



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 27, 2025

Gabrielle Whelan
Town Attorney
Town Attorney's Office, 110 E Main Street
Los Gatos, CA 95030

Re: Your Request for Advice
Our File No. A-25-023

Dear Ms. Whelan:

This letter responds to your request for advice on behalf of Los Gatos Vice Mayor Rob Moore regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the Act's conflict of interest provisions 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, does Vice Mayor Moore have a disqualifying conflict of interest that would preclude him from voting on planning applications for three separate residential development projects located along Los Gatos Boulevard, given that he leases his residence located within 1,000 feet of the proposed projects, pursuant to a month-to-month lease?

CONCLUSION

No. A month-to-month tenancy does not meet the Act's definition of a real property interest subject to the conflict of interest rules. Thus, Vice Mayor Moore does not have a potentially disqualifying interest in the decisions based upon his lease. Further, there is no indication the decisions would have a material financial effect on his personal finances.

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

Within the next few months, the Los Gatos Town Council will be asked to consider several planning applications for housing developments near the residence of Vice Mayor Moore. The planning applications are as follows:

1) A seven-story, 182-unit condominium development at 15300 Los Gatos Boulevard (671 feet from the Councilmember's residence). The 1.9-acre property is flanked by residential buildings to the north and east, medical buildings to the south, and a San Jose Water storage facility to the west, single family to the east and the south. The Property is currently occupied by Ace Hardware and other commercial tenants.

The project includes a seven-level luxury condominium project constructed over street-level commercial space and three levels of underground parking, with additional commercial space on the roof for a prospective eating establishment. The project will consist of for-sale condominium units, including 21 studios, 21 one-bedroom units, 70 two-bedroom units, and 63 three-bedroom units. The roof level is comprised of a fitness area, a covered barbecue area, and a community outdoor roof deck.

2) A seven-story, 238-unit apartment complex at 15495 Los Gatos Boulevard (646 feet from the Councilmember's residence). The existing property consists of a mixed-use of commercial, retail, and office space with minimal frontage along Los Gatos Boulevard and a very deep lot wrapping around McDonald's. The property abuts additional commercial/retail uses to the north and east, industrial automotive uses to the south, and residential uses to the west. The proposed project consists of two buildings consisting of 6-stories of residential housing and two levels of parking. There are two secure courtyards on top of the parking garage that will serve as the private outdoor recreation space for the tenants and a rooftop garden located on the lower roof on the 7th floor. The project is on a single, 3.86-acre infill property parcel that would replace the existing shopping center

3) A three-story, 55-unit condominium development at 15349-15367 Los Gatos Boulevard (512 feet from the Councilmember's residence). This proposal would redevelop 1.56 acres of commercial property into 55 for-sale, three-story townhome-style units that include dedicated front yard areas, decks, and private two-car garages. The project site fronts Los Gatos Boulevard and is located near Oak Hill Playground, Live Oak Manor Park, Good Samaritan Hospital, and Trader Joe's, as well as several outdoor shopping centers.

You state that the State's Department of Housing and Community Development and the Association of Bay Area Governments have determined there is a need for housing in the area but that the rental market in Los Gatos is currently stable. The only factor that may affect rents is that the Town is currently processing a total of 15 planning applications for housing developments. You also state that, while none of those projects have been approved yet, it is conceivable that, considered cumulatively, the projects could affect the rental market by increasing supply. According to data from the Town, the 12 other projects comprise a total of 1,248 additional residential units. These other proposals range in size, with 7 projects consisting of developments ranging from 11 to 68 units and 5 that each consist of more than 100 units. We note that the Town

has a population of approximately 32,000. It is located in Santa Clara County and borders the much larger City of San Jose to the north.

Vice Mayor Moore formerly had a one-year lease on the residence, but the initial lease term has expired. He now leases his residence pursuant to a month-to-month lease.

ANALYSIS

Section 87100 prohibits 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. 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).)

Relevant to the facts presented, Section 87103 of the Act lists several types of financial interests that can give rise to a conflict of interest, including an economic interest in real property in which the official has a direct or indirect interest of \$2,000 or more (Section 87103(b); Regulation 18702.2.) and an interest in the official’s personal finances, including those of the official’s immediate family, also known as the “personal financial effects” rule. (Section 87103; Regulation 18702.5(a).)

The issue is whether the Vice Mayor has a real property financial interest under the Act. Section 82003 defines an “interest in real property” to include a leasehold if the market value is \$2,000 or more. However, Regulation 18233 specifically excludes the interest of a tenant in a month-to-month lease from the definition of an “interest in real property” and that of a “leasehold interest.” Therefore, as a month-to-month tenancy does not constitute a real property interest for purposes of the Act, Vice Mayor Moore does not have a “real property” interest under Section 87103.

Turning to the personal financial effects rule, a governmental decision’s reasonably foreseeable financial effect on a public official’s financial interest in the official’s personal finances or those of immediate family is material if the decision may result in the official or the official’s immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).) The decisions could potentially effect Vice Mayor Moore’s personal finances if they resulted in an increase or decrease in his rental rate or cause a need to relocate incurring moving expenses. However, based on the facts provided, such an effect is not reasonably foreseeable, but merely theoretical. The projects are consistent with the existing commercial and residential uses and developments in the surrounding general area, and two of the three comprise owner-occupied housing. Given the mixed commercial and residential nature of the overall surrounding area, the strong real property market in the Town, the facts do not show that any of these projects individually or as a whole would result in a material effect on Vice Mayor Moore’s personal finances. Moreover, while the facts indicate a rental rate change could result from the totality of the 15 currently proposed development project, the fact that there is an abundance of similar projects makes it less foreseeable that any of the 3 projects identified would individually result in the change.

Accordingly, the Act does not prohibit Vice Mayor Moore from participating in Town Council decisions regarding the above-referenced projects.

If you have other questions on this matter, please contact me 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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