



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 20, 2023

Sudhanshu Jain
Councilmember
Santa Clara
610 Jackson St.
Santa Clara, CA 95050

Re: Your Request for Advice
Our File No. A-22-132

Dear Mr. Jain:

This letter responds to your request for advice 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.

QUESTIONS

1. Are you prohibited from participating in a decision concerning the proposed Precise Plan for the Downtown due to ownership of your primary residence?
2. Since it has been over 12 months since your wife received any income from Santa Clara University, may you now participate in any future discussions and decisions related to the proposed Precise Plan for the Downtown focus area?

CONCLUSION

Although you have a potential conflict of interest in governmental decisions concerning the proposed Precise Plan for the Downtown focus area given the proximity of your primary residence to the focus area, the public generally exception applies and permits you to take part in the

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.

decisions. Because more than 12 months have passed since your wife received any income from Santa Clara University, it is no longer a disqualifying source of income to you. Therefore, you may take part in any future discussions and decisions related to the proposed Precise Plan for the Downtown focus area.

FACTS AS PRESENTED BY REQUESTER

The City is in the process of drafting a Precise Plan for the “Downtown Focus Area” of Santa Clara. The Focus Area spans a twenty-five acre, ten block area, two blocks of which comprise the Franklin Square outdoor shopping mall, and eight blocks of which were previously consolidated under the Federal “Urban Renewal program” in the 1960s.

This “Renewal” program primarily resulted in the demolition of most of the City’s downtown core, and the 1960s promise of a “new downtown” was never realized. As a result, residents of the area have been waiting for the revitalization of this area for more than 50 years.

The City’s 2010-2035 General Plan envisions this area being revitalized to include 129,300 square feet of new commercial uses (e.g., boutique shopping, restaurants), public gathering places and civic venues, 396 new residential units, and a transit loop connection to the Santa Clara Station Area, in order to promote increased multi-modal connectivity, reconnect streets, and increase access to transit to attract residents and visitors.

The objectives for preparation of the Precise Plan are to establish a land use plan, urban design standards, and a policy framework that will guide future development and provide developers and the community with clear direction regarding form, massing, density and streetscape for new development.

You were elected to the Santa Clara City Council in November 2020. Over the next several years, the City Council will be discussing and making decisions related to the adoption of the Downtown Precise Plan. The City has not yet adopted the Precise Plan.

The Precise Plan area contains 44 parcels encompassing approximately 27.4 acres. You and your wife own your primary residence, which is located outside the proposed Precise Plan area, approximately 920 feet from the boundaries of the Precise Plan area. Santa Clara University, a nonprofit organization, owns one of the parcels located within the Precise plan area, located at the corner of Benton and Lafayette streets. Santa Clara University owns approximate 126 acres of property within the City of Santa Clara.

If the goals of the downtown Precise Plan are achieved, it will help to revitalize the area and make the downtown a more attractive destination for residents and businesses. The City’s Existing Conditions Report notes that some of the goals include the introduction of a new theater that will serve as an iconic building and symbol for downtown, as well as a central public space that can be used for music and events, and a “Main Street.” The revitalization efforts will potentially affect traffic, parking, and noise levels in the vicinity.

You own a home located within 1,000 feet of the Precise Plan boundaries. The City has previously determined that 16.34% of the residential parcels in District 5 are within 1,000 feet of

the Precise Plan boundaries. Moreover, there is no indication that your residence will be affected any differently by the Precise Plan as compared to other residential properties within 1,000 feet of the decision.²

Santa Clara University had previously been a source of income to you, as your spouse had been employed as a part time Accounting Manager with Santa Clara University who was paid on an hourly basis in a non-exempt capacity.³ However, your spouse's employment with Santa Clara University ended October 18, 2021. Therefore, it has been over 12 months since she was employed by, and received any income from, Santa Clara University. You now seek clarification as to the application of this advice to your present financial interests.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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. (Section 87103; Regulation 18700(a)).

Pertinent to these facts, Section 87103 defines financial interests to include:

- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)

Real Property

Your home is within 920 feet of the Precise Plan boundary. Regulation 18702.2(a)(8), regarding real property within 500 to 1,000 feet from the property involved in a decision, is the applicable standard. Under Regulation 18702.2(a)(8), a decision's effect on an official's real

² See the *Jain* Advice Letter, No. A-20-126, where we advised that, although you have a potential conflict of interest in governmental decisions concerning the proposed Precise Plan for the Downtown focus area given the proximity of your primary residence to the focus area, the public generally exception applies and permits you to take part in the decisions. However, this letter was subsequently rescinded, as it did not analyze your disqualifying interest in a source of income from your wife's employer, which owns real property within the Plan area, because the facts necessary for this analysis were not provided in the request.

³ See the *Klotz* Advice Letter, No. A-21-056, where we rescinded *Jain* Advice Letter, No. A-20-126, and advised that you had a conflict of interest in decisions relating to the Downtown Precise Plan because it is reasonably foreseeable that City Council decisions related to the proposed Plan would have a material effect on your financial interest in your spouse's employer, which owns real property within the Plan area.

property interest is material if the decision would change the parcel's market value, development potential, income producing potential, highest and best use, or character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality.

Under the facts presented, the Precise Plan would revitalize the area and make the downtown a more attractive destination for residents and businesses. Some of the goals of the revitalization include the introduction of a new theater that will serve as an iconic building and symbol for downtown, as well as a central public space that can be used for music and events, and a "Main Street." The revitalization efforts will potentially affect traffic, parking, and noise levels in the vicinity, and the possibility that the revitalization would have an effect on the market value of nearby properties.

Based on these facts, it is reasonably foreseeable that the proposed downtown Precise Plan would have a material financial effect on your residence. It is reasonably foreseeable that the increase in density and intensity of use, and the change in types of uses, will impact the market value of your home, and that absent an exception, you would have a conflict of interest in these decisions based on your real property interest.

Commonly referred to as the "public generally exception," Regulation 18703(a) sets forth the general rule:

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 the official's financial interest is not unique compared to the effect on the significant segment.

For purposes of the exception, a "significant segment of the public" consists of at least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(2).) With respect to the decision at issue, the "significant segment of the public" is 15 percent of the residences within the City Council district the Council Member represents. (Regulation 18703(d).) Therefore, with respect to the decisions at issue, the "significant segment of the public" is 15 percent of the residential real property within District 5.

The facts presented establish that a "significant segment of the public," consisting of at least 15 percent of residential real property within your jurisdiction, District 5, would also be affected. Moreover, there is no indication that your property interest would be uniquely affected by the decisions. Thus, we conclude that the public generally exception applies, and your real property interest does not create a conflict that would preclude your participation in discussions and decisions of the City Council related to the proposed Precise Plan for the Downtown focus area.

Source of Income

You would have a financial interest in any source of income where that income is received or promised to you in an amount of \$500 or more within 12 months prior to the time that a decision before you is made. We must look back 12 months to determine whether a person is a source of income to an official. Income received or promised is disqualifying for 12 months after an official

has received or was promised the income. In this instance, it has been over 12 months since your wife has been employed by, or received any income from, Santa Clara University. Thus, you no longer have a financial interest in Santa Clara University as a source of income.

As discussed above, the public generally exception applies, and you do not have a prohibitive conflict based on your financial interest in your residence. Because more than 12 months have passed since his wife received any income from an employer that owns real property within plan area, it is no longer a disqualifying source of income to the official. You may thus take part in any future discussions and decisions related to the proposed Precise Plan for the Downtown focus area.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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