



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 17, 2018

Anthony P. Condotti
City Attorney
P O Box 481
Santa Cruz, CA 95061-0481

Re: Your Request for Advice
Our File No. A-17-288

Dear Mr. Condotti:

This letter responds to your request for advice on behalf of Santa Cruz City Councilmembers Cynthia Mathews, Christopher Krohn, Richelle Noroyan, Cynthia Chase, and Sandy Brown 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 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. May Councilmembers Mathews and Krohn, each of whom own rental properties subject to the "just cause" eviction and "rent freeze" provisions included in the City's proposed "rent freeze" ordinance, make or participate in decisions related to the adoption of the proposed ordinance?
2. May Councilmember Noroyan, the owner of a rental property subject to the "just cause" eviction provision included in the City's proposed "rent freeze" ordinance, make or participate in decisions related to the adoption of the proposed ordinance?
3. May Councilmember Chase, the lessee of a rental property subject to both the "just cause" eviction and "rent freeze" provisions included in the City's proposed "rent freeze"

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.

ordinance, make or participate in decisions related to the adoption of the proposed ordinance?

4. May Councilmember Brown, the lessee of a rental property subject to the "just cause" eviction provision included in the City's proposed "rent freeze" ordinance, make or participate in decisions related to the adoption of the proposed ordinance?

CONCLUSION

1. No. The effect of the proposed ordinance on Councilmember Mathews and Krohn's financial interests will be distinct from its effect on the public generally.
2. Yes. The effect of the proposed ordinance on Councilmember Noroyan's financial interests will be indistinguishable from its effect on the public generally.
3. Yes. The effect of the proposed ordinance on Councilmember Chase's financial interests will be indistinguishable from its effect on the public generally.
4. Yes. Councilmember Brown does not have any financial interests that would be affected by the ordinance.

FACTS

You are the Acting City Attorney for the City of Santa Cruz and the authorized representative of the City Council. You have indicated that the Council is likely to consider the adoption of a "rent freeze" ordinance (the "Ordinance") at its January 11, 2018 meeting. The Ordinance coupled with a proposed "rent stabilization" measure (the "Measure") is meant to combat the rising cost of renting and purchasing residential property within the City. Proponents of the Measure are seeking to qualify it for the upcoming November 6, 2018 General Election.

The Ordinance would be limited to a "moratorium" period in which it would serve as a stop gap to prevent landlords from preemptively raising rents while the public considers the Measure. As an "emergency ordinance," it would require affirmative votes from a super majority of the Council for passage (i.e., five of the seven councilmembers). Once adopted, the Ordinance would go into effect immediately.

The Ordinance as proposed would include two components. First, it would impose "just cause" eviction restrictions on all residential rental properties. These restrictions would prohibit landlords from evicting tenants unless specific conditions existed. Second, it would prohibit landlords from increasing rent by more than two percent per year on certain classes of residential rental properties.

It is estimated that over 50 percent of the City's residential properties are rental properties. Of those rental properties, approximately 22-24 percent would be subject to the rent freeze provision.

Three councilmembers own rental properties within the City that would be affected by the Ordinance. An additional two councilmembers lease rental properties that would be affected by the Ordinance.² Their specific financial interests are as follows:

- Councilmember Mathews has full or partial ownership interests in rental properties that would be subject to both the just cause eviction and rent freeze provisions.
- Councilmember Krohn owns a rental property that would be subject to the just cause eviction provision, but not the rent freeze. The councilmember's wife, Rachel O'Malley, is the "sole and separate" owner of a rental property subject to both the just cause eviction and rent freeze provisions.
- Councilmember Noroyan owns a rental property that would be subject to the just cause eviction provision, but not the rent freeze.
- Councilmember Chase has a multi-year lease agreement to occupy a rental property that would be subject to both the just cause eviction and rent freeze provisions. Her lease term expires in mid-2018.
- Councilmember Brown has a month-to-month lease agreement to occupy a rental property that would be subject to the just cause eviction provision, but not the rent freeze.

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 or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a 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. Section 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's interests that is distinguishable from the decision's effect on the public generally.

Interests from which a conflict of interest may arise include the following³:

- Any business entity in which the official has a direct or indirect investment of \$2,000 or more.
- Any real property in which the official has a direct or indirect interest of \$2,000 or more.

² While five City Councilmembers own personal residences within the City, we do not analyze these interests because they do not appear to be implicated by the decision.

³ For purposes of the conflicts analysis, "indirect investments" and "indirect interests" include any investments or interests held by a public official's spouse as separate or community property. (Section 87103(e).)

- Any source of income aggregating to \$500 or more provided, promised, or received in the 12 months prior to the decision. (Section 87103(a-b).)

Councilmembers Mathews, Krohn, and Noroyan each appear to have financial interests in their rental properties as well as their rental businesses as both a business entity and source of income. Councilmember Krohn also appears to have a financial interest in his wife's rental property as well as her rental business as a business entity. Councilmember Chase has an interest in real property arising from her multi-year lease.⁴

In contrast, Councilmember Brown does not have financial interest resulting in disqualification because her lease is only month-to-month. Under Regulation 18233, an "interest in real property" and "leasehold interest" does not include a periodic tenancy of one month or less.

