



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/14/2019

ITEM NO: 1

DATE: September 12, 2019
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Selection of two Council Members by Random Lot to Participate in the Mills Act Ordinance Agenda Discussion and Deliberation as Required under FPPC Regulation 18701

RECOMMENDATION:

Staff recommends that Council draw lots to random select who will participate in the Mills Act Ordinance agenda discussion and deliberation as required under FPPC Regulation 18701.

BACKGROUND:

To establish a Mills Act Program, the Council would need to adopt an enabling Ordinance. If a Mills Act Ordinance is adopted, there potentially could be property tax savings to those properties included under the Mills Act. In addition, a research study looked at the value of the Mills Act on historical property and concluded that they receive a 16% premium over similar houses in the same neighborhood and homebuyers are willing to pay a significant premium for a historically designated house. The results of the study also suggest that a house's value is increased by 3.8% by having a Mills Act historical house within 250 feet and by 1.6 % by having a Mills Act historical home located between 250 and 500 feet away. [Narwold, A. (2008). "Estimating the Value of the Historical Designation Externality." *International Journal of Housing Markets and Analysis*, 1(3), 288-295.]

Council Members Steve Leonardis, Marico Sayoc, and Barbara Spector own real property defined as historical structures under Town Code. Council Member Rob Rennie owns real property within an historical district and within 250 feet of historical property, but his property is not defined as a historical structure under Town Code.

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager

PAGE 2 OF 2

SUBJECT: Selection of two Council Members by Random Lot to Participate in the Mills Act Ordinance Agenda Discussion and Deliberation as Required under FPPC Regulation 18701

DATE: September 14, 2019

DISCUSSION:

The Political Reform Act conflict of interest provisions prohibits a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.)

Regarding Council Member Leonardis, Sayoc and Spector, the decision-making process for adoption of a Mills Act Program would include a discussion on whether their historical structures would be eligible for inclusion in the Mills Act Program. Therefore, their real property would be "explicitly involved" in the decision at issue and they may not participate in decisions related to the adoption of a Mills Act program.

Regarding Council Member Rennie, his real property would not be "explicitly involved" in any of the decisions since his real property is not considered historical. Under Regulation 18702.2(a)(7), a decision's effect on an official's real property interest is material if the decision involves property located 500 feet or less from the property line of the official's parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. Council Member Rennie may not participate in decisions related to a Mills Act program based upon the research study listed above that determined that a house's value is increased by 3.8% by having a Mills Act historical house within 250 feet.

Section 87101 allows an official, who is otherwise disqualified to participate in a governmental decision, if the official's participation is "legally required." (Section 87101; Regulation 18708.) This exception is narrowly construed and applies only when it is legally impossible for the decision to be made without the participation of a disqualified official, and where there is no "alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." (Regulation 18708(a), (c), and (d); In re Tobias (1999) 13 FPPC Ops. 5.)

The Town Council has five members. Three members constitute a quorum. Since four of the five members have a conflict of interest under the Act, the rule of legally required participation would apply since there would only be one member left and three are needed to constitute a quorum. Accordingly, the four disqualified officials need to participate in a random selection process to choose which two officials can participate in the decision to create a quorum. (In re Hudson (1978) 4 FPPC Ops. 13.)

CONCLUSION:

This meeting will be used for the random selection of two of the four Council members to reach a quorum to hear the Mills Act matter at the September 17, 2019 Town Council meeting.