



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 20, 2024

Anais Martinez Aquino  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale CA 94088-3707

Re: Your Request for Advice  
**Our File No. A-24-020**

Dear Ms. Aquino:

This letter responds to your request for advice regarding the 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 a Sunnyvale Planning Commissioner take part in governmental decisions involving a proposed General Plan Amendment that would change the land use designation of a site to permit a mixed-use development, given that the site is located approximately 985 feet from the Planning Commissioner’s residence?

### CONCLUSION

Yes. Because the decisions would not change the residence’s development potential, income producing potential, highest and best use, character, or market value, the decisions would not have reasonably foreseeable, material financial effect on the Commissioner’s real property, and therefore would not disqualify him from taking part in the 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.

## FACTS AS PRESENTED BY REQUESTER

The City of Sunnyvale (“City”) Planning Commission is considering a pending General Plan Amendment (“GPA”) at 1313 S. Wolfe Road to consider changing the land use designation from Commercial Neighborhood Business (C-1) to Medium to High Density Residential (R-3, R-4) with a mixed-use component including the adjacent gas station.

More specifically, the Applicant proposes changing the General Plan designation for two commercial sites totaling 1.2 acres from Commercial to Medium Density Residential to allow a mixed-use project to be developed in the future. The subject sites are located on Wolfe Road and currently consist of a fast food restaurant and a vacant parcel. The site is bounded by a gas station to the north, condominiums to the west, apartments to the south, and a hotel to the east. The mixed-use development would require a rezoning from C-1/PD to R-3/PD. The proposed conceptual project depicts 27 three-story townhomes with a density of 22.5 dwelling units per acre and a detached 2,000 square foot commercial building. Wolfe Road is one of the City’s major arterial streets, with four lanes of traffic in the vicinity of the project. The project site is located one block south of El Camino Real, a six-lane arterial and the City’s primary business corridor.

Galen Davis is a member of the City Planning Commission and owns his primary residence located approximately 985 feet from the corner of the project site. Between Commissioner Davis’s residence and the project site are several blocks of existing urban development. Based upon a map provided with your request, Commissioner Davis’s residence is buffered from the project site by four existing multifamily residential properties directly between the residence and project site including: 1) a 60-unit, 2-story condominium complex; 2) an 88-unit apartment complex, consisting of two-story buildings with one and two bedrooms; 3) a 175-unit condominium complex consisting of four-story buildings; and 4) a 114-unit apartment complex consisting of two-story buildings.

The GPA is scheduled to be presented to the Planning Commission for a recommendation on March 25, 2024, and the City Council for adoption on April 23, 2024.

In a follow-up email, you also provided a copy of a Draft Mitigated Negative Declaration/Initial Study for the proposed GPA and clarified that currently no development project has been proposed. The Initial Study for the land use change identifies that construction noise will be less than a significant impact with mitigation. Air quality and traffic due to construction will be less than a significant impact. If/when a development project is proposed, further studies to understand the specific construction impacts of the project will be required and the project will be required to comply with standard mitigation measures for construction noise and emissions.

## ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest” in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among

those specified economic interests is “[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(b).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. 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).”

Where, as here, an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

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 governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel’s:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Here, the proposed GPA would not affect the development potential or highest and best use of Commissioner Davis’s real property interest. Given the distance between the residence and the project site (nearly 1,000 feet) and the number of physical barriers including four large multifamily residential properties directly between the two properties, decisions relating to the GPA would not change the character of Commissioner Davis’s real property by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. The lack of impact on character is further evidenced by the fact that there is currently no specific development project proposed. As such, a change in land use designation would merely be an initial step that would permit development of such a project in the future. At that point, additional information would become available regarding any potential impact of a specific proposed development project. Consequently, the proposed GPA would not have a reasonably foreseeable, material financial effect on Commissioner Davis’s real property and, therefore, Commissioner Davis does not have a disqualifying financial interest in decisions relating to the proposed GPA. If subsequent decisions

come before Commissioner Davis regarding a specific proposed project and he is unsure of whether he has a financial interest, he should seek additional advice.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Senior Counsel, Legal Division

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