



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 24, 2023

Nicole C. Wright  
Senior Assistant City Attorney  
City of Mountain View  
500 Castro Street  
P.O. Box 7540  
Mountain View, CA 94039-7540

Re: Your Request for Advice  
**Our File No. A-23-067**

Dear Ms. Wright:

This letter responds to your request for advice 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 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

Under the Act, may City of Mountain View Mayor Alison Hicks and City Councilmember Margaret Abe-Koga participate in governmental decisions related to a Downtown Precise Plan, as a part of the City’s Economic Vitality Strategy, when they have property less than 500 feet from the boundary of the Downtown Precise Plan? Specifically, may the Mayor and Councilmember participate in the following decisions:

1. Whether to pursue a vacancy tax on commercial properties downtown.
2. Reconsideration of parking in lieu fees to assist new businesses downtown.

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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.

3. The formation of a Business Improvement District (BID) where the City would levy assessments against businesses or properties to fund services or improvements that benefit the assessed businesses or properties.

### **CONCLUSION**

The Mayor and Councilmember have a disqualifying financial interest in their properties located within 500 feet of the Downtown Precise Plan. Further, the Limited Neighborhood Effect Exception does not apply to the three issues presented above because there are not sufficient facts to indicate that the decisions will have any direct effect on the Mayor's and Councilmember's neighborhood by reducing street parking, imposing traffic controls, deterring vagrancy, reducing nuisance, or improving public safety. If portions of the decision on the Economic Vitality Strategy can be properly segmented under Regulation 18706(a) then they may participate in those segmented decisions.

### **FACTS AS PRESENTED BY REQUESTER**

You are the city attorney for the City of Mountain View ("City") and are seeking advice on behalf of City Mayor Alison Hicks and City Councilmember Margaret Abe-Koga regarding whether they may participate in decisions affecting portions of the Downtown Precise Plan ("Plan") given the proximity of their primary residences to the Plan boundary.

On April 25, 2023, the City Council will hold a study session to discuss the City's Economic Vitality Strategy. The Economic Vitality Strategy was identified as an action item to implement the City Council's adopted Economic Vitality strategic priority in its Strategic Roadmap, which describes the Council's vision for the City in the next three to five years. The City's last full economic development strategy was completed in 2003 with a review and update completed in 2008. In development of the current Economic Vitality Strategy, the City's consultant identified vacancy issues in Mountain View generally and in the broader downtown area in their landscape assessment data.

At the study session, the City Council will consider and provide direction on various recommended goals and strategies guided by community feedback. The Economic Vitality Strategy would then be finalized based on direction provided by City Council and brought back to the Council at a subsequent meeting for adoption. The study session will include consideration of strategies specific to Downtown Mountain View given the importance of the downtown area to the City's economic vitality.

The Downtown Precise Plan area includes more than 50 residential units of real property (752 units making up two percent of the Citywide residential units). There are 175 residential parcels in the Plan area. The downtown specific strategies include consideration of three unique issues:

1. Whether to pursue a vacancy tax on commercial properties downtown that remain vacant for a specified period, with the intent of discouraging absentee property ownership and activating downtown storefronts. The California Constitution requires approval by two-thirds of the local electorate before a vacancy tax can be enacted.

2. Reconsideration of parking in-lieu fees imposed on office and food service businesses in the downtown area that use shared parking in exchange for a more flexible parking policy to avoid cost barriers for new businesses.
3. The formation of a Business Improvement District (BID) where the City would levy assessments against businesses or properties to fund services or improvements that benefit the assessed businesses or properties (it has not yet been decided whether the assessment would be levied against only businesses or businesses and properties). The general purpose of the improvements funded by the BID is to increase the vibrancy of the area it serves. A BID would not be established absent approval of a majority of the business or property owners to be assessed.

The intent of the proposed downtown Economic Vitality Strategies – vacancy tax, BID formation, modification of parking in-lieu fees – would be to activate downtown storefronts and enhance the vitality and vibrance of the Plan area. A more vibrant downtown may result in traffic, parking, and market value impacts on the abutting Old Mountain View Neighborhood where the Councilmembers residences are located. The proposed downtown strategies are designed to enhance the Plan area, or portions thereof, which will have the effect of reducing nuisances and improving public safety by reducing or eliminating vacant storefronts that attract vandalism and other crimes.

