

December 1, 2014

Krishan Chopra
Assistant City Attorney
City of Mountain View
500 Castro Street
Mountain View, CA 94041

Re: Your Request for Advice
Our File No. A-14-185

Dear Mr. Chopra:

This letter responds to your request for advice on behalf of Vice Mayor John McAlister 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 Government Code Section 1090.

QUESTION

Does Vice Mayor McAlister have a conflict of interest based on his leasehold real property interest that prohibits him from participating in decisions regarding the Greystar mixed used development project.

CONCLUSION

No. Based on your facts, it is not reasonably foreseeable that the decisions will have a material financial effect on his leasehold interest.

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 18110 through 18997 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

In 2013, on behalf of Vice Mayor McAlister, your office requested advice related to various decisions that, under the Act's regulations at that time, we determined would have a reasonably foreseeable financial effect on the Vice Mayor's interest in a Baskin Robbins franchise. (See *Quinn* Advice letter No. A-13-080 .) Other than the details of the upcoming decision regarding the Greystar mixed use development project (the "Greystar project"), the facts remain largely the same. We therefore incorporate the facts set forth in the *Quinn* letter by reference.

The Greystar project is a mixed use development project located on the corners of El Camino Real West and Castro Street in Mountain View. The project consists of nine parcels totaling 2.38 acres that is currently in development with 22,380 square feet of commercial buildings and private parking spaces. The applicant is proposing to rezone the site to a Planned Community District, which would contain 164 apartment units in three and four story buildings over underground parking garages, commercial space, and a public plaza.

Vice Mayor McAlister operates a Baskin Robbins franchise that is 1,220 feet from the Greystar project. In the *Quinn* letter, you stated that Councilmember McAlister's rent is not fixed, but is variable at 6.5 percent of gross sales per month. You further stated that the rent does not vary considerably month to month, although it is generally not exactly the same due to slightly variable gross sales. The average yearly rent however, consistently comes close to \$35,000 per year.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or 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 on the public official or any interest describe in Section 87103.

Your facts indicate that Councilmember McAlister, a public official under Sections 82048 and 87200, wishes to make and participate in the Greystar decision. He is therefore subject to the conflict of interest provisions of the Act and its implementing regulations. Therefore, we focus on the Vice Mayor's leasehold and the impact the decision has on that interest.

The definition of "interest in real property" under the Act includes a leasehold interest. A decision is reasonably foreseeable to have a material financial effect on a public official's leasehold interest if the decision will:

- “(1) Change the termination date of the lease;
- “(2) Increase or decrease the potential rental value of the property;

- “(3) Increase or decrease the rental value of the property, and the official has a right to sublease the property;
- “(4) Change the official's actual or legally allowable use of the real property;
- “(5) Impact the official's use and enjoyment of the real property.”

(Regulation 18705.2(b).)

Vice Mayor McAlister’s lease agreement is dependent on the amount the franchise makes in monthly sales. He pays 6.5 percent of this monthly income to his landlord to satisfy his lease, which does not expire until June of 2016. The only provision in Regulation 18705(b), above, that could be seen to impact the Vice Mayor’s agreements is (b)(2). Any decision regarding the Greystar project, however, will not “increase or decrease the potential rental value of the property” because the rental value will not change during the lease; it remains fixed at 6.5 percent of sales. It is therefore not reasonably foreseeable that the decision will have a material financial effect on Vice Mayor McAlister’s interest in his leased property because the amount is based totally on a percentage of sales.²

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl

² In our 2013 letter, we found that any impact to the lease amount would be material because of our application of the so called “one-penny” rule. That letter was issued before the Commission adopted new Regulation 18705.2, which eliminated that rule.