



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 31, 2024

Council Member Patrick Burt
Pat Burt for City Council 2024
1249 Harriet Street
Palo Alto, Ca 94301

Re: Your Request for Advice
Our File No. A-24-110

Dear Council Member Burt:

This letter responds to your request for advice regarding Section 84308, the “pay-to-play,” provision of the Political Reform Act (the “Act”).¹

Please 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

Are the Palo Alto City Council decisions, regarding the permanent closure of portions of Ramona Street and California Avenue to car traffic, entitlement for use proceedings under Section 84308?

CONCLUSION

No, decisions by the Palo Alto City Council to permanently close the specified downtown areas to car traffic are not entitlement for use proceedings subject to Section 84308. The City Council initiated the actions to close these areas permanently to car traffic. The facts indicate that the interests impacted by the closures will be many and diverse. Furthermore, the closures were not applied for, nor have entitlements for use been formally or informally requested by any party to date, and the decisions do not involve a contract between the City and any party.

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 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.

FACTS AS PRESENTED BY REQUESTER

On November 6, 2023, the Palo Alto City Council voted to maintain the closure of two downtown business areas to car traffic. The Council further directed staff to return with the necessary actions to implement the permanent closure of these two areas (such as seeking CEQA and DOT approval if necessary). Both areas had been temporarily closed to cars since early in the pandemic in 2020. One action was for a ½ block on Ramona Street, with approximately 12-20 businesses plus landlords affected, and the second action was for two blocks on California Avenue, affecting approximately 68-90 businesses plus their landlords. The businesses are retail on the ground floor (restaurants, retail shops, and services), with commercial offices and housing upstairs. There is no consensus on the closures – some business owners and landlords believe the closures will have a positive financial impact, and others think the closures will be negative.

The two areas were initially closed during the pandemic to provide restaurants with outdoor eating spaces in response to orders by the Santa Clara County Health Department that banned indoor dining. After the bans were lifted, the City closed these areas temporarily because most of the public still preferred eating outdoors. In addition to helping restaurants, the City also hoped to revitalize retail that had been hard hit by online shopping and remote work by permanently making the two areas pedestrian only.

To date, there have been multiple City Council meetings where business owners, property owners, and members of the public have expressed views and opinions regarding these closures. Additionally, City staff and consultants have held numerous workshops and meetings, some combining members of the public with business and property owners, and some only with the business and property owners. The City has also surveyed various stakeholders. Businesses and community members have provided written and oral comments at City council meetings. Written comments indicate that there is no consensus among stakeholders – as business owners, property owners, and members of the public have varying opinions about the appropriateness of these closures.

ANALYSIS

The Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that officers of government agencies are not biased by contributors or potential contributors of significant campaign contributions who might appear before them in a proceeding involving a license, permit, or entitlement for use. Section 84308 is aimed not only at actual corruption or bias but also at the appearance of corruption or bias that may occur if a public officer were to solicit or accept contributions from a party, participant, or their respective agent while a proceeding is pending before the public officer's agency or has recently concluded.

Section 84308(b) provides:

While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that

the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7.

Proceedings Subject to Section 84308

Section 84308's restrictions and requirements only apply in the context of a "proceeding involving a license, permit, or other entitlement for use." Section 84308 defines "[l]icense, permit, or other entitlement for use" to mean "all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises." Recently adopted Regulation 18438.2 further defines the phrase "proceeding involving a license, permit, or other entitlement for use" to mean:

...any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use, that does not solely involve purely ministerial decisions and is:

- (1) Applied for by the party;
- (2) Formally or informally requested by the party; or
- (3) A contract between the agency and the party or a franchise granted by the agency to the party, other than a contract that is competitively bid, a labor contract, or a personal employment contract.

(Regulation 18438.2(a).)

Additionally, in *City of Agoura Hills v. Local Agency Formation Com.*(1988) 198 Cal.App. 3d 480, the California Court of Appeal explained, "[Section] 84308 does not cover proceedings in which general policy decisions or rules are made or where the interests affected are many and diverse." (*Id.* at pp. 497-498, citing *Fallon Advice Letter*, No. A-85-050.)

Under the facts presented, and given the nature of the decisions, we advise that the actions to close portions of the downtown areas to car traffic do not fall under the scope of Section 84308. The facts indicate that the closures were initiated by the City Council rather than applied for or otherwise initiated by a party. Additionally, the actions do not involve contracts between the City and any affected interest. Rather, the decisions to maintain the street closures permanently are part of the actions taken by the City Council to maintain a larger pedestrian-only area for residents, which the Council feels benefits the community at large. Further, the closures would impact an estimated 80-110 businesses and landlords – many of whom have varying opinions on the closures. Therefore, the closures do not fall within the scope of Section 84308 as entitlement for use proceedings. Based on this conclusion, no analysis of parties or participants is necessary.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja