



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

June 11, 2018

Krishan Chopra
Senior Assistant City Attorney
City of Mountain View
500 Castro Street
Mountain View, CA 94039-7540

Re: Your Request for Advice
Our File No. A-18-098

Dear Mr. Chopra:

This letter responds to your request for advice on behalf of Mountain View City Councilmembers Pat Showalter and John McAlister (the "Councilmembers") 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

- 1) May the Councilmembers, who each own real property within 1,000 feet of Cooper Park, take part in decisions related to rezoning actions permitting the construction of workforce and market housing by the Mountain View Whisman School District (the "District") on the District-owned portion of Cooper Park?
- 2) May the Councilmembers take part in decisions related to the purchase or lease of the District-owned portion of Cooper Park in order to preserve the area as parks and open space?

CONCLUSION

- 1) No. The Councilmembers may not take part in decisions related to rezoning actions permitting the construction of workforce and market housing on the District-owned portion

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.

of Cooper Park because the decision will have a reasonably foreseeable material financial effect on the Councilmembers' interests in real property.

- 2) No. The Councilmembers may not take part in decisions related to the City's proposed purchase of the District-owned portion of Cooper Park because the decision will have a reasonably foreseeable material financial effect on the Councilmembers' real property interests.

FACTS AS PROVIDED BY REQUESTOR

The District owns a 9.5-acre site located in a residential area of the City of Mountain View. The site is currently utilized as part of a 14.7-acre public park facility (the "Park"). The remaining 5.2 acres of the Park are owned by the City. The Park's facilities include two baseball diamonds, four tennis courts, and some small structures including public restrooms, grassy areas, and tree-lined walkways.

The District is exploring opportunities to provide affordable housing for its employees and has conducted a feasibility study regarding the construction of single-family homes and workforce housing on the District-owned portion of the Park. At this time, potential residential development would only occur on the District-owned portion of the Park. The City-owned portion, which contains four tennis courts, a grassy area and small structures, would remain in use as a park.

The feasibility study identifies the option of constructing 82 studios and one-bedroom and two-bedroom townhouses in the center of the Park. The District plans to finance the housing development by selling 36 single-family residential lots along the edges of the Park at market rate.

Any development on the site would require the District to seek City approval of a zoning change from the current public facility to R-3 (residential-multiple family) for the 82 housing units, and residential-single family (R-1) for the 36 single-family homes. Currently, the neighborhood surrounding the Park is zoned for a mixture of R-1 and R-2 (residential one- and two-family homes). You indicated that, in total, 118 new dwellings would bring approximately 160 to 180 new residents to the area.

Councilmember Showalter owns a single-story, single-family home approximately 925 feet south of the Park. Councilmember McAlister owns a single-story, single-family home approximately 935 feet northeast of the Park. You stated that both properties are the equivalent of approximately one-and-a-half residential blocks in distance from the Park. There are no significant topographical barriers between the Park and the properties. The Park can be seen from Councilmember Showalter's home, but is not visible from Councilmember McAlister's home. The neighborhood is zoned R-1 and R-2, with the exception of the Park itself and a small open space, City-owned parcel bordering the Park.

You indicated that Grant Road is the main thoroughfare for the neighborhood. Currently, Grant Road experiences traffic congestion at peak times, some of which is generated by the neighborhood. The increase in housing in the neighborhood would increase traffic congestion along Grant Road.

As an alternative, the City and the District are informally and preliminarily discussing the option of the City purchasing the District-owned portion of the Park to preserve the property as a park and open space. Should the City purchase the Park, the site would be protected from future development. No governmental decisions have been presented to either legislative body regarding this option. Rather, a conceptual discussion has taken place at the executive management level of both agencies whether to bring such a proposal forward for consideration.

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 on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests, from which a conflict of interest may arise. Relevant to your facts, a public official has an interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Additionally, a public official has an interest in his or her personal finances and those of immediate family members. (See Section 87103.) Assuming Councilmembers Showalter and McAlister have an interest of \$2,000 or more in their residences, both Councilmembers have interests in real property.²

Foreseeability and Materiality

For financial interests that are not explicitly involved in a decision, such as the Councilmembers' residences, a decision's financial effect on an interest is only reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. Pertinent to your facts, the financial effect will be material if the decision:

"(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.

[¶]...[¶]

² An official always has an interest in his or her own personal finances. However, an effect on a public official's interest in his or her own personal finances, or those of the public official's immediate family, is not considered separately if the decision also affects the public official's interest in real property. (Regulation 18702.5(c).) Because the decisions at issue may affect the Councilmembers' real property interests, we do not analyze their interests in their own personal finances.

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

Rezoning the Park

The facts provided indicate that the proposed development would result in incremental impacts to the area surrounding the Park, which encompasses both Councilmembers’ residences. These impacts include an increase in intensity of use, on-street parking, and traffic along the area’s main thoroughfare. Additionally, you note that the proposed development would substantially alter the views from Councilmember Showalter’s residence, which would go from views of an open space park to a housing development. The most significant impact on the area, however, would likely arise from the replacement of 9.5 acres of open space with a housing development.³

Therefore, it is reasonably foreseeable that the effects of the proposed development would impact the market value of the Councilmembers’ real property, and would therefore be considered material. As a result, neither Councilmember may take part in decisions related to the proposed development, including the rezoning actions.

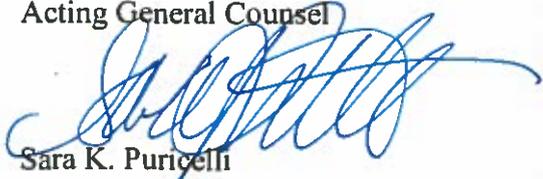
Purchasing or Leasing the Park

You also requested advice as to whether the Councilmembers may take part in decisions regarding the purchase or lease of the District-owned portion of the Park by the City for the specific purpose of preserving the entire park as open space. Such a transaction would effectively block the District’s proposed residential development. Accordingly, for the same reasons stated above, we find that the effects of such transactions would also have a reasonably foreseeable material financial effect on the Councilmembers’ interests. Therefore, the Councilmembers are also disqualified from taking part in decisions related to the purchase or lease of District-owned property meant to prevent the proposed residential development.

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

Sincerely,

Brian G. Lau
Acting General Counsel

By: 
Sara K. Puricelli
Counsel, Legal Division

SKP:jgl

³ We have previously advised that such a transformation alone could cause a reasonably prudent person to be concerned that a governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of an official’s property. (See *Lee* Advice Letter, A-15-130.)