



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 23, 2023

Mark Vanni  
Assistant City Attorney  
City of Palo Alto  
250 Hamilton Avenue, 8th Floor  
Palo Alto, CA 94301

Re: Your Request for Advice  
**Our File No. A-23-022**

Dear Mr. Vanni:

This letter is in response to your request for advice on behalf of City of Palo Alto Councilmember Vicki Veenker regarding conflict-of-interest provisions of the Political Reform Act (the Act).<sup>1</sup> 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 that 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

Under the Act, does segmentation apply to enable Councilmember Veenker to take part in decisions related to updating the City's Housing Element where she has disqualifying financial interests in decisions specific to four of the 291 identified properties on the site inventory? If so, does the City's proposed process for segmentation comply with Regulation 18706?

### CONCLUSIONS

Yes. The decisions related to these four properties can be made independently with decisions related to the other 287 sites in the Housing Element and thus are not inextricably interrelated with other decisions in the Housing Element. The City can segment and consider first the governmental decisions involving the four properties and reach final decisions without Councilmember Veenker's participation. Under Regulation 18706, the councilmember may take part in the remaining decisions as long as any such decision does not reopen the prior decisions

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<sup>1</sup> 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.

regarding the Housing Element. The City's proposed procedure for segmentation complies with these requirements.

## **FACTS AS PRESENTED BY REQUESTER**

### **A. Decisions Regarding the City's Housing Element.**

Councilmember Vicki Veenker is a patent attorney and sole proprietor of Veenker Law Offices. Stanford University's Office of Technology Licensing is a client of Veenker Law Offices, which received income of \$500 or more from Stanford within the last 12 months; thus Ms. Veenker, in turn, received income of \$500 or more from Stanford through her law firm.

In accordance with State law, the City of Palo Alto (City) is updating its Housing Element for the Sixth Cycle. On December 23, 2022, the City submitted to the Department of Housing and Community Development (HCD) an initial draft of its Housing Element. HCD has up to 90 days, or until March 23, 2023, to review and comment on the sufficiency of the City's initial draft. (Gov. Code § 65585(b).) Once the City receives comments from HCD, the City Council will have discretion to amend the Housing Element further or adopt it, depending on HCD's comments. You expect that the Housing Element will likely come before Council shortly after HCD has submitted its comments to the City.

The City's Housing Element currently includes an inventory of 291 sites suitable for residential development to meet the City's Regional Housing Needs Allocation and goals, policies, and programs to implement the Housing Element.

Among those sites is a property located at 1985 Louis Road that is within 500 feet of Councilmember Veenker's home. This site is currently occupied by the First Congregational Church of Palo Alto (the Church Property) and the Housing Element projects that housing could be an authorized use on its parking lot, along with other sites with faith-based institutions.

In addition, the Housing Element has six Programs and Implementing Objectives; Program 1 has six parts. In one of those parts, Program 1.1, three inventory sites owned by Stanford University, one at the corner of Pasteur Drive and Sand Hill Road, and others at 3128 El Camino Real and 3300 El Camino Real (the Stanford Properties) are identified as suitable for "upzoning" or rezoning with specific requirements to allow for housing or increased housing density (see Chapter 5: Goals & Policies, on page 5-7). In addition, Program 1.5 sets forth a longer view policy discussion intended to ensure that additional Stanford-owned sites can be identified for the next housing cycle in eight years (Seventh Cycle).

Approval of the Housing Element can be broken down into separate governmental decisions regarding the many aspects of the almost 350-page document and inventory list of 291 sites. Decisions related to the four properties at issue here can be made independently with decisions related to the other 287 sites in the Housing Element. Decisions regarding whether to include these properties on the site inventory will not affect subsequent decisions to include other properties on the site inventory.

