



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

December 23, 2024

Michael J. Garcia
City Attorney
City of Glendale
613 E. Broadway, Suite 220
Glendale, California 91206-4394

Re: Your Request for Advice
Our File No. A-24-123

Dear Mr. Garcia:

This letter responds to your request for advice on behalf of City of Glendale City Councilmembers Dan Brotman, Ara Najarian, and Vartan Gharpetian 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.

QUESTIONS

1. Do Councilmembers Brotman, Gharpetian, and Najarian have prohibited conflict of interests in making, participating in making or in any way using or attempting to use their positions to influence the decision to approve a contract with a consultant to prepare the Verdugo Woodlands Historic District survey, and participate in future governmental decisions pertaining to the approval of the district, considering their properties located in or within 500 feet of the proposed district?

2. If the councilmembers have a conflict of interest, can councilmembers be chosen at random to participate in the decisions under the rule and procedure for “legal required participation” as set forth in Regulation 18705?

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.

CONCLUSIONS

1. The facts provided do not establish clear and convincing evidence that the decisions will have no measurable impact on Councilmembers Brotman's, Gharpetian's, and Najarian's real properties under the applicable regulations for property located within 500 feet and not explicitly involved in the decisions. Therefore, they have prohibitive financial interests and may not generally take part in the decision to approve a contract with a consultant to prepare the Verdugo Woodlands Historic District survey or participate in future governmental decisions pertaining to the approval of the district.

2. Although the Act prohibits Councilmembers Brotman, Gharpetian, and Najarian from taking part in the decisions, as explained bellow, the City may invoke the "legally required participation" exception to form a quorum of councilmembers with respect to the decisions, as specified in Regulation 18705.

FACTS AS PRESENTED BY REQUESTER

The City of Glendale was incorporated in 1906 and has several neighborhoods that retain architectural integrity that the City has deemed worthy of preserving. Thus, as outlined in the City's Municipal Code, the City established a process to create historic district overlay zones to "protect the beauty of the city and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of its historic and architectural resources within neighborhoods" and "to protect designated areas having historic and architectural significance against intrusion of alterations, additions, new structures and other designs that fail to protect such significance." Notably, one of the other legislative purposes of historic districts in Glendale is to "stabilize and improve property values in such designated areas, thus strengthening the local economy." The Glendale City Council is made up of five councilmembers who are elected from the City at large. The decision to select a consultant will require participation of a quorum of councilmembers, while future Council decisions pertaining to the formation of the District require approval of a four-fifths vote of the City Council.

Summary of Historic District Designation Process

The process to establish a historic district overlay zone is set forth in the Glendale Municipal Code ("GMC"). The process first requires that the owners of any three properties within the proposed district boundary (the "study area") submit an application to the City's Director of Community Development ("Director"). The application must include the proposed historic district overlay zone study area boundary, addresses of all properties to be included in the proposed historic district overlay zone, a written narrative describing the history and development of the area, and a statement describing why the proposed historic district overlay zone designation or modification meets the criteria for designation. Next, the Director must set a community forum and a public hearing before the City's Historic Preservation Commission ("HPC"), the purpose of which is to inform residents and owners about the proposed historic district and historic districts in general, as well as answer questions; immediately following the community forum, the HPC must conduct the public hearing to make a preliminary determination whether the application contains sufficient information indicating the study area appears likely to meet the thresholds and criteria for purposes

of subsequently undergoing more detailed analysis. At the HPC's hearing, the HPC may take one of the following three actions:

1. Preliminarily determine that the proposed historic district overlay zone appears to be eligible for designation or modification;
2. Determine the proposed historic district does not appear eligible for designation; or
3. Preliminarily determine that although the proposed historic district overlay zone appears eligible for designation or modification, additional evidence demonstrating public support for the application is warranted, in which case the HPC may require the applicant to circulate a petition requesting that the City Council authorize preparation of a historic district survey.

Upon the HPC's determination that the proposed historic district overlay zone appears eligible for designation and the Director's acceptance of any required petition, the proposed historic district overlay zone is deemed a "pending historic district overlay zone" until the application is approved or denied by the City Council or is withdrawn by the applicants. If deemed a "pending" district, design review authority for projects in the pending district is transferred from the City's Design Review Board to the HPC and the City's historic district design guidelines for design review replace any applicable general design review guidelines with respect to applications submitted subsequent to the date of the determination.

