



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 8, 2025

Rebecca Moon
City Attorney
Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Re: Your Request for Advice
Our File No. A-25-047(a)

Dear Ms. Moon:

This letter responds to your request for advice on behalf of the City of Sunnyvale (“City”) Vice Mayor Linda Sell 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

Does Vice Mayor Sell have a disqualifying interest in City decisions regarding the proposed Hollenbeck bike lane project where her real property interest is located within 965 feet of the project area, and the decisions may impact on-street parking on Hollenbeck Avenue or may convert the street to allow only one-way traffic?

CONCLUSION

We previously advised that Vice Mayor Shell did not have a conflict of interest where the decisions at issue solely related to parking on Hollenbeck Avenue, minimal construction impacts and the potential for parking issues limited to the immediate streets adjoining Hollenbeck Avenue.

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.

However, where the decision includes changing the traffic flow on Hollenbeck Avenue and there is the potential for significant traffic to pass directly in front of the official's residence as a result, it is reasonably foreseeable that the decisions would affect the character, or market value of her real property, and Vice Mayor Sell has a prohibitive financial interest in the decision as discussed below.

FACTS AS PRESENTED BY REQUESTER

The City is currently considering a bike lane project on Hollenbeck Avenue. This street is approximately 2 miles long and is a residential collector street that runs north-south through Sunnyvale, between El Camino Real and Homestead Road. The street is 40 feet wide and has one traffic lane in each direction. On-street parking is generally allowed on both sides of the street. Uses along the Hollenbeck corridor include single-family homes, schools, churches, businesses, and a park. According to the March 2025 Bike Lane Study, Hollenbeck has a 30 mph speed limit and is primarily residential and is considered a good candidate for bike lanes, as compared to two "arterial" streets to the east and the west, Mary Avenue and Sunnyvale-Sarartoga Road, which have speed limits of 35 and 40 mph, respectively.

The proposed alternatives for the bike lanes include options that would remove some or all on-street parking on Hollenbeck. Another option ("Class III bike route") would preserve the on-street parking and use signs and striping to indicate that vehicle lanes are shared with bicycles. The third option is no changes. As a result, the City's studies have focused on the parking impacts of these alternatives on Hollenbeck and the immediate, adjacent streets.

Recently, neighborhood residents made an alternative proposal that may be discussed at the upcoming City Council study session on May 20, 2025. The alternative proposal would involve converting Hollenbeck Avenue to a one-way street with one lane of traffic (northbound only), bike lanes, and on-street parking.

Vice Mayor Sell owns a single-family home on Lewiston Drive, approximately 965 feet west of Hollenbeck Avenue. Her home is separated from Hollenbeck Avenue by seven rows of single-family homes that are located on two streets that end in cul-de-sacs, and an intervening residential street. There is no direct connection between Hollenbeck and Lewiston. The bike lane project on Hollenbeck Avenue will not change the zoning or allowed uses of Vice Mayor Sell's property.

The loss of on-street parking on Hollenbeck Avenue could result in spillover parking on side streets. However, because there is no direct connection between Hollenbeck and Lewiston, residents on Lewiston are unlikely to be impacted by either spillover parking or temporary construction activities associated with the construction of the bike lanes.

In considering the potential impacts of the "one-way street option" on the Vice Mayor's residence, it is possible that some vehicles could end up driving through adjacent residential neighborhoods if they cannot drive south on Hollenbeck. The extent of the impact on the Vice Mayor's street (Lewiston) is still uncertain, but Lewiston does offer one potential route that drivers could use to go from Fremont Ave. to Homestead Road and is the nearest alternative route. This alternative route would pass directly in front of the Vice Mayor's residence.

