



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

November 21, 2022

Nicole C. Wright
Senior Assistant City Attorney
500 Castro Street, P.O. Box 7540
Mountain View, CA 94039-7540

Re: Your Request for Advice
Our File No. A-22-117

Dear Ms. Wright:

This letter responds to your request for advice on behalf of City of Mountain View Vice Mayor Alison Hicks 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 Vice Mayor Hicks participate in governmental decisions related to a proposed resolution to amend the Downtown Precise Plan to temporarily limit new office development until December 31, 2024 (“Project”) in light of her real property interest located approximately 303 feet to the closest site within Project area?

CONCLUSION

Vice Mayor Hicks may not take part in decisions relating to the proposed resolution to amend the Downtown Precise Plan to temporarily limit new office development because it is reasonably foreseeable that those decisions may have a material financial effect on her real property interest in her single-family home located approximately 303 feet from the Project area.

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 December 6, 2022, the City Council will consider adoption of a resolution to amend the Downtown Precise Plan to temporarily limit new office development until December 31, 2024. The Downtown Precise Plan contains zoning standards, land uses, and development policy for Downtown Mountain View. The current version of the Precise Plan was originally adopted in 1988, with amendments to land uses and parking in 2000 and 2004. Since then, the Precise Plan has only had minor amendments.

The proposed amendment would temporarily limit new office construction, including additions, to 0.35 floor area ratio (FAR), which is much lower than typically allowed downtown. This applies to office uses, including research and development and general office, but does not include retail, restaurants, personal services or residential. The amendment would not apply to existing office uses or changes of use. Existing office uses exceeding 0.35 FAR would be allowed to remain and property owners could improve or replace their buildings, but could not add office if already greater than 0.35 FAR. The amendment exempts small changes associated with building upgrades, government-owned property, development agreements, and already entitled projects.

The amendment would limit office growth while allowing time for the City to formulate a longer-term approach for the downtown area to further consider and study parking (including implementation of the City's Downtown Parking strategy), the jobs-housing imbalance, and support for small businesses that have been slowly recovering from the impacts of the COVID-19 pandemic. This could include a more comprehensive Downtown Precise Plan update if prioritized by City Council or implementation of the Downtown Parking Strategy and continued work on the Transportation Demand management Ordinance, currently under development. The amendment would reduce development capacity for office uses on many sites but would not eliminate it. Nor would the amendment affect the overall development capacity for sites as they could be developed with other allowed uses. Almost all parcels in the downtown have some viable existing use which could be maintained, improved, or replaced and those that do not are able to build residential, either 100% or over ground-floor commercial. The allowance for 0.35 FAR office would ensure that some new office development is available on underutilized sites during this temporary period, but an amount that would likely not have a significant effect on the jobs-housing balance or public parking.

The closest site within the Project area to Vice Mayor Hicks' real property interest is located approximately 303 feet from her residence. Vice Mayor Hicks owns a home in downtown Mountain View, in a neighborhood known as Old Mountain View, which constitutes a real property economic interest under the Act (the "Property"). The Property is similar to many other single family homes in the neighborhood and consists of a two-story home with views from the front looking onto Church Street, which is lined with one-story and two-story homes.

Vice Mayor Hicks is within close proximity to various sites within the Precise Plan that have differing development potentials. Her Property is located within 500 feet of sites that could be developed with office use. Of the developable sites, these include sites that do not currently have existing office use but could be developed to include office (including sites that could develop office space at the back of the sites while maintaining residential uses fronting the street should a development project span the block); and sites that have office use either under or over the 0.35

FAR limit that would be established under the proposed amendment. Under the proposed amendment, only sites under the 0.35 FAR limit could be developed with additional office use up to the limit amount. Her Property is also within 1,000 feet of additional sites that could be developed with office for similar reasons as set forth above.²

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 Castro Street, with residential parcels occupying the blocks further removed from Castro Street.

Traffic, Parking and Other Impacts

You state that, although development under the proposed amendment is unknown, the amendment could have the effect of limiting potential future traffic and parking impacts that could accompany an office development. Given the location of the Vice Mayor Hicks' property, it is possible that her Property could be impacted by traffic and parking depending upon the location of the development site.

You also state that a limit on office uses would not have any impact on air quality, privacy, or noise levels. Regarding view, the proposed amendment does not alter building size restrictions and the maximum heights or size of a building could still be developed so long as the office use is within the 0.35 FAR temporary limit. As applied to the Property, however, the amendment would not likely impact the view from the Property at all. The maximum height (of three- or four-story buildings) that could be built on the developable sites within 1,000 ft of Vice Mayor Hicks' property would not likely be visible from the Property. In addition, the surrounding homes and canopy of the trees in the neighborhood would further reduce any potential view impacts. The amendment would not have any direct impact on the intensity of use of Vice Mayor Hicks' property, as she is located outside the precise plan. Nor does the amendment affect overall development capacity for sites as they could be developed with other allowed uses.

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

² The Property is also in close proximity to other sites within the Precise Plan considered to have no realistic development potential. This is because the sites are City-owned with existing uses; sites with recent and/or existing development that are built-out to the maximum FAR and/or maximum height allowed under the Precise Plan zoning regulations, or are historic or used for other institutional uses.

indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Vice Mayor Hicks has an economic interest in her real property.

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).

Vice Mayor Hicks’ real property interest is not explicitly involved in the governmental decisions to amend the Downtown Precise Plan to temporarily limit new office development.

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.

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 500 feet or less from the property line of the 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).)

Under this standard, the reasonably foreseeable financial effect of a governmental decision is material, unless there is clear and convincing evidence that the decision will not have any measurable impact on Vice Mayor Hicks’ real property.

The decision at issue is adoption of a resolution to amend the Downtown Precise Plan to temporarily limit new office development until December 31, 2024. Vice Mayor Hicks owns real property located approximately 303 feet from the closest site within the Project area. Any decisions concerning the moratorium on office development would involve property within 500 feet of Vice Mayor Hicks’ residence. The proposed amendment would temporarily limit new office construction, including additions, to 0.35 FAR, which is much lower than typically allowed downtown. The amendment would reduce development capacity for office uses on many sites. You indicate that the amendment could have the effect of limiting potential future traffic and parking impacts that could accompany an office development. You have not provided any evidence that these decisions will not have a measurable impact on the Vice Mayor’s property.

Based on the facts provided, the above-stated “clear and convincing evidence” standard is not met. Thus, Vice Mayor Hicks has a disqualifying financial interest in any decisions to amend the Downtown Precise Plan to temporarily limit new office development and is prohibited 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

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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