After the HPC's preliminary determination, the Director must issue a request for proposals ("RFP") to preservation consulting firms and prepare a ranked list of recommended consultants to be selected by the City Council. The chosen consultant completes a draft historic district survey, which the Director must set for review before the HPC.

At such hearing, the HPC may approve the draft historic district survey as presented or provide direction to the Director to make minor revisions. Once the HPC approves the final historic district survey, it issues its final recommendation to the City Council regarding the establishment of the historic district overlay zone and authorizes the project proponents to circulate a petition requesting a historic district overlay zone to affected property owners asking City Council to establish a historic district overlay zone.

If the petition satisfies the GMC's requirements, the Director must prepare a report that details the appropriateness of the recommended boundary consistent with the historic district overlay zone designation criteria, and other necessary information. The Director must then forward the HPC's recommendation and the report to the City's Planning Commission for consideration of a zone change to create the specific historic district overlay zone. Following the Planning Commission's recommendation, the City Council conducts a hearing regarding approval of the historic district overlay zone.

Limitations and Development Review for Properties Within a Historic District Overlay Zone

An historic district overlay zone is an "overlay" to the underlying zoning applicable to each property within the historic district. The GMC and historic district guidelines place restrictions on what modifications, e.g., building alterations, can be made to properties in a designated or pending

historic district. For example, major alterations for any structure that is a contributor² or non-contributor³ to a designated historic district or in a pending historic district and that are visible from the street must be approved by either the HPC or the Director. Any such work must be consistent with the City's Historic District Design Guidelines and the Secretary of the Interior's Standards for Rehabilitation establish the framework for design review of portions of a historic resource that are visible from the public right-of-way. The City does not issue building permits for modifications until review under the California Environmental Quality Act and design review are completed.

The Director also has review authority over routine maintenance and repair of exterior portions of contributors and non-contributors visible from the public right-of-way that require a permit, to determine whether the proposed maintenance and repair exceed the thresholds and/or requirements for what is considered routine maintenance and repair. Even minor alterations to contributors or non-contributors to a historic district require design review and typically also require issuance of a permit. The Director is the review authority for the purpose of determining whether certain work that does not require a permit is nonetheless a minor alteration and, therefore, requires review because the alteration may have a significant impact on the character and appearance of a contributor or non-contributor. Such minor alternations include replacement of doors and garage doors within existing openings; removal of existing awnings, or installation of new awnings, that are fully supported by the wall; removal or installation of wall cladding, trim, shutters, or other decorative materials; installation or removal of decorative light fixtures at existing junction boxes; construction or removal of hardscape, fences, and walls; removal of any protected landscape feature; and includes any other work not requiring a permit and determined by the Director to require design review due to its potential to affect the historic character and appearance of the property. In addition, a demolition clearance and demolition permit is required prior to complete or partial demolition of contributors and non-contributors to designated historic districts and pending historic districts.

Verdugo Woodland Historic District Application

The application currently under consideration is for a proposed historic district consisting of the portion of the Verdugo Woodlands neighborhood. The proposed district will incorporate the Niodrara Drive Historic District, which was designated in 2016. The proposal includes 788 properties, including the 32 homes in the Niodrara Drive Historic District. However, it is still uncertain whether Niodrara Drive will remain a standalone district or if it will be subsumed into a new, larger district.

The application was reviewed by the HPC on August 15, 2024. The HPC made a preliminary finding that the proposed district appears likely to meet the thresholds and criteria requirements and voted to authorize staff to begin the process of retaining a historic preservation

² "Contributor" means a historic resource in a designated or pending historic district overlay zone that was built within the period of significance and retains enough historic integrity to contribute to the overall character and significance of the historic district overlay zone.

³ "Non-contributor" means a resource in a designated or pending historic district overlay zone that was either not built within the historic district overlay zone's period of significance or was built within the period of significance but does not retain enough historic integrity to contribute to the overall character and significance of the historic district overlay zone.

consulting firm to conduct a survey of the area. This determination means the area is now a “pending district” subject to design criteria and approval as stated above. A public hearing was noticed for September 17, 2024, for the City Council to award a contract for a historic district survey to the recommended consultant. However, this hearing was continued pending a determination regarding potential conflicts of interest.

