

June 24, 2014

Jannie L. Quinn  
City Attorney  
City of Mountain View  
500 Castro Street  
Mountain View, California 94041

Re: Your Request for Advice  
**Our File No. A-14-106(a)**

Dear Ms. Quinn:

This letter responds to your request for advice on behalf of Mountain View Councilmember John Inks regarding his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> In order to expedite our responses to your questions, at your suggestion, we have divided your three questions into two advice responses. This letter addresses the first question that you raised about the proposed San Antonio Precise Plan.

Please note, the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Moreover, our advice is limited to the provisions of the Act.

### QUESTION

In his official capacity, can Councilmember Inks make, participate in making or influence governmental decisions regarding the proposed San Antonio Precise Plan?

### CONCLUSION

Councilmember Inks has a conflict of interest with respect to the proposed San Antonio Precise Plan and must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest, as

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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 18110 through 18997 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.

discussed in regulation 18702.5(b), on the record of the meeting; (2) recuse himself; and (3) leave the room for the duration of the discussion and/or vote on the item.

### **FACTS**

The City of Mountain View recently adopted its 2030 General Plan. This General Plan identified the San Antonio Shopping Center and surrounding properties as a “change area.” The Proposed Precise Plan, also known as a specific plan, is used to implement the land use policies set forth in the General Plan. The City is currently in the process of developing a Proposed Precise Plan to include the shopping center and the additional areas encompassed in the proposed precise plan boundaries in order to ensure the precise plan is consistent with the General Plan. The San Antonio Shopping Center is a subset of the greater San Antonio Change Area identified in the 2030 General Plan. The 56-acre Existing Precise Plan covers the entire shopping center and is much smaller than the 123-acre Proposed Precise Plan.

Councilmember Inks is a member of the Mountain View City Council and owns a condominium in a condominium project or common interest development in Mountain View located on Showers Drive, northeast of the boundary of the Plan area. He resides in that condominium. Councilmember Inks’ condominium is located within 500 feet of the tip of the Proposed Precise Plan and is adjacent to Showers Drive. You stated there are 16,035 residential property owners in the City. Only 902 residential properties, or 5.63%, are located within 500 feet of the Proposed Precise Plan

On June 24, 2014, the City Council will hold a study session to provide input on policy topics and improvement standards for the Proposed Precise Plan. For example, these standards will help define where new streets/connections occur, the relationship between new buildings and future street frontages, setback standards for buildings, bicycle circulation, and the allowed intensities for development within the Proposed Precise Plan. This study session is one of many conducted by the City Council to develop the Proposed Precise Plan. It is anticipated that a draft precise plan will be released by early fall and a precise plan will be presented to the City Council for adoption by the end of this calendar year. Additional City Council meetings will be scheduled to discuss and adopt the Proposed Precise Plan.

### **ANALYSIS**

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision.

Your letter eliminates the need to analyze the initial steps of the standard analysis. The Councilmember is a public official and you are asking whether he may make or participate in the

San Antonio Precise Plan decision in light of the fact that he owns and resides in a condominium unit within 500 feet of the plan boundaries.<sup>2</sup>

Regulation 18705.2 provides in pertinent part:

“(a) Except as provided in subdivision (c) below, the reasonably foreseeable financial effect of a governmental decision (listed below in (a)(1) through (a)(13)) 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:

...

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

“(11) Would consider any decision affecting real property value located within 500 feet of the property line of the official’s real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18705.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official’s property; or

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

Your facts implicate each of these subdivisions. These three subdivisions all focus on the effects on the official’s interest emanating from the project site.

- Subdivision (a)(10) considers changes to traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real

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<sup>2</sup> As you noted in your letter, Regulation 18705.2 now provides that the real property in which an official has an interest “does not include any common area as part of the official’s ownership interest in a common interest development the common property.” (Regulation 18905.2(d)(4).)

property parcel in which the official has a financial interest. Distance is not determinative with respect to this test.

- Subdivision (a)(11) focuses on the location of the property. Where the official's property is located within 500 feet of the subject property, the analysis focuses on whether the facts support a finding that there will or will not be a reasonably foreseeable measurable impact on the official's property despite the proximity of the subject property. The new provision differs from the old rule in that it does not apply a "one-penny" rule, but rather focuses on the facts and circumstances of the decision and whether there will be a measurable effect.
- Finally, subdivision (a)(12) provides a fact-based test that is based on a reasonably prudent person standard.

Regulation 18706(b) defines foreseeability as follows:

“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.”

Your facts support a finding of a foreseeable material financial effect under subdivision (a)(10). The councilmember's property is within 500 feet of the boundary of the precise plan. Additionally, his property is on a major street that will be improved under the precise plan. For example, Alternative 1, the Streetlife Alternative, transforms the public streets surrounding San Antonio Center into complete streets that improve pedestrian, bicycle, and vehicular circulation. The streets become activated by ground-level retail and active frontages. Focused improvements are along the four public streets bounding San Antonio Center: San Antonio Road, California Street, Showers Drive, and El Camino Real.

The portion of Showers Drive, which runs directly past the Councilmember's condominium, will become a pedestrian friendly "main street" with mixed-use residential development. Regional retail is encouraged to renovate the face the street. A town square will be wrapped by mixed-use residential at the intersection of the Hetch Hetchy right-of-way and Showers Drive. To a lesser extent, the other two alternatives also contemplate changes to Showers Drive, which could have a positive financial effect property even outside the precise plan area but located on Showers Drive, such as the Councilmember.

Consequently, absent an exception, Councilmember Inks may not participate in the San Antonio Precise Plan decisions.

Please note that a public official who has a conflict of interest in a decision noticed at a public meeting, must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest, as

discussed in Regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

*The Public Generally Exception:* The only exception that could potentially apply to the Councilmember's conflict of interest is the Public Generally Exception. However, as you noted, the numbers of persons affected by the precise plan do not meet the thresholds in Regulation 18707.1. You stated there are 16,035 residential property owners in the City and only 902 residential properties, or 5.63%, are located within 500 feet of the Proposed Precise Plan. Moreover, even fewer properties in the city are situated on one of the specific streets that are to receive improvements under the Precise Plan (similar to the councilmember's property.) Therefore, the Public Generally Exception would not apply and the councilmember is disqualified from participating in the decision.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

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