Foreseeability and Materiality

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. (Section 87100.) The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. (Regulation 18701.) An interest is explicitly involved in a decision if the interest is a named party in, or the subject of, the governmental decision. (Regulation 18701(a).) Generally, a rental property or business is not the subject of a decision involving rent control ordinance. (See *Gelb* Advice Letter, No. A-91-523.) Accordingly, the interests identified are not "explicitly involved" in decisions regarding the Ordinance.

When an interest is not explicitly involved in the decision at issue, the effect on that interest is deemed reasonably foreseeable only if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.1(b) sets forth the materiality standard applicable to a decision's financial effect on an official's interest in a business entity, and real property containing a business entity, that is not explicitly involved in the decision. (See Regulation 18702.2.) Under Regulation 18702.1(b), a financial effect is material if a prudent person with sufficient information would find it reasonably foreseeable that the effect would contribute to a change in the value of the business entity. Regulation 18702.1(b) also provides examples of decisions that may have a material effect on a business entity, including the example of a decision that would "[a]uthorize, prohibit, regulate or otherwise establish conditions for an activity in which the business entity is engaged." (Regulation 18702.1(b)(1).)

The Ordinance would impose just cause eviction restrictions on all residential rental properties within the City. Such restrictions would prevent landlords, including the three Councilmembers operating rental properties, from evicting tenants to increase rent. By restricting the income producing potential of rental properties within the City, the Ordinance would lessen the value of the Councilmembers' rental properties. Therefore, decisions related to the Ordinance

⁴ We note that officials also have interest in their respective tenants as sources of income, provided the tenant has paid rent aggregating to \$500 in the 12 months before the decision. However, it is unnecessary to consider disqualification based upon interests in the tenants in light of the conclusions reached herein.

would have a reasonably foreseeable material financial effect on Councilmembers Mathews', Krohn's, and Noroyan's interests in their residential rental businesses and real properties.

In regard to Councilmember Chase, Regulation 18702.2 provides that the reasonably foreseeable financial effects of a governmental decision on any real property in which the official has a leasehold financial interest is material if the decision will increase or decrease the potential rental value of the property. (Regulation 18702.2(b)(5).) The rental property leased by Councilmember Chase is subject to both the just cause eviction and rent freeze provisions, and both provisions could affect her landlord's ability to increase her rent. Therefore, decisions related to the Ordinance would have a reasonably foreseeable material financial effect on the Councilmember's financial interest.

"Public Generally" Exception

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits public officials to make and participate in governmental decisions that affect their interests if the effect on the interest is indistinguishable from its effect on the public generally. In general, an effect on an official's interest is "indistinguishable" from its effect on the public generally if (1) a significant segment of the public is affected and (2) the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).)

Regulation 18703(b)(2) provides that a significant segment of the public is at least 25 percent of all real property, commercial real property, or residential real property within the official's jurisdiction. Based on the figures you provided, rental properties make up more than 50 percent of the residential real property in the jurisdiction. However, less than 25 percent of the City's residential real property are properties potentially subject to the rent freeze provision.

Councilmembers Mathews and Krohn each have an ownership interest in rental property subject to the rent freeze. Rental properties subject to the rent freeze would be uniquely affected as compared to other residential real property within the jurisdiction. Accordingly, Councilmembers Mathews and Krohn are disqualified from decisions regarding the Ordinance and the public generally exception does not apply.

Councilmember Noroyan, however, has an ownership interest in a rental property that is subject only to the just cause evictions provision and not the rent freeze. Based on the information provided, the effect of the eviction provision on her property would be essentially identical to the effect on all other rental properties in the jurisdiction which consists of more than 50 percent of the residential real property in the jurisdiction. Therefore, Councilmember Noroyan is permitted to make and participate in decisions related to the Ordinance under the public generally exception.

In addition to the general rule provided in Regulation 18703(a), there are also specific public generally rules provided for special circumstances including a rule for determining if a decision's effect on an official's residential lease is indistinguishable from its effect on the public generally. Specifically, Regulation 18703(e)(4), provides that the financial effect on a public official's residential lease is deemed indistinguishable from that of the public generally if the official establishes that (1) the underlying decision affects all residential rentals in the relevant jurisdiction,

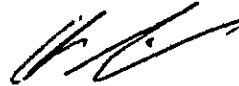
and (2) the official's only interests affected by the decision are interests resulting from the official's leasehold interest in his or her residence.

Based upon the facts provided, the proposed ordinance would broadly affect all rental properties in the jurisdiction, including the one leased by Councilmember Chase. Moreover, the only interests implicated by the decision would be the Councilmember's leasehold interest in her residence. Therefore, the Councilmember is permitted to make and participate in decisions related to the Ordinance under Regulation 18703(e)(4).

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

Sincerely,

Brian G. Lau
Assistant General Counsel



Adam E. Silver
Counsel, Legal Division

By:

AES:jgl