



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 4, 2021

Nicole C. Wright
Senior Assistant City Attorney
City of Mountain View
500 Castro Street
Mountain View, California 94039-7540

Re: Your Request for Advice
Our File No. A-21-047

Dear Ms. Wright:

This letter responds to your request for advice on behalf of City of Mountain View City Councilmembers Margaret Abe-Koga, Alison Hicks, and Sally Lieber 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

Given that Mountain View City Councilmembers Abe-Koga, Hicks, and Lieber each own a single-family residence located within the area covered by the City’s inchoate Downtown Parking Strategy, may those Councilmembers take part in decisions relating to the Downtown Parking Strategy pursuant to the Public Generally Exception?

CONCLUSION

Yes. Councilmembers Abe-Koga, Hicks, and Lieber may take part in decisions relating to the Downtown Parking Strategy because Regulation 18703(e)(3)’s Public Generally Exception for decisions with Limited Neighborhood Effects applies.

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.

FACTS AS PRESENTED BY REQUESTER

You are a Senior Assistant City Attorney for the City of Mountain View and the authorized representative of Mountain View City Councilmembers Margaret Abe-Koga, Alison Hicks, and Sally Lieber. The City Council will soon consider decisions related to the Downtown Parking Strategy (the “Parking Strategy”). The purpose of the Parking Strategy is to assess parking needs and to address supply and demand discrepancies within the City’s downtown. The area covered by the Parking Strategy is bounded by Shoreline Boulevard, Evelyn Avenue, Calderon Avenue, and El Camino Real. Each of these Councilmembers owns a single-family residence, which serves as that Councilmember’s primary residence, located within the City’s Old Mountain View Neighborhood and the Parking Strategy area. There are 40,496 residential addresses within the City. The Parking Strategy area contains 2,452 residential addresses, approximately six percent of the residential real property within the City.

The Old Mountain View Neighborhood is characterized as historic with one- and two-story homes on small lots located nearby a vibrant downtown commercial area, with offices, shops, and restaurants. Castro Street, the main commercial street in the area, runs roughly northeast and southwest. Commercial uses generally occupy the parcels immediately abutting Castro Street, with residential parcels occupying the blocks further removed from Castro Street.

Councilmembers Abe-Koga, Hicks, and Lieber’s single-family residences within the Old Mountain View Neighborhood are surrounded by other single-family homes, and these Councilmembers’ respective residences are similarly situated to each other and many other single-family homes within the Old Mountain View Neighborhood.

Prior to the City beginning to develop the Parking Strategy, the City completed the Downtown Paid Parking Study, which considered options for implementing paid parking to help address parking demand and supply challenges in the downtown area. In addition, there were discussions regarding an additional parking structure to help address parking needs for downtown development. The Study concluded that an integrated and comprehensive approach to parking should be evaluated to support current and future parking demand.

The Parking Strategy concepts under consideration include modification of existing programs to increase efficiency, implementation of parking technology, transportation demand management programs, and increasing parking supply. The City Council will provide City staff direction on the next phase of study in support of the Parking Strategy, including input on parking supply and demand considerations and development of proposed solutions to align parking requirements with downtown development priorities and land use regulations. Ultimately, after further City Council input and development, the Council will consider the Parking Strategy for adoption.

Future implementation of the adopted Parking Strategy could result in the adoption of ordinances and/or other City Council actions, including modification of the downtown Parking

Districts, on-street or off-street parking restrictions, modification to the downtown permit parking areas, and potential Zoning Code changes relating to parking.²

ANALYSIS

Under the Act's conflict of interest provisions, a public official is prohibited from making, participating in making, or attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) If the decision's financial effect on the official's interest is indistinguishable from the effect on the public generally, the Public Generally Exception applies, and the official may take part in that decision pursuant to the Exception. (Section 87103.)

