

Olson Remcho



July 13, 2020

VIA EMAIL

Chair Gregg Hart, Vice Chair Peter Adam,
and Supervisors Das Williams, Joan Hartmann,
and Steve Lavagnino
Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Michael C. Ghizzoni
County Counsel
Office of County Counsel
105 East Anapamu Street, Suite 201
Santa Barbara, CA 93101

**Re: Supervisor Hartmann's Conflict of Interest in Voting on the Cannabis Cultivation Ban
Within EDRNs; Recusal Required (File No. 20-00560)**

Dear Chair Hart, Vice Chair Adam, Supervisors Williams, Hartmann,
Lavagnino, and County Counsel Ghizzoni:

On behalf of a group of voters and cannabis growers, we write to demand that Supervisor Hartmann recuse herself from participating in, influencing or voting in the hearing on July 14, 2020, to amend the County Land Use and Development Code (the Ordinance) to address issues related to commercial cannabis cultivation. Supervisor Hartmann has a disqualifying conflict of interest in the decision to amend the Ordinance because her proposal to prohibit commercial cannabis cultivation in Existing Developed Rural Neighborhoods (EDRNs) would have a direct effect on her personal property in violation of the State's Political Reform Act. Indeed, she has already violated the Act by making the motion on June 11 to institute such a ban, and proposing the public hearing on July 14 to approve the ban and other changes. For her past violations, we are separately filing a complaint with the Fair Political Practices Commission, but to address her ongoing conflict she must recuse herself from voting on the Ordinance as written on July 14.

The Board initially requested that the Planning Commission study and make recommendations about commercial cannabis cultivation. The Board took up the Commission's proposal on June 2 and June 11, 2020. Prohibiting commercial cannabis in EDRNs was not one of the Commission's proposals.

Long Beach
555 E. Ocean Blvd, Ste. 420
Long Beach, CA 90802

Sacramento
555 Capitol Mall, Ste. 400
Sacramento, CA 95814

Oakland
1901 Harrison St., Ste. 1550
Oakland, CA 94612

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At the hearing on June 11, Board members proposed a series of motions to amend the Ordinance. Supervisor Hartmann made a motion, which passed by a 3-2 vote, directing staff to draft changes to the Ordinance that would ban cannabis cultivation in Existing Developed Rural Neighborhoods (EDRNs). The prohibition has been included in the draft Ordinance before the Board on July 14.

We understand the County currently bans commercial cannabis cultivation on any parcels 20 acres or smaller.¹ Supervisor Hartmann's motion, if adopted, would extend that ban to parcels of more than 20 acres within an existing EDNR.

Supervisor Hartmann's residence is on such an affected parcel. We understand Supervisor Hartmann owns and lives on a 31-acre parcel, which is located within the Bobcat Springs EDNR.² Thus, Supervisor Hartmann's motion would directly affect her land by changing the uses to which her and her neighbors' land could be used. If adopted, her motion would have the effect of prohibiting commercial cannabis cultivation on her parcel and in her EDNR, whereas it currently is not.

That constitutes a disqualifying conflict of interest under the Political Reform Act. Under the Act, a public official cannot make, participate in making, or in any way use their official position to influence a governmental decision in which they know or have reason to know they have a disqualifying financial interest. Cal. Gov't Code § 87100. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect – distinguishable from the effect on the public generally – on the public official, their immediate family member, or on a specifically enumerated financial interest. Cal. Code. Regs. tit. 2, § 18700.

A public official has a financial interest in any real property in which they have a direct or indirect interest worth two thousand dollars or more. Cal. Gov't Code § 87103(b).

A governmental decision has a reasonably foreseeable material financial effect on an official if the decision involves "the adoption of or amendment to a development plan or criteria applying to the parcel" owned by the official or "the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel

¹ Commercial cannabis cultivation can only occur on parcels zoned AG-I or AG-II; thus Supervisor Hartmann's motion does not apply to parcels zoned for residential use.

² The parcel APN is 99-430-001, and is zoned AG-I.

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or any variance that changes the permitted use of, or restrictions placed on, the property.” Cal. Code Regs. tit. 2, §§ 18702.2(a)(1), (5) (emphasis added).

The Fair Political Practices Commission (FPPC) has opined in particular that under subsection (a)(5) any decision that changes the permissible uses of a parcel is material. “[A]ny decision involving a plan that establishes development criteria which will apply to the property interest in question is a decision involving ‘a land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, that real property’ and the property interest is explicitly involved in the decision pursuant to Regulations 18702.1(a) and 18702.2(a)(5).” *Houston Advice Letter*, FPPC No. I-16-095 (2016) (requiring light/shadow modeling or other development criteria applicable only to Downtown Triangle falls within Regulation § 18702.2.(a)(5)).

