



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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Re: Your Request for Advice  
**Our File No. A-20-054**

Dear Mr. Alvarado:

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.

## QUESTIONS

1. Under the Act, may East Palo Alto (“City”) Mayor Regina Wallace-Jones take part in amending the Ravenswood District Specific Plan (“Specific Plan”), given that she owns real property located within the boundaries of the Specific Plan?
2. Under the Act, may City Councilmember Larry Moody take part in amending the Specific Plan, given that he owns real property located within 1,000 feet of its boundaries, and his employer is proposing to construct a commercial office project within the Specific Plan Area?

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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. Yes, Mayor Wallace-Jones may take part in decisions concerning the amendment of the Specific Plan. Although it is presumed the decisions would have a reasonably foreseeable, material financial effect on her residential real property located within the Specific Plan Area, the facts establish that this effect is not distinguishable from the financial effect on the public generally.
2. No, Councilmember Moody may not take part in decisions concerning the amendment of the Specific Plan, as the decisions would have a reasonably foreseeable, material financial effect on his source of income, Job Train, which is seeking to build a new office building under the amended Specific Plan and would be uniquely affected by the decisions.

## **FACTS AS PRESENTED BY REQUESTER**

The City is located in the southeast portion of the San Francisco Peninsula, approximately thirty (30) miles southeast of San Francisco. The City adopted the Specific Plan in 2012. The Specific Plan Area encompasses approximately 350 acres.

Mayor Wallace-Jones owns a personal residence within the small area of the southeast boundary of the Specific Plan Area. Councilmember Moody owns a personal residence within 1,000 feet of the southwest boundary of the Specific Plan Area. Councilmember Moody's employer, an employment agency named Job Train, is proposing to construct a 100,000 square-foot office building within the Specific Plan Area.

In 2012, the Specific Plan Environmental Impact Report ("EIR") analyzed the projected growth within the Specific Plan Area. By 2030, after completion of all development projected at the time, the EIR projected the Specific Plan Area would see 853 new residential units, 112,400 square-feet of new retail space, over 1.2 million square-feet of new office space, and approximately 268,000 square-feet of new industrial space. These maximum intensities are incorporated into the City's General Plan.

In the past few years, the Ravenswood Business District has garnered significant private development interest because of the robust regional economy, the demand for office uses, the proximity to Facebook's campus, and the availability of large parcels of vacant and underutilized land. Several pre-applications have been received for new projects to be developed, including Job Train's pre-application for its new 100,000 square-foot office building. The Specific Plan Area now has projects in the "development pipeline" totaling 537 new residential units, 70,000 square-feet of new retail space, and approximately 5.5 million square-feet of new office space. Consequently, the projected development now exceeds the amount of development considered in the Specific Plan EIR and the amount of non-residential development analyzed in the General Plan EIR.

At a February 25, 2020 special City Council meeting, City staff recommended that the City prepare an amendment to the Specific Plan, the Specific Plain EIR and the General Plan EIR to study an increased level of development in the area and the City as a whole. Mayor Wallace and Councilmember Moody did not participate in this agenda item.

Moving forward, City staff will return to the City Council to discuss the potential for an increased amount of development in the Specific Plan Area. The discussion will likely focus on the following topics:

- The total amount of development that is realistic in today's economic market;
- A fair structure for allocating the additional development rights in exchange for tangible community benefits;
- District-wide transportation and utility improvements to accommodate new development and minimize impacts to the community;
- The fiscal benefits from different levels of development to better understand how development could result in net positive revenues for the City and perhaps solve the City's structural deficit; and
- A revised urban design plan with a new roadway and open space network designed to create a cohesive urban district, rather than a series of standalone development projects.

City staff will seek Council input and direction on each of these topics that may ultimately result in subsequent amendment to the Specific Plan, the Specific Plan EIR, and the General Plan EIR.

You have indicated that 50% of all commercial properties in the City are situated within the Specific Plan Area. Further, 14% of all residential real property in the City is situated within the Specific Plan Area, and 30% of all residential real property in the City is situated within the Specific Plan Area and 1,000 feet therefrom.

## ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he 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 his or her immediate family," or on certain enumerated economic interests, including:

- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more; and
- Any source of income aggregating five hundred dollars (\$500) or more in value provided or promised to, or received by, the public official within 12 months prior to the time when the decision is made.

(Section 87103(b)-(c).)

A financial effect on a public official's economic interest is reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) An economic 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 economic interest, and includes any governmental

decision affecting a real property economic interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Where a public official's economic interest is not explicitly involved in the decision, a different standard for determining the reasonable foreseeability of a financial effect is applicable. Under Regulation 18701(b), "[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."

Regulation 18702.2 provides the relevant standards for determining the materiality of a reasonably foreseeable financial effect on a real property economic interest. Under Regulation 18702.2(a)(7), such an effect is presumably material whenever the governmental decision "[i]nvolves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property." Additionally, the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has an economic 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:

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

Regulation 18702.2(a)(8).