Lewiston would not be the most direct route, however, as this route does require several turns on other residential streets. Arterial streets, Mary Avenue and Sunnyvale-Saratoga to the east and west of Hollenbeck Avenue, offer the closest direct connections if Hollenbeck were unavailable to southbound traffic. Mary Avenue is approximately 1,900 feet west of Lewiston and approximately 2,460 feet west of Hollenbeck Avenue. The City states that until a traffic analysis is conducted, the extent of traffic impacts on Lewiston Drive is unclear. It is also states that while impacts on Lewiston Drive may prove negligible, it is possible that there will be a “significant” increase in traffic on Lewiston Drive. If the Council directs staff to study this alternative, it will require a traffic engineering analysis to determine the spillover effects.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. 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. (Section 87103; Regulation 18700(a).) Section 87103 defines “financial interests” to include, relevant to these facts, an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)

Vice Mayor Sell has a real property interest in her residence located on Lewiston Drive. We examine whether it is reasonably foreseeable that the Hollenbeck bike lane project decisions to add bike lanes and potentially alter on-street parking on Hollenbeck Avenue will have a material financial effect on her real property.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. Regulation 18701(a) states that a financial interest is “the subject of” a proceeding under certain criteria, including where the decision affects a real property financial interest as described in the regulation setting forth the real property materiality standard, Regulation 18702.2, items (a)(1)-(6). Pertinent to these facts, an official’s property is the “subject of a decision” where that decision:

Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the [official’s] parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.

(Regulation 18702.2(a)(6).)

The facts provided do not indicate that bike lane construction or improvements to Hollenbeck Avenue will provide either a disproportionate benefit or a detriment to the Vice Mayor’s property which is located over seven rows of residential housing away from Hollenbeck

Avenue. The official's real property is not explicitly involved in the Hollenbeck bike lane project decisions.

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). It states, "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."

Relevant to a residential parcel located more than 500 feet but less than 1,000 feet from the property at issue in the decisions, Regulation 18702.2(a)(8) states that the financial effect of a decision on the official's parcel is material if the decision would change the official's parcel's development potential; income producing potential; highest and best use; character (by substantially altering traffic levels, the intensity of use, parking, view, privacy, noise levels, or air quality); or its market value.

The proposed alternatives for the bike lanes include options that would remove some or all on-street parking on Hollenbeck. Another option ("Class III bike route") would preserve the on-street parking and use signs and striping to indicate that vehicle lanes are shared with bicycles. Here, the facts provided indicate that these decisions regarding the Hollenbeck bike lane project would not impact the Vice Mayor's property in any of these manners, particularly in regard to changes to its character. Bike lane construction, as well as spillover parking that may result from the loss of on-street parking on Hollenbeck Avenue, is unlikely to impact the official's residential street. This is due to the fact that the property's street does not immediately connect to Hollenbeck Avenue, and the property is separated from Hollenbeck Avenue by seven rows of residential homes and intervening residential streets.

However, the City's consideration of the neighbor's recent proposal has the potential to redirect some traffic to Lewiston Drive, directly past the Vice Mayor's residence. The exact impacts are unknown until the City, if it elects to do so, conducts a traffic study. However, you have indicated that increases in traffic could be "significant." Based on these facts and absent a traffic study showing to the contrary, it is realistically possible this decision may impact the official's residential street by changing its character. The decision could alter the traffic levels, intensity of use, privacy, noise levels, and air quality of this residential street. Altering its character could impact the residence's market value as well. Therefore, it is reasonably foreseeable that the Hollenbeck bike lane project decisions, as long as the decision includes the one-way option and a study does not indicate that traffic impacts would be minimal, would have a material financial impact on Vice Mayor Sell's real property interest, and the official may not participate in the decisions. We note that this conclusion is based on the fact that a traffic study has not yet been conducted. To the extent subsequent traffic studies indicates that the traffic impacts would be minimal, the Vice Mayor may wish to seek additional advice if there are additional questions regarding the application of the conflict of interest provisions at that time.²

² We note that under Regulation 18706 an agency can break down a decision into separate decisions if the decisions are not inextricably interrelated to allow participation by the official with a conflict of interest. The decision

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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in which the official has a conflict must be considered first, be a final decision, and the official must not participate in any manner in that decision. Please seek additional advice on segmenting decisions as needed.