Recently updated Regulation 18703 provides special rules for the application of the Public Generally Exception in specific circumstances, including a rule for decisions with Limited Neighborhood Effects set forth in subdivision (e)(3) of that regulation. Regulation 18703(e)(3) provides as follows:

(e) Specific Rules for Special Circumstances. The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

[¶] ... [¶]

(3) Limited Neighborhood Effects. The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

Thus, under the Limited Neighborhood Effects Rule, an otherwise disqualified official may take part in a decision as a matter of public policy where there is sufficient evidence supporting the public purpose for the action, the action applies to a specific location, and there is no unique effect on the official. (*Yu* Advice Letter, No. A-20-073; *Gibson* Advice Letter, No. A-17-188.)

Decisions relating to the Parking Strategy affect residential real property limited to a specific location, the City's downtown, and 2,452 of the City's 40,496 total residential addresses, or approximately six percent, are located within the area of the Parking Strategy. Therefore, the

² On April 23, 2021, you confirmed that decisions relating to the Parking Strategy at issue may include "increasing parking supply" within the Parking Strategy area but will not include any discussion or consideration of a parking structure or potential locations for a parking structure. You also confirmed that the City will seek additional advice regarding any potential conflicts of interest under the Act prior to taking up any decisions relating to a parking structure.

decisions relating to the Parking Strategy are limited to a specific location encompassing more than five percent of the residential real properties in the City.

Prior to the City initiating the development of the Parking Strategy, the City completed the Downtown Paid Parking Study, which considered options for implementing paid parking to help address parking demand and supply challenges in the downtown area, and there have been discussions regarding an additional parking structure to help address parking needs for downtown development. The Study concluded that an integrated and comprehensive approach to parking should be evaluated to support current and future parking demand. Therefore, the facts presented indicate that the City has gathered sufficient information to support the need for the Parking Strategy.

Councilmembers Abe-Koga, Hicks, and Lieber each own a single-family residence within the Parking Strategy area which serves as that Councilmember's primary residence. Each of these Councilmembers' residences is located within the Old Mountain View Neighborhood and is surrounded by other single-family homes. These Councilmembers' respective residences are similarly situated to each other and many other single-family homes in the Old Mountain View Neighborhood. Therefore, the facts presented provide no indication that decisions relating to the Parking Strategy would have a unique effect on Councilmembers Abe-Koga, Hicks, or Lieber's respective real property interests in their primary residences.

In the *Garibaldi* Advice Letter, No. A-15-083, we determined that the Act's conflict of interest provisions did not prohibit a city councilmember from taking part in a decision to approve or amend proposed residential parking requirements on the street on which the councilmember resided as well as several nearby streets because the Limited Neighborhood Effects Rule applied. The decisions at issue affected residential real property limited to a specific location, and the city gathered sufficient evidence to support the need for the parking requirements under consideration. Even if the city did not adopt a formal ordinance to establish the parking requirements, the Limited Neighborhood Effects Rule applied because the parking requirements could be established through a less formal City action.

Like the decisions at issue in the *Garibaldi* Advice Letter, *surpa*, decisions relating to the Parking Strategy would establish, amend, or eliminate parking restrictions on streets, within the Old Mountain View Neighborhood and the Parking Strategy area, on which Councilmembers Abe-Koga, Hicks, or Lieber's respective primary residences are located as well as nearby streets. Future implementation of the Parking Strategy could result in the adoption of ordinances or other City Council actions, including modification of the downtown Parking Districts, on-street or off-street parking restrictions, modification to the downtown permit parking areas, and potential Zoning Code changes relating to parking. Therefore, the facts presented indicate that the Parking Strategy's parking restrictions will either be implemented by ordinance or by less formal City Council actions.

Thus, Councilmembers Abe-Koga, Hicks, and Lieber may take part in decisions relating to the Parking Strategy because Regulation 18703(e)(3)'s Limited Neighborhood Effects Rule applies based on the facts presented.

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

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

MFC:dkv