



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 11, 2021

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

Re: Your Request for Advice
Our File No. A-21-104

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

May the Councilmembers participate in governmental decisions related to construction of a new parking structure located at one of three locations in the downtown area in light of their real property ownership interests located approximately 888, 822, and 1,433 feet, respectively, to the potential locations for the structure?

CONCLUSION

Councilmembers Abe-Koga and Hicks may not take part in decisions relating to the downtown parking structure because, under the applicable standard for property interests located between 500 and 1,000 feet from the parcel subject to the decision and the facts presented, the construction of a new downtown parking structure would substantially alter traffic levels, intensity

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.

of use, parking, and air quality in the vicinity of their residences. However, under the standard applicable where the official has an interest in property more than 1,000 feet from the parcel subject to the decision, Councilmember Lieber may participate because there are no clear and convincing evidence that the decision would have a substantial effect on her property.

FACTS AS PRESENTED BY REQUESTER

On August 24, 2021, the City Council will consider construction of a new downtown parking structure located at one of three potential locations in Downtown Mountain View. The City currently has three surface level parking lots (Lots 5, 6, and 7) located along Hope Street between Villa and Mercy streets. Lot 7 is located approximately 888, 822, and 1,433 feet of Councilmembers Abe-Koga's, Hicks' and Lieber's real property interests respectively. Councilmembers Abe-Koga's and Hicks' residences are located approximately one block from Lot 7, on Church Street, while Councilmember Lieber's residence is located on Sierra Avenue, and separated from Lot 7 by more than two blocks. All three of the Councilmembers' real property interests are in excess of 1,000 feet from Lots 5 and 6.

Not all characteristics of the parking structure have been determined at this early stage, but based on preliminary analysis, the structure would be approximately five stories in height above ground (and could also include underground parking) with approximately 325-400 parking stalls.² Additional considerations for the structure include potential ground level commercial uses of approximately 10,000 square feet. Commercial uses could include neighborhood and other retail uses, offices, childcare centers, art galleries, personal or business services, medical services, banks, restaurants, indoor recreation, and lodges, clubs, social or fraternal organizations. The location of the Project will affect the potential ground level uses.

The cost range for the Project is anticipated at approximately \$20-\$24 million. To assist with funding, the City Council will consider partnership opportunities with private developers, including one that would authorize a contribution of \$8 million to the new structure in lieu of providing on-site parking at the development site. In addition, the City Council will consider use of \$10.1 million in funding provided by another development project as a ground lease payment for development on an existing City parking lot. The amount of funding needed would be dependent upon the lot location selected, as this relates to the structure configuration, existing conditions, and structure characteristics.

Real Property Interests

Each Councilmember owns a single-family primary residence downtown, which constitutes a real property economic interest under the Act (collectively "Properties"). Their residences are similarly situated to each other and most other single family homes in the Old Mountain View neighborhood. The Old Mountain View neighborhood is characterized as historic with one- and two-story homes on small lots located in close proximity to a vibrant downtown commercial area, with offices, shops and restaurants. Castro Street is the main commercial street in the area, and runs roughly Northeast/Southwest. Commercial parcels generally occupy parcels immediately abutting

² We note that currently, lots 5, 6, and 7 respectively contain 94, 98, and 94 parking spaces.
<https://www.mountainview.gov/depts/comdev/economicdev/downtowndev/dtparking.asp>

Castro Street, with residential parcels occupying the blocks further removed from Castro Street. Given Old Mountain View residents' proximity to surrounding commercial uses, residents currently experience traffic and parking impacts from nearby uses. As a result, residents' homes are located near existing commercial parking facilities that serve the downtown.

Project Impacts

In evaluating whether a new parking structure may substantially alter the character of their real property interests under Regulation 18702.2(a)(8)(D), the potential factors implicated by the Project would be view, noise, traffic impacts, and parking. With respect to view, the addition of a five-story structure located at Lot 7 would not likely substantially alter their view, as their existing views from ground level homes in a densely developed neighborhood with flat topography and other homes situated immediately nearby are already limited. It is unlikely a parking structure on this lot would be visible from Church Street and Hope Street, although small imperceptible corners of the building may be visible from specific angles or in the event of tree removal along Hope Street, which could make it more visible. It would not be visible at all from Church and View Streets.

