



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 15, 2022

Rebecca L. Moon  
Senior Assistant City Attorney  
Sunnyvale  
456 West Olive Ave  
Sunnyvale, CA 94088-3707

Re: Your Request for Advice  
**Our File No. A-22-082**

Dear Ms. Moon:

This letter responds to your request for advice on behalf of Sunnyvale Vice Mayor Alysa Cisneros 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.

### QUESTION

Under the Act, may Vice Mayor Cisneros take part in City Council decisions regarding a proposed grade separation, which involves building an underground tunnel for traffic such as cars, pedestrians, and bicycles, given that her leased apartment is located near the proposed construction site?

### CONCLUSION

Yes, the Act permits Vice Mayor Cisneros to take part in the decisions given that it is unlikely the decision will affect the rental value or use and enjoyment of the official’s rental unit considering the unit is located in a large apartment complex consisting of 158 units, the unit is approximately 900-1,200 feet from any potential construction, the apartment complex is buffered

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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.

from the project by another large apartment complex, and the project will not alter the location of the railway adjacent to the official's apartment complex.

### **FACTS AS PRESENTED BY REQUESTER**

An “at-grade” crossing is an intersection where the roadway and the railroad cross at the same level. Such crossings raise concerns including safety, traffic congestion, and noise. In 2017, the City of Sunnyvale (“City”) began a study to evaluate the feasibility of building a grade separation at Sunnyvale Avenue and the Caltrain railroad tracks. The Sunnyvale Avenue crossing is immediately adjacent to the Sunnyvale Caltrain station and Downtown Sunnyvale and has substantial pedestrian and bicycle traffic. The Sunnyvale Avenue location is also within walking distance to many employment and retail centers including historic Murphy Avenue. Additionally, many residents use Sunnyvale Avenue to travel between their homes, jobs, schools, shopping and recreational uses.

Caltrain is currently the main user and owning agency of the railroad tracks along this corridor. Other rail agencies also use these tracks for freight trains, typically during off peak night hours. There are currently 104 Caltrain trains and six freight trains traveling through these crossings every weekday. However, after construction of an electrified rail system (estimated to be completed in late 2024), the proposed range of service vision would increase the number of Caltrains travelling along this corridor from 104 to between 174 and 348 trains per weekday by 2040, as well as an additional 130 High Speed Rail trains per weekday.

The results of the City's feasibility study will be presented to the City Council on August 30, 2022, and the City Council will be asked to select one of two options for the Sunnyvale Avenue crossing. Following the City Council meeting, staff will undertake appropriate environmental review of the preferred option. Staff anticipates that the project will come back to the City Council at one or more future dates for environmental findings, approval of the design, and approval of funding, grants, and contracts necessary to build the project.

The two options for the project are:

1. The “Underpass Tunnel” option would be a tunnel for vehicles, bicycles, and pedestrians on Sunnyvale Avenue that would go under Evelyn Avenue, the Caltrain tracks and Hendy Avenue.
2. The “Bicycle and Pedestrian Only Underpass” option would be a tunnel under Caltrain tracks for bicycles and pedestrians only.

Alternatively, the City Council could choose a third “no build” option—that is, choosing not to construct any type of underpass.

At the Sunnyvale Avenue crossing, the Underpass Tunnel option would have various benefits, including: (1) improving safety by removing the railroad conflict with local traffic modes; (2) decreasing noise from rail gates, bells, and the sounding of train horns; and (3) reducing or maintaining the overall average vehicular delays on the study intersections compared to both the “no build” and the Bicycle and Pedestrian Only options, among other benefits.

Both options will require 2-3 years of construction and will likely have impacts on the surrounding neighborhood due to use of heavy construction equipment, excavations, associated street closures, and re-routing of traffic. The Underpass Tunnel option would result in permanent changes to vehicle traffic patterns in the Downtown, reducing congestion at some intersections but increasing vehicle delays at the intersections of Sunnyvale/Washington Avenue and Sunnyvale/California Avenue.

You subsequently clarified that if the project is approved, construction is not likely to occur for at least five years, beginning in 2028.

Alysa Cisneros is the Vice Mayor of Sunnyvale. Vice Mayor Cisneros's primary residence is a rental apartment the north side of Evelyn Avenue between S. Bayview Avenue. and Marshall Avenue. The apartment complex consists of 158 units. The apartment complex lot is approximately 2.3 acres and is located 450 feet from the nearest potential construction site and approximately 725 feet from the nearest construction site on Evelyn Avenue. The apartment complex is partially buffered from the proposed construction sites by another large apartment complex, Villa Del Sol. However, Vice Mayor Cisneros's apartment unit is located approximately 900-950 feet from potential construction on Hendy Avenue and approximately 1,100-1,200 feet from potential construction on Evelyn Avenue. Vice Mayor Cisneros has a one-year lease that will expire on July 9, 2023. The lease then converts to a month-to-month lease, but Vice Mayor Cisneros intends to renew her lease for another term and does not currently have an intention of moving out of the apartment complex before construction begins.

It is possible that she and other residents of the apartment complex will experience some negative impacts in the neighborhood as a result of construction activities, such as street closures and traffic congestion. The apartment complex is not directly adjacent to any of the planned construction, but residents on Mayor Cisneros's side of the building have to put up with train noise. The City does not anticipate the residents of the apartment complex will lose access to their properties due to street closures or be forced to relocated at any point during construction.

## 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 [their] official position to influence a governmental decision in which [the official] 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 [the official's] immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[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).)

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).”

Where, as here, 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 effects of a governmental decision on any real property in which a governmental official has a 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.

(Regulation 18702.2(c).)

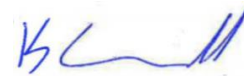
There are no facts that potentially indicate the decisions before the City Council would change the termination date of Vice Mayor Cisneros’s lease or her actual or legally allowable use of the property. A prolonged construction project does have the potential to change the rental value of a property or an individual’s use and enjoyment of a property. Here, however, the facts do not appear to indicate any such effect. Mayor Cisneros’s apartment is one of 158 units in her apartment complex. It is located approximately 900 feet from the closest proposed construction site and is partially buffered from the sites by another large apartment complex. The City does not anticipate the residents of the Vice Mayor’s apartment complex will lose access to their properties due to street closures or be forced to relocated at any point during construction. Further, while the project may involve noise as a result of construction, those living on Vice Mayor Cisneros’s side of the building already experience significant noise as a result of the nearby trains. Finally, the proposed construction is at least five years away and, as a result, any potential effect on the rental value of the apartment unit or the use and enjoyment of the apartment unit is more speculative at this time. Consequently, it is not reasonably foreseeable the proposed project will have a material financial effect on the apartment unit, and the Act does not prohibit Vice Mayor Cisneros from taking part in the decisions.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Counsel, Legal Division

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