Here, Supervisor Hartmann lives in an EDRN and owns a parcel that is directly affected by her motion to prohibit cannabis cultivation in EDRNs. Put differently, currently Supervisor’s Hartmann parcel could be used to cultivate cannabis but if her motion is adopted it would no longer be permitted, and the same goes for her neighbors in the Bobcat Springs EDRN with parcels larger than 20 acres. Her motion directly applies to her residence and her EDRN, and under the Political Reform Act that qualifies as a disqualifying conflict.³

Nor is there any exception to the conflict rules that allows her participation here. Most importantly, the public generally exception does not apply. Under that exception, a public official may vote on a matter notwithstanding the fact they have a financial interest in the decision if the decision will affect a large portion of the public in the same fashion. 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 his or her financial interest is not unique compared to the effect on the significant segment. *See generally* Cal. Code Regs. tit. 2, § 18703. In this case, 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.”⁴ *Id.* § 18703(b)(2). Thus, with the respect to the Board’s decision to prohibit

³ The two exceptions to the materiality standard set forth in Regulation 18702.2 do not apply. *See* Cal. Code Regs. tit. 2, § 18702.2(d)(1)-(2) (providing exceptions for (1) repairs, replacement or maintenance of streets or utilities; and (2) planning objectives for a general plan amendment).

⁴ The FPPC has advised that for purposes of elected officials representing a district of an agency – such as member of the Board of Supervisors – “jurisdiction” is the district they represent.

(Continued . . .)

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cannabis cultivation in EDRNs the “significant segment of the public” is defined as 25 percent of all parcels within District 3, the District Supervisor Hartmann represents. Cal. Code Regs. tit. 2, § 18703(d).

Here, the prohibition on cannabis cultivation applies to fewer than 25 percent of the parcels (or more generally the property) in District 3. *See Carroll* Advice Letter, FPPC No. A-19-067 (2019) (holding the public generally exception did not apply where the number of parcels in the newly proposed zones – where the official lived – was less than 25 percent of the parcels in the jurisdiction). Therefore the public generally exception is of no assistance. Nor is this a situation involving “limited neighborhood effects” because the prohibition on EDRNs does not apply simply to residential property, and does not involve one of the specifically enumerated government decisions to which that exception applies. Cal. Code Regs. tit. 2, § 18703(e)(3) (exception applies only to a “decision that establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance, or improve public safety . . .”).

Finally, because there is a quorum of the Board without Supervisor Hartmann, her participation in the ordinance amendment is not legally required, and she cannot vote simply to break a tie. Cal. Gov’t Code § 87101; Cal. Code Regs. tit. 2, § 18705.

Therefore, Supervisor Hartmann has a disqualifying conflict of interest under the Political Reform Act and cannot participate in, influence, or vote on the decision to amend the Ordinance on July 14. The consequence of that is twofold. First, she has already violated the Act by making the motion on June 11, 2020 to prohibit cannabis cultivation in EDRNs and moving to hold the public hearing on July 14. Cal. Gov’t Code § 87100 (public official prohibited from participating in any part of a decision in which they have a conflict); Cal. Code Regs. tit. 2, § 18704(a) (same). Second, she cannot participate in any decision related to the prohibition on cannabis cultivation in EDRNs on July 14, 2020, which means she cannot vote on the amended Ordinance. Instead, she must disclose the conflict, recuse herself, and leave the room. Cal. Gov’t Code § 87105; Cal. Code Regs. tit. 2, § 18707. Neither she nor any other Board member with a conflict may count toward a quorum. *Id.*

We therefore request that the Board, County Counsel, and Supervisor Hartmann take all necessary actions to ensure Supervisor Hartmann recuses herself from participating on this matter on July 14.

Thus, the relevant jurisdiction for purposes of determining whether the public generally exception applies, is all parcels in District 3, the district Supervisor Hartmann represents.

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Finally, we also want to ensure other Board members do not have similar disqualifying conflicts. There is a lack of transparency as to what property the Board members own and whether those properties present the potential for conflicts with respect to the EDRN ban. The Statement of Economic Interests (FPPC Form 700) that the Board members are required to file annually does not provide sufficient information for the public to assess whether a conflict exists in this situation. For example, public officials are not required to identify their residences on the FPPC Form 700. We believe the public is entitled to know whether Board members own property in EDRNs and whether their decisions regarding where cannabis can and cannot be cultivated are free of personal financial conflicts of interest. We therefore call on all Board members to disclose their real property holdings before the July 14, 2020 meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas A. Willis', with a long horizontal flourish extending to the right.

Thomas A. Willis

TAW:NL
(00414571)