



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 9, 2022

Diana Fazely  
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City of Mountain View  
500 Castro Street, P.O. Box 7540  
Mountain View, CA 94039-7540

Re: Your Request for Advice  
**Our File No. A-22-046**

Dear Ms. Fazely:

This letter responds to your request for advice on behalf of City of Mountain View (“City”) Mayor Lucas Ramirez, Vice-Mayor Alison Hicks, and Councilmembers Margaret Abe-Koga, Sally Lieber, Lisa Matichak, Ellen Kamei (collectively the “Councilmembers”) 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. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

## QUESTIONS

1. Are the decisions to amend the Bike Lane Resolution and the Narrow Streets Resolution ministerial decisions under the Act?

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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 18104 through 18998 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.

2. If no:

(a) May Councilmember Lieber participate in the Bike Lane Resolution decisions based on the location of her real property interest within 897 feet of a segment subject to the decision?

(b) May Vice-Mayor Hicks or Councilmembers Abe-Koga, Lieber and Matichak participate in the Narrow Streets Resolution decisions based on the location of their real property interests within 805 feet, 827 feet, 352 feet and 42 feet, respectively, of a street segment subject to the decision?

3. May Mayor Lucas Ramirez or Councilmember Ellen Kamei participate in the Overnight Resolution decisions based on the location of their real property interests within 587 feet and 867 feet, respectively, of a street segment subject to the decision?

### CONCLUSIONS

1. No. The Bike Lane and Narrow Street Resolution decisions do not meet the definition of a “ministerial” decision due to the City Council’s discretion in designating the street segments subject to each Resolution. (Regulation 18704(d)(1).)

2. Yes.

(a) Councilmember Lieber may participate in the Bike Lane Resolution decisions under the Limited Neighborhood Effects rule in Regulation 18703(e)(3), as the decision involves an on street parking restriction to improve public safety at a specific street segment location that encompasses more than 50 residential real properties near the segment.

(b) Vice-Mayor Hicks and Councilmembers Abe-Koga, Lieber and Matichak may participate in the Narrow Streets Resolution as the officials have established that the decision will affect a significant segment of the public and will not have a unique effect on their residential interests.

3. Yes. Mayor Lucas Ramirez and Councilmember Ellen Kamei have established that the decision will affect a significant segment of the public and will not have a unique effect on their residential interests.

## FACTS AS PRESENTED BY REQUESTER<sup>2</sup>

### *Bike Lane Ordinance & Resolution*

The Bike Lane Ordinance was enacted to address traffic-safety and mobility concerns with oversized vehicles<sup>3</sup> parked on the public right of way. The Bike Lane Ordinance prohibits oversized vehicles from parking on city streets adjacent to Class II bikeways. The Class II bikeways are “bike lanes established along streets and are defined by pavement striping and signage to delineate a portion of a roadway for bicycle travel.” As required by the Ordinance, the City Council passed a Resolution designating the streets adjacent to the bikeway and thus subject to the parking limitation. Since this Resolution was passed in December 2019, City staff has identified two street segments that were inadvertently left off the designated list and one street (with two segments) where new Class II bike lanes have been added. The City Council will consider amending the Bike Lane Resolution to include the four segments identified by staff.<sup>4</sup>

### *Narrow Streets Ordinance & Resolution*

The Narrow Streets Ordinance was enacted for similar traffic-safety and mobility purposes and prohibits oversized vehicles from parking on narrow city streets. “Narrow” streets are defined by the City’s municipal code as “streets less than or equal to 40 feet in width.” As required by the Ordinance, the City Council passed a Resolution in December 2020 designating 444 street segments as “narrow” streets and thus subject to the parking limitation. However, there were some difficulties in the measuring process, and in March and April 2022 staff determined that an additional 37 street segments qualified as “narrow” under the City code.<sup>5</sup> 35 segments on short streets or cul-de-sacs were missed in the initial data collection efforts. The other two segments were re-measured and determined to meet the “less than 40 inches wide” criteria. The City Council will consider amending the Narrow Streets Resolution for the inclusion of the additional street segments.

### *Overnight Parking Prohibition & Proposed Ordinance and Resolution*

Under the City’s municipal code as amended in 1966, parking of any vehicle on public streets has been prohibited from 2 a.m. to 6 a.m., city-wide. However, this provision was only enforced where signage was installed by the City, currently on 46 street segments. Historically, signs were installed on a “complaint” basis and primarily in commercial/industrial areas. Staff has determined that traffic safety issues related to overnight parking are now largely addressed in the Bike Lane and Narrow Streets Ordinances and Resolutions. Staff has reconsidered the criteria to

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<sup>2</sup> In response to our request for additional or clarifying information, you provided the Council Report on the parking decisions included in the Council’s May 24, 2022, Agenda, as well as additional information by phone and emails.

<sup>3</sup> “Oversized vehicles” are those that exceed 22 feet in length, or 7 feet in width, or 7 feet in height, including boats, large trucks, and recreational vehicles (RVs).

