



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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(916) 322-5660 • Fax (916) 322-0886

May 23, 2019

Terence R. Boga
355 South Grand Avenue
40th Floor
Los Angeles, CA 90071-3101

Re: Your Request for Advice
Our File No. A-19-083

Dear Mr. Boga,

This letter responds to your request for advice on behalf of City of Westlake Village Councilmember Ray Pearl 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

Is it reasonably foreseeable that the City Council's consideration and possible adoption of a Specific Plan and associated EIR to establish allowable land uses in a particular area of the City would have a financial effect on Councilmember Pearl's source of income, CHC, given that CHC's mission is to advocate for statewide policies to encourage the development of low- and moderate-income housing and the Specific Plan would establish land use regulations allowing for some residential development?

CONCLUSION

No. Under the Act, it is not reasonably foreseeable that the decision will have a material financial effect on Councilmember Pearl's source of income.

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 18110 through 18997 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

The Westlake Village City Council (“City Council”) is in the process of adopting a North Business Park Specific Plan (“Specific Plan”). In connection with the Specific Plan, a consultant has prepared an Environmental Impact Report (“EIR”) to analyze the potential environmental impacts of the Specific Plan. The Draft EIR was released for public comment on March 29, 2019. It is anticipated that the City Council will consider certification of the EIR and adoption of the Specific Plan in late Spring 2019.²

The proposed Specific Plan regulates the allowable land uses in an area covering approximately 200 gross acres in size and 54 parcels of land with multiple property owners and distinct existing uses. By its own terms, the Specific Plan is intended to “provide a long-range strategy for revitalizing the Westlake Village Business Park to enhance the City’s economic base, define new public spaces to serve the business park and the entire community, and create a model for sustainable, healthy development.” (Specific Plan, p. 2.) The changes to the land use regulations primarily affect the northern two-thirds of the plan area, which currently consists of varied office, service, light industrial, and warehousing uses. Also, by its own terms, the Specific Plan “provides for higher density zoning and the addition of housing at appropriate locations within the Specific Plan area, while not increasing density to the degree that it overburdens the surrounding street system and causes unavoidable significant impacts.” (*ibid.*) The Specific Plan would allow for 1,017 new residential dwelling units and approximately 1.63 million square feet of floor area of new non-residential uses within the plan area. The Specific Plan imagines that these new uses would replace existing non-residential uses in the northern portion of the plan area, while 2 million square feet of existing non-residential uses would remain operational in the southern portion of the plan area.

Councilmember Ray Pearl took office for his first term as a Westlake Village City Councilmember in December 2018. In his private capacity, Councilmember Pearl serves as the Executive Director of the California Housing Consortium (“CHC”). CHC is a tax-exempt, 501(c)(3) organization whose mission is to be “a non-partisan advocate for the production and preservation of housing affordable to lower and moderate income Californians.”³ CHC advocates for statewide policies that promote the development of new affordable housing units and the preservation of existing affordable housing units. CHC does not take positions on specific development projects. CHC also does not become involved in local policy decisions. The majority of CHC’s advocacy efforts are focused on protecting or expanding state resources for affordable housing development or preservation. While some of CHC’s advocacy may promote state policies that affect local control or impact state law planning requirements, CHC operates on a statewide basis and never becomes involved in local decision-making.

Councilmember Pearl receives a fixed salary and healthcare benefits from CHC. In addition, he is eligible for an annual bonus at the discretion of the CHC Board of Directors’ executive committee. CHC is funded through grants and membership dues from an array of organizations,

² The Specific Plan and the Draft EIR are available on the City’s website: <https://www.wlv.org/220/North-Business-Park-Specific-Plan>.

³ CHC website: <http://calhsng.org/>

including banks, developers, architects, and other organizations that seek to support affordable housing development in California.

You also note that CHC is registered with the California Secretary of State as a “lobbyist employer.” That registration identifies “Ray Pearl, Executive Director” as the “responsible officer” for CHC. However, Councilmember Pearl is not a registered lobbyist. Rather, as indicated in that registration, Marina Wiant is CHC’s lobbyist employee and Sloat Higgins Jensen and Associates, LLC is CHC’s lobbying firm.

ANALYSIS

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. An official has a financial interest in a decision 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, or on a member of the official's immediate family, or on the following financial interests pertinent to your facts:

- Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)

While CHC is not a “business entity” as defined in the Act⁴, nonprofit corporations such as CHC can be considered sources of income under Section 87103(c). You stated that City Councilmember Pearl is the Executive Director for CHC and received \$500 or more in compensation in a 12-month period from CHC. Thus, he may not make, participate in making, or in any way use his official position to influence any decision that will have a reasonably foreseeable material financial effect on CHC.

Foreseeability and Materiality

Generally, a governmental decision’s financial effect on a public official’s source of income is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, the decision. (Regulation 18701(a).) In all other cases, as here, the financial effect is foreseeable if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. (Regulation 18701(b).) If the financial effect cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable. (*Ibid.*)

⁴ Section 82005 defines a “business entity” as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association

Under Regulation 18702.3(a)(3), a financial effect on a nonprofit entity that is a source of income is material if:

“(3) The source is a nonprofit that will receive a measurable financial benefit or loss...”

You note that CHC advocates for statewide policies that promote the development of new affordable housing units and the preservation of existing affordable housing units, and that CHC does not take positions on specific development projects, nor does it become involved in local policy decisions. Under your facts, CHC will not receive any financial benefit or loss from the City Council’s consideration of a Specific Plan and associated EIR to establish allowable land uses in a particular area of the City. Therefore, it is not reasonably foreseeable that the decision will have a material financial effect on CHC.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Zachary W. Norton
Senior Counsel, Legal Division

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