fisher from participation in the Palm Avenue Complete Multimodal Corridor Project (“Project”) where the officials’ residential real property is located within 340 feet and 240 feet, respectively, of the Project?

CONCLUSION

Mayor Aguirre and Councilmember Fisher may take part in the Project decision despite their residential real property interests because the Project decisions will affect a significant segment of the public in each of their jurisdictions, 73 percent of the businesses within District 2

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.

and 50.4 percent of all businesses within the City, that are also within 500 feet of the Project boundaries, and the decisions will not uniquely affect either of the officials' residential property.

FACTS AS PRESENTED BY REQUESTER

The City of Imperial Beach ("City") is a general law city with a population of 25,458 and is 4.5 square miles in area of which 40 percent is open space. Councilmember Jack Fisher was elected by the voters within District 2 of the City. Mayor Aguirre was elected by the citizens at large within the City. Each official owns a primary residence that is within close proximity to Palm Avenue, a six-lane prime arterial street in the City, and the primary east-west thoroughfare that bisects the City into distinct northern and southern areas. The zoning along the corridor is primarily General Commercial and Mixed-Use (C/MU-1) and is the City's primary commercial corridor. This vital road is integral to the daily lives of Imperial Beach residents, providing access to essential destinations, including schools, parks, healthcare facilities, a shopping center, dining establishments, and more.

Palm Avenue Complete Multimodal Corridor Project

The Project encompasses the entire length of the City's primary east-west thoroughfare and will provide 1.5 miles of active transportation improvements on Palm Avenue. The Project involves improving the Palm Avenue corridor to enhance the experience for all users, increase safety, and improve the overall aesthetics of the area. Most of the proposed work will involve repair, replacement, and maintenance of the existing street and its facilities. The work and improvements include the following:

- Protected Class 4 bicycle facilities along the corridor with bicycle crossing markings at
- intersections and driveways;
- Upgrades to existing sidewalks to be a minimum of 10" wide and ADA-compliant;
- Upgraded crosswalks and curb ramps to meet ADA standards;
- Replacement of deteriorated curbs and gutters;
- Curb extensions on east-west crossings;
- Driveway and all apron reconstruction;
- Floating parking and bus islands;
- Storm drain assessments and replacement rehabilitation;
- Stormwater management that integrates strategies and improves drainage; traffic signal
- modifications;
- Consolidated traffic signal operations for streets;
- A new traffic signal at 10th Street (dependent on traffic analysis and community input);
- Road diet from 3 lanes to 2 lanes on a short segment between 7th Street and Delaware Street;
- Landscaping and irrigation updates; and
- Trees and pedestrian scale lighting.

The City has received over \$23 million in Active Transportation Program (ATP) funding from the State of California Department of Transportation (Caltrans) to develop the Project within the City limits. The San Diego Association of Governments (SANDAG) will provide an additional

\$2 million in Trans Net Major Corridor funding. The City Council will consider awarding a contract to a consultant for the preliminary design, environmental documentation, and project management of the proposed Project at its November 2024 meeting and will consider awarding construction contracts to construct the Project at a later date.

Councilmember Fisher's Residence

Councilmember Fisher owns a primary residence approximately 240 feet south of Palm Avenue and the Project boundaries. His home does not front on Palm Avenue and is located in a cul-de-sac behind a larger commercial complex that does. To reach Palm Avenue from Councilmember Fisher's home, one would take about three turns and travel approximately 1,180 feet. Councilmember Fisher does not live within 500 feet of the proposed new signal light on 10th Street nor the proposed road diet between 7th Street and Delaware Street. These improvements are located three blocks and two blocks from his home.

Mayor Aguirre's Residence

Mayor Aguirre owns a primary residence approximately 340 feet north of the Palm Avenue Project boundaries. Her home also does not front on Palm Avenue, and it is a condominium unit within a condominium complex that contains about 36 units. There are two parcels between Mayor Aguirre's residence and Palm Avenue. In order to reach Palm Avenue from the Mayor's residence, one would turn out of the complex's parking area onto 9th Street and travel approximately 390 feet to make a turn to get on Palm Avenue. Mayor Aguirre does not live within 500 feet of the proposed new signal light on 10th Street nor the proposed road diet between 7th Street and Delaware Street. These improvements are both located three blocks from her home.