<sup>4</sup> While the initial request identified five segments to be added, staff revised this number.

<sup>5</sup> At the time of the request, staff anticipated proposing 35 street segments to be included in the Narrow Street Resolution amendment; however, you notified our office by email that the number would be 36 segments. This number was adjusted in the City’s Council Report to 37 segments.

prohibit overnight parking and identified two land uses that necessitate a prohibition: residential areas and sensitive ecological/habitat areas. On this basis, staff recommends the Council adopt an Ordinance prohibiting overnight parking on streets as designated by Resolution. Staff has identified 46 street segments to be considered for the Overnight Resolution, which includes street segments recommended for inclusion in the Overnight Resolution as well as those which are currently posted with signage but will not be recommended for inclusion. The City Council will consider adopting the Overnight Ordinance and the Resolution designating the street segments subject to the Ordinance.

#### *City Councilmembers' Residential Real Property Financial Interests*

Vice Mayor Hicks and Councilmembers Lieber, Matichak, Abe-Koga and Kamei each have an interest in their residential real property, and Mayor Ramirez has a leasehold interest in his primary residence, located near a street segment at under consideration in one or more of the Resolutions. None of the officials lives on an identified street segment. The distances of an official to a street segment identified for a decision is as follows:

- *Bike Lane Resolution:*

Councilmember Lieber's residence: 897 feet

- *Narrow Street Resolution:*

Councilmember Matichak's residence: 42 feet

Councilmembers Lieber's residence: 352 feet

Vice Mayor Hicks's residence: 805 feet

Councilmember Abe-Koga: 827 feet

- *Overnight Ordinance and Resolution:*

Mayor Ramirez: 583 feet

Councilmember Kamei: 867 feet

The City covers approximately 12 square miles, with 38,667 residential units and 18,445 residential parcels in the City. You believe that the restriction of City parking of vehicles (oversized or overnight) near real property will likely increase or decrease an adjacent parcel's income producing potential, change the character of the property by substantially altering traffic levels, parking, view, and privacy, and is also likely to impact the parcel's market value. The Mayor's, Vice-Mayor's, and Councilmembers' residences are similarly situated to other residences in these areas, and it is your understanding that the official's residences would be similarly affected by the adoption of these resolutions as any other residential interests.

Additionally, you stated in a telephone call regarding the impacts of the Overnight Resolution that the staff recommendation is to retain the Overnight parking restriction on the

segment near Mayor Ramirez's leasehold property and to remove the restriction on the segment near Councilmember Kamei's property.

To determine the City residential properties affected by each decision, the City drew a circle around each street segment and determined that relative to each type of decision the following percentages are within an approximate 800 foot distance to a segment under consideration: (1) Bike Lane, 5.4 percent of residential parcels and 7.1 percent of units; (2) Narrow Streets, 28.4 percent of residential parcels and 32.1 percent of units and (3) Overnight, 14.1 percent of residential parcels and 20.7 percent of units. In regard to the Bike Lane Resolution, City staff identified that 657 residential parcels and 1140 residential units are within the same proximity, 897 feet, to the identified street segment near Councilmember Lieber's residence. It is your understanding that all of these residences would be similarly affected by the inclusion of the particular segment in the Bike Lane Resolution.

Subsequent to this request, the City Council proceeded with the first reading of the Bike Lane Resolution and the Narrow Street Resolution as well as the Overnight Parking Ordinance and Resolution. We understand that each decision was segmented and each official with residential real property recused from the decision(s) in which the official's property was located within 1,000 feet of a street segment up for designation. Councilmember Kamei was not in attendance. The second reading is scheduled for the June City Council meeting.

## ANALYSIS

The Act's conflict of interest provisions prohibit any 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 87100.) We first examine if the Council's decisions regarding the designated streets subject to the Bike Lane or Narrow Street Ordinances may be deemed "ministerial" decisions under the Act.

### *Making a Government Decision*

A public official "makes a governmental decision" when the official "authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of the official's agency." (Regulation 18704(a).) An official is not "making or participating in making a government decision" if the official's actions are solely ministerial, secretarial, manual, or clerical. (Regulation 18704(d)(1).)

The exception for ministerial decisions is not specifically defined in the Act and has been narrowly construed. (*Torrance* Advice Letter, No. A-94-043.) "Ministerial" actions include those that do not involve discretion as to the results or performance or are pursuant to a clear objective. (*Ibid.*) Here, the Council will be making the decision to include street segments in the Bike Lane Resolution or Narrow Street Resolution on the sole basis that staff has identified that the segment meets the criteria as either adjacent to a Class II Bike Lane or as a "narrow" street of less than 40 inches wide, respectively. However, it appears there is discretion on the part of the City Council in designating the streets subject to the two Ordinances. Therefore, we determine that the decisions on

the Bike Lane and Narrow Street Resolution amendments to include street segments that meet the criteria for each are not ministerial decisions pursuant to Regulation 18704(d)(1).

