



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

February 16, 2021

Cara E. Silver
Interim City Attorney
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025- 3392

Re: Your Request for Advice
Our File No. 21-007

Dear Ms. Silver:

This letter responds to your request for advice on behalf of City of Menlo Park City Councilmember Jen Wolosin 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 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 Councilmember Wolosin from taking part in governmental decisions relating to the Menlo Oaks Bicycle Improvement Network Project, which would make bicycle and pedestrian improvements to Coleman Avenue within the City, given that the Councilmember owns a single-family residence located approximately 550 feet from the Project’s western boundary?

CONCLUSION

No. The Act does not prohibit the Councilmember from taking part in decisions relating to the Project because it is not reasonably foreseeable that those decisions would have a material financial effect on the Councilmember’s real property interest in her single-family residence based on the facts presented.

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 the Interim City Attorney for the City of Menlo Park and the authorized representative of Menlo Park City Councilmember Jen Wolosin, who was sworn in as a Councilmember on December 15, 2020.

On November 17, 2020, the City Council adopted the Transportation Master Plan (the “TMP”). The TMP identifies appropriate projects to enhance the community’s transportation network and outlines an implementation strategy for local improvements as well as local contributions towards regional improvements. One of the local Tier 1 projects, the TMP’s highest priority projects, is called the Menlo Oaks Bicycle Improvement Network Project. The Project, estimated to cost \$224,000, would establish a Class II bike lane on Coleman Avenue within the City, with Willow Road serving as the eastern boundary of the Project and the City limit as its western boundary. Coleman Avenue is one lane each way in this area, and there is street parking available on the eastern portion of Coleman Avenue between Willow Road and Berkeley Avenue.

The Councilmember owns a single-family residence located on Alder Place, a cul-de-sac within a neighborhood of single-family residences. The Councilmember’s residence is approximately 550 feet southwest of the Project’s western boundary measured by map in a direct line. To access the Councilmember’s residence from Coleman Avenue by road, however, one must head south then west on Riordan Place, then south on Hanna Way, then west on Seminary Drive, before finally arriving at Alder Place, after traveling 0.2 miles from Coleman Avenue. Those roads are all one lane each way and their intersections are controlled by stop signs. There are numerous single-family residences located between the Project and the Councilmember’s residence.

You note that the Councilmember does not believe the Project would impact the development potential, income producing potential, highest and best use, or market value of the Councilmember’s residence. You also note that other traffic solutions, such as turn restrictions that limit traffic during certain hours, may be included in the Project, and that those changes may impact traffic nearby the Councilmember’s residence. If the City proceeds with the Project, as recommended by the TMP, there may be some minor parking overflow into other streets. You state, however, that it is not clear this parking overflow will impact the Councilmember’s residence.

Prior to joining the City Council, the Councilmember founded and chaired “Parents for Safe Routes,” a group committed to getting children to and from school safely. The group’s goal is to provide every child the option to bike or walk safely within the community. Parents for Safe Routes works with local schools, municipal leaders, and community members to build a strategic partnership focused on improving the community’s transportation culture.

Before being elected to office, the Councilmember, in her capacity as chair of Parents for Safe Routes, participated in the TMP process and advocated for the Project to be included in the TMP. The Councilmember resigned her chair position with Parents for Safe Routes but remains active in the group. The Councilmember has not received any compensation for her volunteer work on behalf of Parents for Safe Routes.

It is anticipated that the City Council will soon consider whether to allocate funding for the Project and to take other related actions in connection with the Project.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official 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.) An official's financial interests that may give rise to a disqualifying conflict of interest are identified in Section 87103 and include all the following:

- An interest in any business in which the official has an investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- An interest in any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).)
- An interest in any source of a gift or gifts aggregating \$520 or more in the 12 months prior to the decision.² (Section 87103(e).)
- An interest in the official's personal finances and those of immediate family members.³ (Section 87103.)

With respect to decisions relating to the Menlo Oaks Bicycle Improvement Network Project, the facts presented indicate the Councilmember has a real property interest in her single-family residence, assuming her interest in that real property is worth \$2,000 or more, as well as an interest in her personal finances and those of immediate family. Based on the facts presented, the Councilmember does not have a source of income interest in Parents for Safe Routes.⁴

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an 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 interest. In addition, an official's real property interest is

² Section 87103(e) requires the amount of the value of a gift or gifts set forth therein to equal the same amount as the gift limit specified in Regulation 18940.2. This gift limit was recently adjusted from \$500 to \$520, effective January 1, 2021, pursuant to Section 89503(f).

³ Section 82029 defines "immediate family" to mean the spouse and dependent children.

⁴ We note again that we are only providing advice under the conflict of interest provisions of the Act, and this advice does not address any potential common law conflicts of interest.

explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Regulation 18702.2 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's real property interest, and subdivision (a)(8) of that regulation provides that the effect is material if the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel and 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, noise levels, or air quality; or
- (E) Market value.

The facts presented provide no indication that decisions relating to the Project would affect the development potential, income producing potential, highest and best use, or market value of the Councilmember's real property interest in her single-family residence. Therefore, at issue is whether decisions relating to the Project would affect that parcel's character by substantially altering the parcel's traffic levels, intensity of use, parking, view, noise levels, or air quality.

Although the Councilmember's single-family residence is located 550 feet from the western boundary of the Project measured by map in a direct line, but by car the property is separated by 0.2 miles of winding, one lane each way roads to access the residence from Coleman Avenue. The Councilmember's residence is further separated from potential impacts of the Project because it is in a cul-de-sac within a neighborhood of single-family residences, and there are numerous other single-family residences between it and the Project.

There is no indication that decisions relating to the Project would substantially alter the views, noise levels, air quality, or intensity of use of the Councilmember's single-family residence. You note that there may be some minor parking overflow from Coleman Avenue to other streets due to the Project, but any such overflow is unlikely to affect the Councilmember's residence due to it being insulated from the Project for the reasons noted above.

Although the Project may include associated traffic solutions that may impact traffic in the vicinity of the Councilmember's residence, such as turn restrictions that limit traffic during certain hours, there is no indication that these limitations would change the character of the Councilmember's residence by substantially altering traffic levels. In the area nearby the Councilmember's residence, Coleman Avenue and the roads used to access the Councilmember's residence from Coleman Avenue are one lane each way, their intersections are controlled by stop signs, and there is no indication that these characteristics would be changed by the Project. While

the Project may alter traffic levels in the area nearby the Councilmember's residence, there is no indication that any traffic level changes would be substantial.

Based on the facts presented, it is not reasonably foreseeable that decisions relating to the Menlo Oaks Bicycle Improvement Network Project would have a material financial effect on Councilmember Wolosin's real property interest in her single-family residence under Regulation 18702.2(a)(8).⁵ Accordingly, the Act does not prohibit the Councilmember from taking part in those decisions.

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

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⁵ Regulation 18702.5(c) provides that if the decision at issue affects an official's real property interest, the materiality standards of Regulation 18702.2 apply, and any related effect on the official's personal finances is not considered separately. Because this analysis applies Regulation 18702.2, we do not further analyze the effect of the decisions at issue on the Councilmember's interest in her personal finances or those of immediate family.