Councilmembers' Residential Real Property

- Councilmember Brotman owns a single-family residential property (his primary residence) that is within the Niodrara Drive Historic District. Even if the Niodrara Drive Historic District is removed from the current application, the property is still within 500 feet of the boundary of the proposed Verdugo Woodlands Historic District.
- Councilmember Najarian owns a single-family residential property (his primary residence) that is not within the proposed district but within 500 feet of the proposed boundary.
- Councilmember Gharpetian owns three single-family residential properties (one of which is his primary residence) that are not within the proposed district but within 500 feet of the proposed boundary. The other two properties are rental properties.

The number of properties that will be within the proposed District and within 500 feet of the proposed district is substantially below 15 percent or 25 percent of all residential real properties within the City.

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.)

Councilmembers Brotman, Najarian, and Gharpetian all have an economic interest in their real properties. In addition, Councilmember Gharpetian also has an interest in his property rental business as a business entity and source of income, and possible interest in his tenants as sources of income.⁴

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.

Councilmembers Najarian's and Gharpetian's economic interests are not within the boundaries of the proposed district and therefore the properties are not explicitly involved in the decisions. It is unclear whether Councilmember Brotman's property is explicitly involved in the decision. While the property may be incorporated into the proposed district, the property is already within the Niodrara Drive Historical District, which is already subject to historical designation restrictions, and may ultimately not be included within the proposed district. However, it is unnecessary to further consider whether the property is explicitly involved in the decision as Councilmember Brotman has a potentially disqualifying conflict of interest even to the extent the property is treated as not explicitly involved in the decisions.

Turning to the applicable standards for property not explicitly involved in the decision, the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in

⁴ Considering the conclusion that Councilmember Gharpetian has a potentially disqualifying conflict of interest based upon his real property interest, it is unnecessary to further consider his interests in his rental business and tenants.

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).)

Based on the facts provided, the above-stated "clear and convincing evidence" standard is not met, and the councilmembers must recuse themselves from participation in the decision to approve a contract with a consultant to prepare the survey, and future governmental decisions pertaining to the approval of the historic district. As explained in detail above, the creation of a designated historic district is intended to "protect the beauty of the city and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of its historic and architectural resources within neighborhoods" and "to protect designated areas having historic and architectural significance against intrusion of alterations, additions, new structures and other designs that fail to protect such significance." Further, any remodeling in a historic district of a property which is visible from the public street or sidewalk immediately adjacent thereto is subject to design review. Even minor alterations to contributors or non-contributors to a historic district require design review and typically also require issuance of a permit. The creation of the historic district will protect the status quo of the entirety of the neighborhood, in part through the creation of review and permitting requirements that make nonconforming alterations difficult at best. As the Councilmembers' properties are located within 500 feet of the proposed historic district and there is no clear and convincing evidence that decisions involving the proposed district would not have any measurable impact on the properties, the Councilmembers have a disqualifying financial interest in the decisions.

Legally Required Participation

Based on the facts provided, three of the City Council's five members would be disqualified under the Act. Under Regulation 18705, "[a] public official who has a financial interest in a decision may establish that the official is legally required to make or to participate in the making of a governmental decision within the meaning of Section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." (Regulation 18705(a).) Regulation 18705(c) requires the exception to be construed narrowly. The exception cannot be invoked to allow a financially interested official to participate in a decision if a quorum can be convened of other members of the agency who are not disqualified, and participation is required to be limited to the smallest number of officials with a disqualifying interest that are "legally required" to make the decision. (Regulation 18705(c)(2)-(3).)

Because the City Council is made up of five councilmembers, at least three are necessary to form a quorum with respect to decisions regarding the selection of a consultant to prepare the survey, while four are necessary to form a quorum with respect to decisions pertaining to the formation of the district. Councilmembers Brotman, Gharpetian, and Najarian, as discussed above, would ordinarily all be prohibited from taking part in decisions these decisions. Accordingly, in order to establish a quorum of three councilmembers to approve the selection of a consultant, one otherwise disqualified councilmember may be "legally required" to participate as provided under Regulation 18705, while, in order to establish a four-fifth quorum for decisions pertaining to the formation of the district, one additional member may be selected to participate as provided under Regulation 18705.

Accordingly, the City may use a random means of selection to select the necessary, otherwise disqualified, councilmembers to form the required quorums with respect to decisions relating to the selection of a consultant and the formation of the district. (See Regulation 18705(c)(3).) Once two councilmembers are selected, those councilmembers are selected for the duration of the proceedings and in all related matters until those councilmembers' participation is no longer legally required, or the need for invoking the exception no longer exists. (*Ibid.*) The selected councilmembers will be required to state the existence of the potential conflict of interest as specified in Regulation 18705(b).

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:aja