In addition, potential noise impacts would be minimal or nonexistent. The downtown area is already heavily developed with commercial uses, and the additional noise impacts of one parking and commercial use development would be insignificant considering the existing environment.

Traffic and parking impacts may be implicated, however. Because these decisions are in early stages, a traffic analysis has not yet been performed. Traffic impacts would be more fully analyzed after Council has provided direction on the location and parameters of a parking structure. Nonetheless, a preliminary consideration of potential traffic impacts anticipates the greatest impacts in the immediate one block radius around the structure location, which for Lot 7 would be along Mercy, California and Hope Streets adjacent to Lot 7. Any potential traffic impacts would be lessened along Church Street although some traffic impacts may result.

Further, while an additional parking structure downtown could encourage vehicle use and increase traffic congestion, the City is concurrently developing congestion management strategies to manage parking demand and reduce vehicle impacts downtown. Assuming adoption of the Downtown Parking Strategy, the addition of a parking structure at Lot 7 would not likely have a perceptible effect on traffic impacts.

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 specified economic interests. (Section 87103.) Among those specified economic interests are “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).)

Councilmembers Abe-Koga, Hicks and Lieber have economic interests in their respective real properties.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. 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).” Councilmembers Abe-Koga’s, Hicks’ and Lieber’s real property interests are not explicitly involved in the governmental decisions relating to the construction of the new downtown parking structure.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[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.”

Councilmembers Abe-Koga and Hicks

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial 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:

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

(Regulation 18702.2(a)(8).)

Because Councilmembers Abe-Koga’s and Hicks’ real property interests are located between 500 and 1,000 feet from Lot 7, one of the three potential locations, the relevant materiality standard is Regulation 18702.2(a)(8). Based on the facts presented, it does not appear likely that the construction of a new downtown parking structure would affect the development potential or highest or best use of Councilmembers Abe-Koga’s and Hicks’ real property, nor does it appear likely the decision would affect the property’s market value or income producing potential. However, in this circumstance, the construction of a new downtown parking structure, approximately five stories in height, with approximately 325-400 parking stalls, as well as potential ground level commercial uses of approximately 10,000 square feet, in place of an existing, surface level parking lot, with no structures of commercial uses, approximately one block away from the

Councilmember's' residences, would substantially alter traffic levels, intensity of use, parking, and air quality in the vicinity of Councilmembers Abe-Koga's and Hicks' residences. As your request notes, because these decisions are in early stages, a traffic analysis has not yet been performed. However, notwithstanding a traffic analysis, the facts provided indicate that traffic and parking already impact residential properties in the area that the new downtown parking structure will further impact these properties. Moreover, you also anticipate the greatest impacts in the immediate one block radius around the structure location. Accordingly, under the Act, it is reasonably foreseeable that the decisions at issue would have a material financial effect on Councilmembers Abe-Koga's and Hicks' real property and, they may not take part in the decisions pertaining to the new downtown parking structure.

Councilmember Lieber

Decisions related to the locations for the new downtown parking structure will involve property more than 1,000 feet from Councilmember Lieber's residence and are thus presumed not to have a material financial effect on her real property interest. (Regulation 18702.2(b).) This presumption may be rebutted if clear and convincing evidence indicates the decision would have a substantial effect on the Councilmember's property. As the three potential locations for the new downtown parking structure are all located more than 1,000 feet from Councilmember Lieber's residence, with the closest of the potential locations more than two blocks away, there is no clear and convincing evidence presented indicating the decision would have a substantial effect on her property, and she does not have a financial interest in the decision concerning the downtown parking structure. However, we caution that once a decision concerning a location has been made, and the traffic analysis has been completed, Councilmember Lieber may wish to seek further advice for future decisions on the parking project.

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

Sincerely,

Dave Bainbridge
General Counsel

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:dkv