Mayor Hicks and Councilmember Abe-Koga own single-family homes in the Old Mountain View Neighborhood, which serve as their primary residences. The neighborhood is adjacent to the Plan area. Mayor Hick’s property is located approximately 279 feet from the Plan boundary, and Councilmember Abe-Koga’s property is approximately 39 feet from the boundary. The neighborhood where their properties are located is characterized as historic, with one- and two-story homes on small lots located in close proximity to the downtown commercial area, which includes office, retail, and restaurant spaces.

## ANALYSIS

### *Real Property*

As public officials, Mayor Hicks and Councilmember Abe-Koba are subject to the Act’s conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use the official’s position to influence a governmental decision in which he has a financial interest. 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 on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including any real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more. (Section 87103(b)).

The standards for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. 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” as a named party in, or the subject of, the decision. An interest is the “subject of a proceeding” if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the interest including any decision affecting an interest in real

property as described in Regulation 18702.2(a)(1) through (6). Where, as here, the official's financial interest is not explicitly involved as a named party or subject of the decision, the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Regulation 18702.2(a)(7) provides that 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 decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.

Here, both properties are located within 500 feet of the Plan area. The facts provided do not show by clear and convincing evidence that there would be no "measurable impact" on the Mayor's and Councilmember's respective properties. Although enactment of the vacancy tax and formation of the BID would both require an additional vote—by the local electorate and business/property owners to be assessed, respectively—the mere possibility that certain decisions *may not* ultimately have a measurable impact on the officials' property does not constitute clear and convincing evidence that the decisions *will not* have such an effect. This is particularly true where the purpose of the proposed Economic Vitality Strategies would be to activate downtown storefronts and enhance the vitality and vibrance of the Downtown Precise Plan area located, which could presumably enhance the market value of nearby properties. Therefore, it is reasonably foreseeable the decisions will have a material effect on the Mayor's and Councilmember's financial interest in the decision pursuant to Regulation 18702.2(a)(7) and they may not take part in the project decisions absent an exemption.

#### *Public Generally Exception*

Under Section 87103, the Act's prohibition against an official taking part in a decision that would have a disqualifying financial effect on an official's financial interest only applies if the decision's effect on that interest is "distinguishable from its effect on the public generally." (Section 87103.) This is commonly referred to as the Public Generally Exception. Regulation 18703(e) sets forth specific rules for applying the Public Generally Exception in special circumstances. Under Regulation 18703(e)(3), a decision's financial effect on an official's financial interest is indistinguishable from the effect on the public generally if the official can establish that the decision: "affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction and the decision establishes, amends, or eliminates street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location."

This Limited Neighborhood Effect Exception for decisions regarding public nuisances and public safety, permits an official to take part in a decision as a matter of public policy where there is sufficient evidence supporting the public purpose for the action, and the action widely applies to a specific location with no unique effect on the official. (*Gibson Advice Letter, No. A-17-188.*)

Your request for advice states that “[t]he proposed downtown strategies are designed to enhance the Downtown Precise Plan area, or portions thereof, which will have the effect of reducing nuisances and improving public safety by eliminating vacant storefronts that attract vandalism and other crimes.” However, the exception for limited neighborhood effects is limited to a specified location and decisions to establish, amend, or eliminate ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety for the specific location. It also requires the body making the decision to gather sufficient evidence to support the need for the action at the specific location. General goals of reducing nuisances and improving public safety through the amendment or adoption of a development plan for the entire downtown area are not aimed at a nuisance or public safety concern for a specific location. Moreover, the scope of the decisions identified extends well beyond nuisance and safety concerns and are outside the scope of the exception.

### *Segmentation*

Regulation 18706(a) provides that an agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all the following conditions apply:

- (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.

If the issues before the Council, where the Mayor and Councilmember are disqualified, can feasibly be segmented in a manner as described above, Mayor Hicks and Councilmember Abe-Koga may participate in areas of the governmental decisions surrounding the Economic Vitality Strategy that are segmented from decisions surrounding the Plan area.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Valerie Nuding  
Counsel, Legal Division

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