



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

November 20, 2024

Celena H. Chen  
Senior Assistant City Attorney  
City of Mountain View  
500 Castro St.  
PO Box 7540  
Mountain View, CA 94039

Re: Your Request for Advice  
**Our File No. A-24-130**

Dear Ms. Chen:

This letter responds to your request for advice on behalf of City of Mountain View Councilmember Lucas Ramirez 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.

## QUESTIONS

1. May Councilmember Ramirez participate in governmental decisions related to a proposed affordable housing development project (the “Residential Project”) in light of his leasehold property interest and personal residence located approximately 591 feet from the project site?

2. May Councilmember Ramirez participate in governmental decisions related to a proposed commercial-office building with ground floor retail (the “Commercial Project”) in light of the same leasehold property interest and personal residence located approximately 885 feet from the project site?

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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.

## CONCLUSION

1. & 2. The Act does not prohibit Councilmember Ramirez from taking part in decisions related to either the Residential Project or the Commercial Project. Based on the facts provided, it is not reasonably foreseeable that decisions concerning either project will have a material effect on his leasehold interest in his apartment, because both projects are consistent with existing residential and commercial uses and developments in the immediate area and there are no other indications that the decisions may impact his use and enjoyment of his apartment or its potential rental value.

### FACTS AS PRESENTED BY REQUESTER

#### *334 San Antonio Road - "Residential Project"*

The proposed project is a new residential development at 334 San Antonio Road that consists of a 100-unit, 100 percent affordable housing project with one manager's unit and associated amenities, which will replace an existing commercial gas station with auto repair service. The property is an approximately 0.62-acre (27,090 square foot) parcel located on the west side of San Antonio Road between California Street and Miller Avenue in the San Antonio Precise Plan ("SAPP"), within one-half mile of a major public transportation stop, the San Antonio Caltrain station, and seven bus stops.

The project consists of a mix of 1-bedroom, 2-bedroom, and 3-bedroom apartment units, configured in one, 8-story building. The project features residential amenity space, including an outdoor courtyard, a mail/parcel room, and community space. Overall, the project improves the current site conditions with tree plantings, landscaping, and open space. The project also improves existing sidewalks, bicycle lanes, and frontage for an improved pedestrian experience. Traffic assessments for the project conclude that there will be no additional impacts to existing traffic levels of service.

The project qualifies for a density bonus, incentives and concessions, and waivers of development standards. Although no parking is required, the project includes a ground-level garage on the west side of the building that will accommodate 16 parking spaces and over 100 bicycle parking spaces for residents. In addition, pursuant to State Density Bonus Law, the project is allowed to exceed the SAPP's maximum height limit and floor area ratio.

The property is surrounded by commercial and residential uses including a bank, restaurant, and commercial uses immediately adjacent to the site. Additional residential and commercial uses occur in the broader neighborhood. The surrounding area has been undergoing change and development with several major development projects nearby, including a five-story mixed-use residential project at the northeast corner of the project intersection (California Street/San Antonio Road). Surrounding buildings along California Street are no more than three stories, although there are other developments in the surrounding area with taller buildings.

#### *365-405 San Antonio Road and 2585-2595 California Street - "Commercial Project"*

The proposed project is "Phase III" of the redevelopment of the last remaining underutilized parcel on the west side of San Antonio Center, with the project sites (including two prior phases -

Phase I and II) spanning the entire east side of San Antonio Road, between West El Camino Real (to the south) and California Street (to the north). Phases I and II are complete and no longer owned by the current applicant for Phase III.

The proposed project includes a new seven-story commercial building with 12,970 square feet of ground-floor retail space and six floors of office space (169,382 square feet) above three levels of underground parking. The project will incorporate up to 150,000 square feet of development rights from the Los Altos School District (“LASD”) transfer of development rights (“TDR”) program and requires SAPP amendments to accommodate the proposed project, TDR proposal, and a Provisional Use Permit for office use. The project’s new retail-commercial tenant spaces and office area improves the current site condition, which consists of two small, vacant commercial buildings and a small surface parking lot.

The project is located on an approximately one-acre site at the southeast corner of San Antonio Road and California Street. The site is surrounded by a five-story mixed-use residential development to the north, a six-story commercial office building to the south, a multi-story commercial building with a movie theater to the east, and a one-story service (gas) station and one-to two-story commercial (bank) building to the west. The project includes typical onsite and offsite improvements, including wider public sidewalks and on- and off-site landscaping, art and other amenities to provide improved pedestrian comfort and improved connectivity to adjacent neighborhoods.

