



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 13, 2022

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-22-105

Dear Ms. Wright:

This letter responds to your request for advice on behalf of City of Mountain View Mayor Lucas Ramirez 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

May Mayor Ramirez participate in governmental decisions related to a proposed mixed-use development project on a nearby parcel currently used as a gas station and auto service center in light of his leasehold property interest located approximately 593 feet from the project?

CONCLUSION

The Act does not prohibit Mayor Ramirez from taking part in decisions related to the project. Based on the facts provided, it is not reasonably foreseeable the project decisions will have a material effect on his leasehold interest in his apartment because the project is consistent with existing residential and commercial uses and developments in the immediate area and there are no

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 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.

other indications that the decisions may impact his use and enjoyment of his apartment or its potential rental value, as detailed below.

FACTS AS PRESENTED BY REQUESTER

The project is located on a 0.62 acre site located at 334 San Antonio Road, which is within the City's San Antonio Precise Plan. It is a mixed-use project consisting of five-stories, 62 residential ownership units, and 2,000 square feet of ground level commercial space. The site is currently used as a gas station with auto repair service.

The project includes a small courtyard facing California Street. The ground floor commercial uses front a small public plaza area facing San Antonio Road. The commercial uses would be for existing or relocating small businesses and/or nonprofits or other culture/public service providers. In addition, the project includes a rooftop deck to serve future residents of the project as private common open space.

The project is a 50 percent density bonus project under State Density Bonus Law and is therefore entitled to waivers and concessions from development standards. In addition, the project is allowed to utilize the parking standards under State Density Bonus Law. While the City may impose its parking standard for the commercial space, the City may not require more than 0.5 spaces per residential unit, inclusive of accessible and guest spaces, based on the project's proximity to a major transit station.

The project includes two levels of underground parking consisting of 77 parking spaces for the residential component of the project and 20 spaces for commercial (with use of some of the spaces by residential when not in use by commercial). The amount of parking provided is less than what the City's parking requirements would typically require given the mix of units. In addition, the project is allowed to exceed the San Antonio Precise Plan's maximum limit of four stories and 1.85 floor area ration (FAR).

The project adds significantly more trees (the majority of which are in planters which can limit growth), landscaping, and open space. Overall canopy provided by the project is expected to exceed current conditions. In addition, three existing street trees will be removed and nine, new street tree plantings will be provided by the project.

With respect to traffic impacts, the project is anticipated to result in fewer vehicle trips than the existing use. The project is not expected to result in adverse impacts to vehicle operations or worsening intersection impacts. A detailed analysis of intersection level-of-service was not required to be conducted due to lower traffic volumes.

The project also includes improved multimodal access and street improvements along the project's frontage, including wider detached sidewalks and bike lanes along the California Street project frontage to comply with San Antonio Precise Plan street standards. Existing vehicle lanes will also be widened to comply with San Antonio Precise Plan street standards.

Surrounding the project are commercial and residential uses. These include a bank, restaurant, small commercial strip center and vacant commercial buildings immediately adjacent to the site (including across adjacent street frontages). Additional residential and commercial uses

occur in the broader neighborhood. The surrounding area has been undergoing change and development, with several major development projects nearby, including a five-story mixed-use residential project at the northeast corner of the project intersection (California Street/San Antonio Road). Surrounding buildings along California Street are no more than three stories, although there are other developments in the surrounding area with taller buildings.

Mayor Ramirez leases an apartment unit that is located approximately 593 feet from the closest point of the project. He has a yearly lease (not a month-to-month) for his unit. Mayor Ramirez does not have views of the corner of California Street and San Antonio Road, the location of the project. In addition, the apartment complex provides an on-site parking space for Mayor Ramirez's vehicle. The apartment complex also provides, for general use by the residents, some on-site guest parking. Mayor Ramirez accesses his apartment complex from a driveway located on California Street. Additionally, the City has a strong real estate market, and increases in housing supply are not viewed as having an impact on this market.

ANALYSIS

The Act's conflict of interest provisions prohibit 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." (Section 87100.)

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, distinguishable from its effect on the public generally, on one or more of the public official's interests, including "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103.) Section 82033 defines an "interest in real property" to include a leasehold if the market value is \$2,000 or more. Mayor Ramirez has identified a leasehold real property interest relative to the proposed mixed-use project decisions.

Foreseeability and Materiality Standards

Regulation 18701 provides the standard for determining the foreseeability of a financial effect on an economic interest depending on whether it is explicitly, or not explicitly, involved in the governmental decision. A financial interest is explicitly involved in a decision if it is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) A financial 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 financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6). (*Ibid.*) According to the facts provided, Mayor Ramirez's interest in his apartment does not meet the standard of a "named party or subject of" the proceeding and it is not explicitly involved in the decision.

Regulation 18701(b) provides the applicable standard for determining the foreseeability of a financial effect where an official's economic interest is not explicitly involved in the governmental decision. This provision states, "[i]n general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable." (Regulation 18701(b).) It further states, "[i]f the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable." (*Ibid.*)

Materiality: Real Property Standards

Regulation 18702.2 provides the standards for determining when a government decision's reasonably foreseeable effect on an official's real property interest is material by considering factors such as the proximity of the property subject to the decision and its impacts on the official's parcel. For a leasehold interest, Regulation 18702.2(c) provides that the financial effects of a decision on an official's leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

The facts give no indication that the mixed use project decisions will have any impact on the termination date of the lease or its legally allowable use. Nor do the facts indicate that the project is likely to change the potential rental value of the property or impact his use and enjoyment of his apartment. This project is a change in use, from a commercial gas station with auto service to a mixed-use residential development with high density in a 5-story building which will bring an additional 62 units of residents to the area, but with apparently balancing improvements in aesthetics, fewer vehicle trips and improvements to the sidewalks, tree plantings and bike lanes to the frontage of the project parcel.

Nonetheless, the project is consistent with the existing commercial and residential uses and developments in the immediate area. Given the mixed commercial and residential nature of the area, other high-density development projects nearby, and the strong real property market in the City, there are no facts that show a potential for his apartment's value to increase or decrease related to the project. And, although the project calls for construction, increased residents in the area and a potential increase in parking needs, the facts show that his use and enjoyment of his apartment is less likely to be impacted by the project, in that there is no anticipated increase in traffic, he does not have a view of the parcel and he has on-site parking available to him at his complex. The materiality standard applicable to his leasehold interest is not met, and the Act, therefore, does not prohibit the Mayor Ramirez from taking part in decisions regarding the project.

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

Sincerely,

Dave Bainbridge
General Counsel

By: **L. Karen Harrison**
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Senior Counsel, Legal Division

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