Under the Act, a reasonably foreseeable, material financial effect on a public official's economic interest is only disqualifying if it is distinguishable from the effect on the public generally. (Section 87103.) Under Regulation 18703(a), a governmental decision's financial effect on a public official's economic 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 his or her financial interest is not unique compared to the effect on the significant segment. A significant segment of the public is at least 25 percent of all businesses or non-profit entities, real property, commercial real property, or residential real property, or individuals within the official's jurisdiction. (Regulation 18703(b).) A unique effect on a public official's financial interest includes a disproportionate effect on an official's business entity or real property resulting from the proximity of a project that is the subject of a decision, or a disproportionate effect on the income, investments, assets, liabilities, or real property of the official's source of income. (Regulation 18703(c)(2), (5).)

Both Mayor Wallace-Jones and Councilmember Moody have economic interests in their personal residences as real property. Mayor Jones's real property is located within the boundaries of

the Specific Plan Area and Councilmember Moody's real property is located within 1,000 feet of the boundaries. Neither real property interest is the subject of the governmental decisions at issue under Regulation 18701(a). However, as economic interests not expressly involved in the decisions, it is still reasonably foreseeable that the decisions will have a financial effect on both public officials' real property economic interests, given the magnitude of the development that the governmental decisions would potentially permit. (Regulation 18701(b).)

Additionally, Councilmember Moody has an economic interest in Job Train as a source of income. This economic interest is the subject of the decisions at issue, given that the decisions would potentially allow Job Train to construct a 100,000 square-foot office building. Alternatively, even if construction of the Job Train office building was not contingent upon amendment to the Specific Plan, the significant development of the surrounding area would affect the value of Job Train's real property. Thus, under either Regulation 18701(a) or 18701(b), the decisions at issue would have a reasonably foreseeable financial effect on Job Train, Councilmember Moody's source of income interest.

Under Regulation 18702.2(a)(7), the reasonably foreseeable financial effect on Mayor Wallace-Jones's real property is presumably material, given that the decision involves property less than 500 feet from Mayor Wallace-Jones's property. Under Regulation 18702.2(a)(8), the reasonably foreseeable financial effect on Councilmember Moody's real property is less certain, although the decisions, resulting in major developments to the nearby Specific Plan Area, may change the property's market value and income-producing potential as well as altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. However, it is unnecessary to consider the financial effect Councilmember Moody's real property, because the decisions would have a reasonably foreseeable, material financial effect on Councilmember Moody's source of income interest, Job Train. The reasonably foreseeable financial effect of a governmental decision on an official's source of income interest is material where the source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Under Regulation 18702.1(a)(4), a decision's reasonably foreseeable financial effect on a business entity is material where the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

Here, Job Train is properly considered the subject of the decision(s) under Regulations 18701(a) and 18702.2(a)(1), given that the decisions involve the amendment of a development plan applying to the parcel. Without amendment to the Specific Plan and General Plan permitting additional development, it appears that Job Train would not be able to build its new 100,000 square-foot building. In any case, even if Job Train were not the subject of the decision, there is clear and convincing evidence that the decisions would have a substantial effect on Job Train's real property interest, given that decisions permitting (or prohibiting) millions of square-feet of additional office space would undoubtedly impact the market value of the property. Accordingly, the decisions would have a reasonably foreseeable, material financial effect on Councilmember Moody's source of income economic interest.

Given the reasonably foreseeable, material financial effects that the decisions would have on the economic interests of Mayor Wallace-Jones and Councilmember Moody, both officials are disqualified from taking part in the decisions unless an exception applies. As noted above, under the

“public generally” exception, a governmental decision’s 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 his or her financial interest is not unique compared to the effect on the significant segment.

With respect to Mayor Wallace-Jones, given the magnitude of the project, it appears the decisions at issue would affect residential real property located 1,000 feet from the Specific Plan Area, as well as residential real property located within the Specific Plan Area, in addition to the 50% of the jurisdiction’s businesses located inside the Specific Plan Area. Accordingly, the decisions would affect a significant segment of the public. Although Mayor Wallace-Jones owns residential real property located within the Specific Plan Area, it does not appear that she would be uniquely affected by the amendment of the Specific Plan. Accordingly, Mayor Wallace-Jones is not prohibited from taking part in the decisions, given that the financial effect the decisions would have on her economic interest is not distinguishable from the financial effects the decisions would have on the public generally.

However, Councilmember Moody would be uniquely affected, given that the decision would have a disproportionate effect on his source-of-income’s real property and business operations, given that the decisions will affect the potential construction of Job Train’s planned 100,000 square foot building. (See Regulation 18703(c)(5).) Accordingly, Councilmember Moody is disqualified from taking part in decisions pertaining to the amendment of the Ravenswood District Specific Plan, as those decisions would uniquely affect his source-of-income interest in Job Train.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Kevin Cornwall*

By: Kevin Cornwall  
Counsel, Legal Division

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