

October 20, 2014

Jannie L. Quinn  
City Attorney  
Krishan Chopra  
Assistant City Attorney  
City of Mountain View  
500 Castro Street  
Mountain View, CA 94041

Re: Your Request for Advice  
**Our File No. A-14-182**

Dear Ms. Quinn and Mr. Chopra:

This letter responds to your request for advice on behalf of Mountain View Councilmember Jac Siegel regarding his duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because 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), this advice is based solely on the facts presented. Please also 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 Government Code Section 1090.

### QUESTIONS

May Councilmember Siegel participate in and vote on whether the city council will do the following:

1. Authorize the City Manager to execute an agreement with Google to provide community shuttle program services, as well as make any minor amendments, including extensions, to the agreement.
2. Direct staff to return to the City Council with an overview and update regarding the community shuttle pilot program after it has been in operation for one year.

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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.

## CONCLUSIONS

1 & 2. Yes. The councilmember will not have a conflict of interest under the Act in the decisions you describe.

## FACTS

The idea of operating a community shuttle in Mountain View has been a topic of both community and City Council discussion on and off for the past several years. The community shuttle would be a transportation alternative for residents whose mobility needs are not currently being addressed with the transportation services available in the City. Initially, Google representatives contacted City officials offering to fund a pilot community shuttle program. Based on the community input received in 2012 and previous community shuttle service discussions, City staff worked with Google staff and representatives from ALTRANS, the company Google has retained to manage the daily operations and customer service needs for the community shuttle pilot program, to develop a proposed route and service plan for a community shuttle pilot program.

In January 2015, the community shuttle will begin as a two-year pilot program fully funded by Google and will automatically be renewed for an additional year unless either the City or Google decide to terminate the program. Throughout the term of the pilot program, the City will fine-tune the shuttle route and stop locations based on rider feedback and will also collect ridership data to assess the demand for shuttle services. The initial proposed shuttle service and route was presented at a community meeting held on August 12, 2014 and included the following key attributes:

- Four electric shuttles traveling the proposed shuttle route—two in a clockwise direction and two in a counterclockwise direction—serving each proposed shuttle stop location at estimated 30-minute intervals on weekdays from 10:00 a.m. to 6:00 p.m. and once an hour between 12:00 noon and 8:00 p.m. on weekends and holidays.
- The shuttle vehicles will be equipped with seating for 16 passengers, a wheelchair lift, space for two wheelchairs, WiFi connectivity, and bicycle racks on the outside.
- The shuttle route included 27 destination locations with a total of 51 shuttle stops (stops on both sides of a street at most locations), connecting residential areas throughout the community to the Center for the Performing Arts, Castro Street stores and restaurants, the Mountain View Public Library, other regional transit services at the Downtown Mountain View Transit Center and San Antonio Transit Center, City and community facilities including the Senior Center, Teen Center, parks, and both sports centers, shopping at San Antonio Center, Grant Road and El Camino Real, El Camino Real and The Americana, Blossom Valley, the El Camino Hospital and nearby medical offices, the Palo Alto Medical Foundation, and the movie theater complex on North Shoreline Boulevard.

*Alternate Two-Loop Shuttle Route:* City staff evaluated other shuttle route configurations that might better address some of the requested changes/improvements that could not be incorporated into the single-loop route. This evaluation resulted in the development of an alternate, two-loop shuttle route and service plan. As its name implies, under this route configuration, shuttle service would be provided along two smaller route loops (an East Loop and a West Loop) as opposed to one larger loop. Two shuttle buses would serve each loop (one running in a clockwise direction, the other in a counterclockwise direction). Riders would be able to transfer between the two loops at the Downtown Mountain View Transit Center (“VTC”) stop and/or any of the stops along Shoreline Boulevard to travel to destinations served by the other loop.

Councilmember Siegel owns two real property interests within 500 feet of existing VTC stops the shuttle route may use. The first is his residence, and the second is a single-family home that the Councilmember rents to a tenant. The existing VTC service at those stops is weekdays only, running all day every 30 minutes to one hour. The new shuttle would run on top of this schedule every 30 minutes on weekdays from 10am to 6pm and would add weekend service at the stops once per hour noon through 8pm.

## 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. 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 as set forth in Section 87103. (Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest in a given governmental decision.

It is not necessary to review the first two steps. As a city councilmember for the City of Mountain View, Councilmember Siegel is a public official subject to the Act’s conflict-of-interest provisions. Councilmember Siegel wishes to make and participate in the decisions concerning the Community Shuttle Pilot Program decisions.

### ***Step 3. What are the Councilmember’s interests?***

The Act’s conflict-of-interest provisions apply only to conflicts of interest arising from certain interests enumerated in Section 87103. The following interests are relevant here:

- A public official has an interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- A public official has an interest in any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)

Councilmember Siegel owns a residence on Sleeper Avenue and a rental unit on Begen Avenue, each of which is within 500 feet of existing VTC stops which the new shuttle service may use. The tenants who lease the rental units from him are considered sources of income.

***Steps 4, 5, and 6: Foreseeability and Materiality***

*1. Real Property.*

Regulation 18705.2 provides (in pertinent part) that the reasonably foreseeable financial effect of a governmental decision (listed below in (a)(1) through (a)(12)) on a parcel of real property in which an official has an 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.”

We note that none of the proposed routes or stations is immediately adjacent to the councilmember's properties. Rather they are separated from his properties by a significant number of houses.

Moreover the proposed routes are along roads that appear to already handle significant traffic loads, so the added traffic caused by the new shuttle service would not appear to have any additional financial effect on the councilmember's property. You also noted that the shuttle would use existing active VTC stops. The VTC bus traffic at the stops near Councilmember Siegel's properties are weekdays only and run all day at 30 minute to hour increments. The shuttle would run on top of the VTC schedule every 30 minutes on weekdays 10 a.m. - 6 p.m., and would add weekend service at the stops once per hour noon – 8 p.m. Again, in light of the

current use of the VTC stations and traffic on the streets feeding the stations, it would not appear that the Councilmember's properties would be measurably affected.

2. *Sources of Income.*

Regulation 18705.3 provides two different rules with respect to sources of income depending on whether the source of income is either an applicant to the decision, or indirectly affected by the decision. In this case, the councilmember's tenants would be indirectly affected by the decision, and the effect would be material if:

- The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or
- There are specific circumstances regarding the governmental decision, its financial effect, and the nature of the source of income's real property that make it reasonably foreseeable that the decision will have a material financial effect on the real property. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects: (i) The development potential or income producing potential of the real property; (ii) The use of the real property; (iii) The character of the neighborhood including, but not limited to, substantial effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.<sup>2</sup>

Again, based on the location of the property and the buffer of houses between it and the proposed stations, it does not appear that the decision in questions will create any specific circumstances to suggest the interests of the source of income will be materially affected.

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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<sup>2</sup> Note that current Regulation 18705.2 has a typographical error citing a different test. The regulation is currently with the Office of Administrative law to conform the regulation to the analysis set forth above.