



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

April 24, 2025

Ian Sobieski
Councilmember, City of Sausalito
420 Litho Street
Sausalito, CA 94965

Re: Your Request for Informal Assistance
Our File No. I-25-022

Dear Mr. Sobieski:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your inquiry is general in nature, we are treating your request as one for informal assistance.²

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 you from taking part in a decisions concerning a property located between 500 and 1000 feet of your residence if the City Council decides to consider it as an opportunity site in connection with the City’s Housing Element?

CONCLUSION

The facts do not identify any decision before the City Council to determine whether you are disqualified from taking part in that decision under the Act. As a general matter, you are potentially prohibited under the Act from taking part in any decision if it is reasonably foreseeable that the decision will have a material effect on your real property interest and/or your interest in your rental

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

property business. However, conflicts of interest under the Act must be determined on a case-by-case basis and we cannot reach any conclusion beyond the general assistance we have provided.

FACTS AS PRESENTED BY REQUESTER

You are a member of the Sausalito City Council seeking advice as to whether the conflict of interest provisions under the Act prohibit you from taking part in decisions concerning the City's amended Housing Element.³

Sausalito, with a population of about 7,500, is only two square miles and densely developed. According to the City's Amended Housing Element (Draft March 27, 2025), Sausalito received a RHNA of 724 units as its "fair share" required to meet regional housing needs and currently has a deficit of 371 units. In order to accommodate the RHNA, the City identified dozens of opportunity sites for the Housing Element that can be rezoned for residential development, but more than 50% of those sites can be rezoned only with approval by voter referendum, which will be scheduled sometime this year in the late summer or early fall.

Relevant to your real property interest in your personal residence and attached three rental units, one of the original opportunity sites was Site 202, made up of 5 contiguous parcels comprising 1.19 acres of land,⁴ which could sustain up to 150 units of housing if a developer were able to use a 100 percent bonus density.⁵ The property was originally used as the location for a historic boutique hotel that opened in 1927, but the building is currently used for a residential addiction center. The property remains a Housing 29 overlay (29 units per acre) providing the potential for 27 to 35 units.

As the crow flies, the closest point from the boundary of your property to the closest point of site 202 is approximately 860 feet. To walk or drive from your property, the closest point to site 202 is 1024 feet, which requires going down a hill and then up a hill in a circuitous route. You are not able to see the parcel from your property. Because of the hilly topology with several multi-level buildings as well as the dense trees/vegetation, no portion of site 202 can be seen (or heard) from

³ Under State law, every city and county in California is required to update its Housing Element to address specific requirements and submit the element to the Department of Housing and Community Development (HCD). (See www.sausalito.gov.) The Housing Element serves as the City's blueprint for meeting the housing needs of its residents, at all economic levels and addressing segments of the population with special housing needs. (*Ibid.*) Each jurisdiction in California is required to plan for its fair share of the region's housing need. This fair share is determined through a process called the Regional Housing Need Allocation ("RHNA"). Once a local government has received its RHNA, it must revise its Housing Element to show how it plans to accommodate its portion of the region's housing need.

⁴ Site 202 has been identified as the Alta Mira property at 125 Bulkeley and most of the parcels are currently parking lots.

⁵ You stated that some staff members have said 150 units is not a realistic construction possibility, but it is your understanding that 150 units would be legally allowed.

your property.⁶ You currently have private off-street parking at your house for you and your tenants.

At its meeting on February 25, 2025, the City Council voted to remove Site 202 as an opportunity site.⁷ Therefore, it is unclear at this time whether Site 202 will ultimately be considered as an opportunity site in connection with the Housing Element. In addition, there is currently no development project for the property that the City Council plans to consider.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 defines financial interests to include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more. (Section 87103(a).)
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

Here, you have a real property interest in your residence, and because you have three rental units on your property, you also have a business entity interest and source of income interest in your rental property business, as well as a potential source of income interest in your tenants.⁸

Foreseeability and Materiality

Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is explicitly involved in the decision as a named party in, or the subject of the decision. An interest is the subject of a proceeding if the decision involves the

⁶ You provided a video that showed the route from site #202 to your property, which confirms the densely developed winding and hilly topography with no potential view of the site from your property.

⁷ You recused yourself and did not take part in the discussion or vote.

⁸ We do not have any information about the tenants so we do not address them further.

issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the interest.

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, as here, and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

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 more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Generally speaking, if your real property will be affected in a manner listed above as a result of a decision concerning the Housing Element, it is reasonably foreseeable that the decision will have a material effect on your financial interest, and you may not participate in the decision. For example, a decision to change the zoning and allowable density for the area encompassing Site 202 may increase the opportunity for a development that results in a change to the character of your real property by substantially altering such things as traffic levels, intensity of use and parking in the surrounding area, which could also affect the market value of your property.

As mentioned, you also have a source of income and business entity interest in your rental property business. For a business entity, including a business entity that is a source of income, not explicitly involved in the decision, as here, a foreseeable effect on the entity is material if the entity will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Relevant to these facts, under Regulation 18702.1(a), the reasonably foreseeable financial effect of a governmental decision on an official's interest in a business entity is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than (A) \$1,000,000 or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)
- 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 (A) \$250,000 or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

Similar to your real property interest, if your rental business may be affected in a manner listed above as a result of a decision concerning the Housing Element, it is reasonably foreseeable that the decision will have a material effect on your financial interest, and you may not participate in the decision.

However, conflicts of interest under the Act must be determined on a case-by-case basis and we cannot reach any conclusion beyond the general assistance we have provided above unless you identify a specific decision that will be considered by the City Council. Accordingly, we can only advise that you may take part in governmental decisions concerning the Housing Element only to the extent those decisions will not have a reasonably foreseeable, material impact on your real property interest or your rental property business.⁹

Potential Segmentation

We note that under certain circumstances, a public official disqualified from one decision may participate in other related decisions if the official's participation does not affect the decision in which he or she has a conflict of interest. (Regulation 18706.) The Commission has consistently advised that an official may segment a decision in which the official has a conflict of interest from other decisions in which they do not have a conflict of interest to allow participation by the official in one or several related decisions if the decisions are not too interrelated to be considered separately.

The Commission has advised that some decisions may be too interrelated and may not be considered separately, such as when resolution of one decision will effectively determine, affirm, nullify or alter the result of the other decision. (Regulation 18706(b).) Segmentation may only apply if the decisions can be broken down into separate decisions that are not inextricably interrelated to the decisions in which you have a disqualifying conflict of interest.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

⁹ We recommend you seek further advice when additional facts concerning a specific Housing Element decision with respect to Site 202 are available.