



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

December 14, 2020

Sudhanshu Jain
610 Jackson Street
Santa Clara, CA 95050

Re: Your Request for Advice
Our File No. A-20-126

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.

QUESTION

Does the Act prohibit you, as a Councilmember, from participating in discussions and decisions of the City Council related to the proposed Precise Plan for the Downtown focus area, given the proximity of your primary residence to the focus area?

CONCLUSION

No. 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.

FACTS AS PRESENTED BY REQUESTER

You have asked for reconsideration of the *Abbe* Advice Letter, No. A-20-091, in light of additional facts you have provided. The City of Santa Clara 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

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 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.

block area. When this advice request was made and issued, you were a member of the City's Planning Commission, whose members serve the City at large, and are not appointed to represent any specific region of the City. However, you informed our office that you were a successful candidate for City Council in the November 3, 2020 election, and will take office as a Councilmember, representing Council District 5, on December 8, 2020.

The *Abbe* Advice Letter concluded that it is reasonably foreseeable the decisions concerning the proposed Precise Plan for the "Downtown Focus Area" of Santa Clara will have a material financial effect on the market value of your residence, located within 1,000 feet of the plan boundaries, under Regulation 18702.2(a)(8), due to the proposed sizable changes in the density and type of use in the Downtown focus area. In light of additional information, you now seek advice as to whether the "public generally" exception would apply to allow your participation in the proposed Precise Plan.

Updated Information from the City

While the public generally exception did not apply in respect to your role as a Planning Commissioner based upon the City's previous determination of the number of properties within 1,000 feet of the decision, the City's Planning Division completed a more refined analysis in respect to your position on the City Council and in light of the September 17, 2020, revision to Commission Regulation 18703. For the purposes of this request, the City has now determined that 16.34 percent of the residential parcels in District 5 are within 1,000 feet of the precise plan boundaries. City staff utilized the City's GIS System, Tidemark database, and individual property records to conduct this exhaustive search, on a parcel-by-parcel basis.

The refined analysis resulted in a different number than previously determined because:

- The previous analysis included only parcels that are zoned residential. A number of parcels within the area are zoned Planned Development (PD) with residential uses. In the refined analysis, Planning Division looked at each PD parcel to determine whether it contained residential uses, and added the parcels containing residential uses to the count.
- The previous analysis did not include non-residentially zoned parcels that have a legal nonconforming residential use. For the revised analysis, the Planning Division added parcels to the count where the zoning is, but the use of the property is residential.
- The previous analysis did not include parcels with a zoning of Historic Combining District (HT). There are 10 residential HT parcels within 1,000 feet of the precise plan boundaries, and 11 residential HT parcels within District 5 overall.
- Some parcels are listed in the City's GIS system with irregular coding. For example, a parcel zoned R1-6L may be listed just as "R1." The previous determination did not capture every parcel with irregular coding.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a "financial interest" in a 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 that is distinguishable from the decision's effect on the public generally.

Public Generally

Commonly referred to as the "public generally exception," Regulation 18703(a)² 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.

As mentioned, when you previously requested advice concerning this decision, you were serving as a Planning Commissioner, a position which serves the City at large, and the public generally exception did not apply. However, the City has now 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 uniquely affected by the Precise Plan as compared to other residential properties within 1,000 feet of the decision.

Based upon the updated facts provided from the Planning Division, the fact that you will be serving as a Councilmember representing District 5, as well as the amendments the public generally regulation that establish the "significant segment of the public" consists of at least 15 percent of residential real property within the official's jurisdiction, we conclude that the public generally exception applies, and you may, as a Councilmember, participate in discussions and decisions of the City Council related to the proposed Precise Plan for the Downtown focus area.

² The Commission adopted amendments to Regulation 18703 at its regular meeting on September 17, 2020, and the analyses below applies that regulation as amended.

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

ZWN:aja