We next examine whether the officials have a prohibitive financial interests in the decisions under the Act.

### *Financial interests*

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, including “[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.) Section 82033 defines an “interest in real property” to include a leasehold if the market value is \$ 2,000 or more. Mayor Ramirez has identified a leasehold real property interest and the Vice-Mayor and Councilmembers have identified a residential real property interest relative to one or more of the decisions.

### *Foreseeability and Materiality Standards*

Regulation 18701 provides the standard for determining the foreseeability of a financial effect on an economic interest depending on whether it is explicitly, or not explicitly, involved in the governmental decision. A financial interest is explicitly involved in a decision if it is a named party in, or the subject of, a governmental decision before the official or the official’s agency. (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). (*Ibid.*) According to the facts provided, the officials’ real property interests are not located on any of the street segments subject to the decision and do not meet the standard of a “named party or subject of” the proceeding.

Where, as here, an official’s economic interest is not explicitly involved in the governmental decision, Regulation 18701(b) provides the applicable standard for determining the foreseeability of a financial effect. This provision states, “[i]n general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.” (Regulation 18701(b).) It further states, “[i]f the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.” (*Ibid.*)

### *Real Property Standards*

Regulation 18702.2 provides the standards for determining when a government decision’s reasonably foreseeable effect on an official’s real property interest is material considering factors such as the proximity of the property subject to the decision and its impacts on the official’s parcel. Applicable to these facts, Regulation 18702.2(a) states that the reasonably foreseeable financial effect is material:

- Whenever the decision involves property located 500 feet or less from the property line of the official's parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)
- Whenever the 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 development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value.

For a leasehold interest, Regulation 18702.2(c) provides that the financial effects of a decision on an official's leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

Under the facts provided, it is unnecessary to determine whether it is foreseeable that the decisions regarding the Bike Lane Resolution, Narrow Street Resolution and Overnight Resolution will have a material effect on the officials' respective property. Even assuming for purposes of this analysis that the decisions will have a material financial effect on the properties, the officials may take part in the decisions under the public generally exception as analyzed below.

#### *Public Generally Exception*

A public official who has a financial interest in a decision may still participate if the official demonstrates that the financial effect is: (1) shared by a significant segment of the jurisdiction, and (2) not unique to the official's financial interest. (Section 87103; Regulation 18703.) Regulation 18703(a) provides:

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 his or her financial interest is not unique compared to the effect on the significant segment.

#### *Significant Segment*

When the only interest an official has in the governmental decision is the official's primary residence, as indicated by the facts here, a "significant segment of the public" is at least 15 percent of residential real property within the official's jurisdiction. (Regulation 18703(b).) For the Narrow

Street Resolution and Overnight Resolution, this standard is met, as over 15 percent of residential properties will be affected by each Resolution.

The Bike Lane Resolution does not meet this standard. Please see further discussion of this decision and Councilmember Lieber's interest below.

### *Unique Effect*

A "unique effect" on an official's financial interest relevant to these facts includes a disproportionate effect on the development potential or use of the official's real property; or on the official's property due to the proximity of the project. (Regulation 18703(c)(1) and (2).) It appears that the Narrow Street and Overnight parking restrictions will primarily affect the particular street segments and immediate adjacent area. The facts indicate that the Mayor's, Vice-Mayor's, and Councilmembers' residences are similarly situated to other residences in the affected areas and none of the residences are located on one of the actual street segments that may be designated. Accordingly, the residences would be similarly affected as any other residential interests within a similar proximity to the segments. Based upon these facts, the officials have demonstrated that there will not be a unique effect on each of their interests compared to the effect on the significant segment. Vice Mayor Hicks and Councilmembers Matichak, Abe-Koga and Councilmember Lieber may participate in the Narrow Street Resolution, and Mayor Ramirez and Councilmember Kamei may participate in the Overnight Resolution decisions under Regulation 18703.

### *Limited Neighborhood Effects*

The Bike Lane Resolution decision involves four specific segments, the closest of which is 897 feet from Councilmember Lieber's residence. 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." Regulation 18703(e)(3) states:

(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.

Additionally, the official must demonstrate that there is no unique effect on the official's interest as set forth in Regulation 18703(c). (Regulation 18703(e).)

Here, the Bike Lane Resolution decision will affect property in a specific location and effectuates the City's ordinance prohibiting the parking of oversized vehicles adjacent to a Class II bikeways. The action is needed due to the fact that the segment near Councilmember Lieber's residence is identified as having a Class II bikeway, and the prohibition of parked oversized vehicles on the segment improves public safety. City staff identified that 657 residential parcels and 1140 residential units are within the same proximity, 897 feet, to the street segment near Councilmember Lieber's residence. The facts do not indicate that there will be a unique effect on the official's residence as compared to these similarly situated residential properties. Therefore,



under Regulation 18703(e)(3) the financial effect is deemed indistinguishable from that on the public generally and Councilmember Lieber may participate in the Bike Lane Resolution decision.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

LKH: aja