



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 10, 2021

Elizabeth Klotz  
Assistant City Attorney  
1500 Warburton Avenue  
Santa Clara, CA 95050

Re: Your Request for Advice  
**Our File No. A-21-056**

Dear Ms. Klotz:

This letter responds to your request for advice on behalf of Santa Clara City Councilmember Sudhanshu Jain 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. Additionally, the Commission does not advise about past conduct. (Regulation 18329(b)(8).) Therefore, nothing in this advice letter should be construed to advise about any conduct that has already taken place.

Further, the *Jain* Advice Letter, No. A-20-126, is RESCINDED, as the material facts on which the letter’s conclusion is based are no longer accurate. This advice may no longer be relied upon under the provisions of Section 83114(b).

### QUESTION

Does the Act prohibit Councilmember Jain from participating in discussions and decisions of the City Council related to the proposed Precise Plan for the Downtown focus area, given that his spouse’s nonprofit university employer owns real property within the focus area?

### CONCLUSION

Yes. It is reasonably foreseeable that City Council decisions related to the proposed Precise Plan will have a material effect on Councilmember Jain financial interest in his spouse’s employer.

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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.

## **FACTS AS PRESENTED BY REQUESTER**

The City 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 block area, two blocks of which comprise the Franklin Square outdoor shopping mall, and eight blocks of which were previously consolidated under the Federal “Urban Renewal program” in the 1960s.

This “Renewal” program primarily resulted in the demolition of most of the City’s downtown core, and the 1960s promise of a “new downtown” was never realized. As a result, residents of the area have been waiting for the revitalization of this area for more than 50 years.

The City’s 2010-2035 General Plan envisions this area being revitalized to include 129,300 square feet of new commercial uses (e.g., boutique shopping, restaurants), public gathering places and civic venues, 396 new residential units, and a transit loop connection to the Santa Clara Station Area, in order to promote increased multi-modal connectivity, reconnect streets, and increase access to transit to attract residents and visitors.

The objectives for preparation of the Precise Plan are to establish a land use plan, urban design standards, and a policy framework that will guide future development and provide developers and the community with clear direction regarding form, massing, density and streetscape for new development.

Sudhanshu Jain was elected to the Santa Clara City Council in November 2020. Over the next several years, the City Council will be discussing and making decisions related to the adoption of the Downtown Precise Plan.

The Precise Plan area contains 44 parcels encompassing approximately 25 acres. Santa Clara University, a nonprofit organization, owns one of these parcels. The total area of this parcel is 35,510 sq. ft (.82 acre). Santa Clara University owns approximate 126 acres of property within the City of Santa Clara. Santa Clara University is a source of income to the Councilmember. Councilmember Jain’s spouse is currently employed as a part time Accounting Manager with Santa Clara University who is paid on an hourly basis in a non-exempt capacity. In her current capacity as a part time Accounting Manager, she does not manage employees. Nor does she have authority to approve purchase requisitions, invoices, spend authorizations or contracts. Councilmember Jain’s spouse’s income was disclosed on his Assuming Office Statement of Economic Interests.

If the goals of the downtown Precise Plan are achieved, it will help to revitalize the area and make the downtown a more attractive destination for residents and businesses. This will potentially affect traffic, parking, and noise levels in the vicinity, although the magnitude of these impacts will not be known until an environmental document has been prepared. There is also a possibility that the revitalization would have an effect on the market value of properties within the Downtown Precise Plan, including Santa Clara University’s parcel.

## ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a)).

Pertinent to these facts, Section 87103 defines financial interests to include:

- Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- Any business entity<sup>2</sup> in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)

Councilmember Jain does not have a business entity interest in Santa Clara University, due to its nonprofit status. As noted in your facts, he has a source of income interest in Santa Clara University as the result of his spouse’s employment as a part time Accounting Manager with Santa Clara University. Thus, he may not make, participate in making, or use his official position to influence any decision that will have a reasonably foreseeable material financial effect on his source of income interest, Santa Clara University.

### *Foreseeability*

Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. (Regulation 18701(a).) A financial 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 financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

Pursuant to Regulations 18702.1(a) and 18702.2(a)(1)-(6), an interest in real property is explicitly involved in the decision and the effect of the decision on the interest is both foreseeable and material if the decision:

- (1) Involves the adoption of or amendment to a development plan or criteria applying to the parcel;

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<sup>2</sup> Section 82005 defines a “business entity” as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

- (2) Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries;
- (3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;
- (4) Authorizes the sale, purchase, or lease of the parcel;
- (5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property;
- (6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. (Regulation 18702.2(a).)

#### *Materiality - Source of Income*

Regulation 18702.3(a)(3) provides the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's source of income interest, where the source is a nonprofit organization. Under the regulation, foreseeable financial effect is material if the official knows or has reason to know the organization has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6). (Regulation 18702.2(a)(3)(C)(i).)

As noted above, the goals of the Precise Plan are to establish a land use plan, urban design standards, and a policy framework that will guide future development and provide developers and the community with clear direction regarding form, massing, density and streetscape for new development. As such, this decision involves the adoption of or amendment to a development plan or criteria applying to the 44-parcel Precise Plan area, including property owned by Santa Clara University, a source of income to Councilmember Jain.

Here, the financial effect on Councilmember Jain's source of income interest is material, because the source is a nonprofit organization, the organization has an interest in real property, and the property is the subject of the decision under Regulations 18701(a) and 18702.2(a)(1), as the decision on the Precise Plan is an adoption of or amendment to a development plan or criteria applicable to the parcel owned by Santa Clara University. Thus, Councilmember Jain may not make, participate in making, or influence the decision.

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  
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