This project will require SAPP amendments to allow currently permitted height, non-residential floor area ratio and office development cap limits (applicable to the project site) to be exceeded, in association with the proposed TOR use. It will also require SAPP amendments to implement the Council-authorized LASD TOR program in the SAPP area and facilitate approval of the 150,000 square feet of TDR proposed to be used in this project. The SAPP was adopted before the LASD TDR program was established and highlights the future potential for a TDR program through supportive policies encouraging creative partnering solutions for the development of a public school meeting the needs of the Precise Plan area as well as placeholder TDR program language requiring subsequent Precise Plan amendments. The SAPP amendments will replace this general TDR program language with specific regulations and procedures for the LASD TOR program.

#### *Councilmember Ramirez’ Residence*

Councilmember Ramirez has an apartment unit, which is his primary residence. The apartment is rented on a long-term (12-month) lease. The nearest part of the parcel on which the apartment is located is approximately 248 feet from the Residential Project site. The apartment is approximately 591 feet from the Residential Project Site. The nearest part of the Commercial Project site is located within approximately 540 feet of the property line of the parcel on which the apartment is located, and approximately 885 feet from the apartment. His lease will terminate in May 2025, and by its terms, will automatically convert to a month-to-month lease at that time; however, in the past, Councilmember Ramirez has voluntarily sought to renew his 12-month lease at the end of its term, and he intends to do so again next year. Councilmember Ramirez’ residence is located on the second of two floors and entirely on the Del Media side. He does not have views of the site of either the Residential Project or the Commercial Project. In addition, Councilmember

Ramirez is provided with one on-site parking space for his vehicle, and there is also some on-site guest parking for general use by the residents. Councilmember Ramirez accesses his residence from a driveway located on California Street.

In a follow-up email, you stated that the real estate market in the City remains strong, and that the City does not anticipate any impact on the potential rental value of Councilmember Ramirez' property due to the continued strong real estate market.

## 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.)

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.<sup>2</sup> Councilmember Ramirez has a real property interest in his leased residence.

### *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).<sup>3</sup> According to the facts provided, Councilmember Ramirez's interest in his leased residence does not meet the standard of a "named party or subject of" the proceeding and it is not explicitly involved in the decision.

Regulation 18701(b) provides the applicable standard for determining the foreseeability of a financial effect where an official's economic interest is not explicitly involved in the governmental decision. 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." It further states,

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<sup>2</sup> Regulation 18233 specifies that the terms "interest in real property" and "leasehold interest" do not include the interest of a tenant in a periodic tenancy of one month or less. In the event that Councilmember Ramirez does not renew his one-year lease and becomes subject to a month-to-month lease, he will not have an "interest in real property" for the purposes of the Act.

<sup>3</sup> We note that Regulation 18702.2(a)(1)-(6) is not applicable to a leasehold interest.

“[i]f the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

*Materiality: 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. For a real property 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.

The facts provided give no indication that decisions concerning either the Residential Project or the Commercial Project will have any impact on the termination date of the Councilmember’s lease or legally allowable use of his residence, nor do they indicate that either project is likely to change the potential rental value of the property or impact his use and enjoyment of his apartment.

Both the Residential Project and the Commercial Project are consistent with the existing commercial and residential uses and developments in the immediate area. Given the mixed commercial and residential nature of the area, the existence of several other existing high-density development projects nearby, and the strong real property market in the City, there are no facts that suggest either project will cause an increase or decrease in the potential rental value of the Councilmember’s apartment. And, although each project calls for construction, increased residents or commercial activity in the area, and a potential increase in parking needs, the facts do not indicate any impact on the Councilmember’s use and enjoyment of his apartment, as there is no anticipated increase in traffic, he does not have a view of either project, and his apartment complex includes one on-site parking space for his vehicle and some on-site guest parking for general use. The materiality standard applicable to his leasehold interest is not met, and the Act, therefore, does not prohibit Councilmember Ramirez from taking part in decisions regarding either the Residential Project or the Commercial Project.

If you have other questions on this matter, please contact me by email at  
znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

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