Additional Facts

The City has determined that 50.4 percent of all businesses within the City are within 500 feet of the Project boundaries. The City has determined that 73 percent of the businesses within District 2 are within 500 feet of the Project boundaries. As stated previously, the Palm Avenue corridor is the City's primary commercial corridor, and a large number of the City's businesses are impacted by the Project. The City is not aware of any other facts indicating that the residences of Mayor Aguirre or Councilmember Fisher would receive unique or disproportionate impacts due to the Project.

The City has also determined that more than 15 percent of all residential parcels within the entire City are within 750 feet of the Project boundaries. The City has determined that more than 15 percent of all residential parcels within District 2 are within 750 feet of the Project boundaries. You state that any effects on Mayor Aguirre's or Councilmember Fisher's residences would be similar to the residential parcels located within 750 of the Project area. The City is not aware of any other facts indicating that their residences would receive unique or disproportionate impacts due to the Project.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests, distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include any real property in which the public official has a direct or indirect interest worth more than \$2,000 or more. (Section 87103(b)). Mayor Aguirre and Councilmember Fisher have each identified a real property interest in their primary residence.

Foreseeability and Materiality

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in a decision as a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, 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. (Regulation 18701(b).)

We note that a real property interest is the "subject of a proceeding" if the decision involves street construction or improvements that will provide new or improved service that disproportionately affects an official's real property compared to other properties receiving the service. (Regulation 18701(a), referencing Regulation 18702.2(a)(6).) There is no indication from the facts that Mayor Aguirre's or Councilmember Fisher's real property interests would receive unique or disproportionate impacts due to the Project's improvements, compared to that received by the commercial and residential properties in the immediate area. Therefore, the official's real property is not explicitly involved in the Project decision, and under Regulation 18701(b), each official will have a financial interest in the decision if there is a realistic possibility that the decision will have a material financial effect on their respective real property interests.

Real Property Interests

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. First, we note that Regulation 18702.2(d) states that the financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is not material if the decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities." However, as you note in your request, the Project is more involved than a mere "repair, replacement, or maintenance" of the existing street. It involves a number of improvements as well. Therefore, the standard in Regulation 18702.2(d)(1) is not applicable to the Project decisions.

For decisions involving this type of real property located 500 feet or less from the property line of the official's parcel, Regulation 18702.2(a)(7) states that the reasonably foreseeable financial effect of a governmental decision on the official's property is presumed to be material 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 effect of the Project decisions on Councilmember Fisher's and Mayor Aguirre's residences is presumed material unless clear and convincing evidence is presented to rebut the presumption. The facts indicate that Councilmember Fisher's residence is buffered from Palm Avenue because it is on a cul de sac located behind a larger commercial complex. Mayor Aguirre's residence is located within a condominium complex, with two parcels between her residence and Palm Avenue. However, we need not further consider the materiality issue due to the conclusion below that the effect of the Project decisions on the officials' real property interests is indistinguishable from the decision's effect on the public generally.

Public Generally Exception

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of the official's interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) 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).)

Relevant to these facts, a significant segment of the public is at least 25 percent of all businesses within the official's jurisdiction. (Regulation 18703(b)(1)(A).) A "unique effect" on an official's financial interest relevant to these facts includes a disproportionate effect on the development potential, or use of the official's real property or on the income producing potential of the official's real property or a disproportionate effect on the official's real property due to the proximity of the project. (Regulation 18703(c)(1) and (2).)

Councilmember Fisher's jurisdiction, for purposes of applying the public generally exception, is either the City as a whole or District 2.² Mayor Aguirre's jurisdiction is the City. The facts state that 73 percent of the businesses within District 2 and 50.4 percent of all businesses within the City are within 500 feet of the Project boundaries. Therefore, the Project decisions will affect a significant segment of the public in each official's jurisdiction. The facts indicate that neither official's residence would receive unique or disproportionate impacts due to the Project compared to the significant segment. The repairs and improvements are planned for the entire Palm Avenue Project site. The area-specific changes, such as the new traffic signal and road diet, are not immediately adjacent to the officials' respective properties and the effects on the officials' residences will be similar to those experienced by the businesses along this commercial corridor. Councilmember Fisher and Mayor Aguirre have established that the "public generally" exception applies, and they do not have a disqualifying interest in the Project decisions due to their respective residences.

² As applicable to the public generally exception, Regulation 18703(d) defines the term "jurisdiction" as the "jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected."

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

Sincerely,

Dave Bainbridge
General Counsel

Brian J. Lau

For:

By: L. Karen Harrison
Senior Counsel, Legal Division

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