**B. The City's Proposed Process for Segmentation.**

The City proposes a process for segmentation as follows:

We propose that when the Housing Element is presented to the City Council, the City Council first consider the inclusion of 1985 Louis Road and Stanford-owned properties in the site inventory, then discuss the portion of the policy in Program 1.1 that would impose specific requirements on the three Stanford-owned sites listed in the site inventory, and then discuss the policy in Program 1.5 that would set forth a longer view policy discussion intended to ensure additional Stanford- owned sites can be identified for the next housing cycle. Councilmember Veenker would not be present for these discussions.

Once these matters are decided, they need not be revisited and subsequent decisions with the Housing Element would not alter these decisions. Thus, Councilmember Veenker could then return and participate in remaining Housing Element decisions, as they involve properties unaffected by conflict issues or are policies and programs unrelated to a specific property and apply citywide. Finally, in accordance with Regulation 18706(c), Councilmember Veenker would participate in the final vote adopting the Housing Element and encompassing all decisions previously finalized.

**C. Conflicts of Interest.**

You state that Councilmember Veenker has real a property interest in decisions related to the Church Property and source of income interests in decisions related to the Stanford Properties. The Church Property is within 500 feet of the councilmember's property, and you do not have clear and convincing evidence that the decision to include this site in the inventory list will not have a measurable impact on her property. (See Regulation 18702.2(a)(7).) Stanford University is a qualifying source of income to Councilmember Veenker's law firm and it owns property that is named or described in the Housing Element in a manner that may affect its development potential. (See Regulation 18702.3) You conclude that taking part in governmental decisions regarding these four sites would have a reasonably foreseeable, material financial effect on Councilmember Veenker's real property and source of income interests.<sup>2</sup> Thus, Councilmember Veenker will recuse herself from decisions regarding the four properties.

**ANALYSIS**

You have identified disqualifying conflict of interest under the Act are a seeking advice limited to segmenting the decisions at issue. Under the Act, segmentation enables an official with a conflict of interest to participate in decisions that do not reopen or affect the decision in which the official has a conflict of interest. Regulation 18706 allows for some large, complex decisions to be segmented into separate decisions to enable an official with a disqualifying financial interest in one component of the series of decisions to participate in other components where no financial interest exists. Regulation 18706(a) requires the following:

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<sup>2</sup> You state that the "public generally" exception may apply to some of these properties, but you are not raising that issue; you seek advice solely on the question of segmentation.

(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

(2) The decision in which the official has a financial interest is segmented from the other decisions;

(3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and

(4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

When a decision in which an official has a conflict of interest is "inextricably interrelated," where the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision, the official is disqualified from both decisions. (Regulation 18706(b).)

You state that decisions related to the Church and Stanford Properties are not inextricably interrelated with other decisions in the Housing Element; to the contrary, these decisions may be "easily extricated" without affecting later segmented decisions. You indicate that approval of the Housing Element can be broken down into separate decisions regarding the many aspects of the almost 350-page document and inventory list of 291 sites. More specifically, you assert that decisions related to the four properties at issue here, the Church Property and the three Stanford Properties, are not "inextricably interrelated" within the meaning of Regulation 18706(b) with decisions related to the other 287 sites in the Housing Element and can be made independently. Moreover, decisions regarding whether to include these properties on the site inventory will not effectively determine, affirm, nullify, or alter subsequent decisions to include other properties on the site inventory.

You indicate that Program 1.5, which identifies ways to prepare during the next eight years for the next Housing Element by pursuing options on Stanford-owned lands, is also "easily segregable." Because none of the properties discussed in this segment are contemplated to be part of the current Housing Element, decisions related to them are not inextricably interrelated with other decisions regarding the current Housing Element.

Accordingly, if governmental decisions involving Church and Stanford Properties are segmented and considered first, with a final decision reached without Councilmember Veenker's participation, then she may take part in the remaining decisions, as long as any such decision does not reopen the prior decisions regarding the Housing Element. The City's proposed procedure for segmentation complies with these requirements.

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

Sincerely,

Dave Bainbridge  
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.  
Senior Counsel, Legal Division