



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

June 9, 2022

Thomas D. Jex  
Wildomar City Attorney  
Burke, Williams & Sorensen, LLP  
1770 Iowa Ave, Suite 240  
Riverside, California

Re: Your Request for Advice  
**Our File No. A-22-056**

Dear Mr. Jex:

This letter responds to your request for advice on behalf of City of Wildomar (“City”) Council Member Ashlee DePhillippo regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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

May City Council Member DePhillippo participate in decisions regarding a 78.3 acre parcel located within 500 feet of her residential property, where the parcel would be split in three separate parcels, two comprising a total of 10 acres to be used for the construction of a new City Hall and a Fire Station, and the third parcel comprising 68.3 acres and otherwise unaffected?

### CONCLUSION

Yes. The applicable standard to determine materiality under these facts is Regulation 18702.2(b), because the decision affects only a clearly defined, specific and isolated site on the large parcel. Under this standard, it is presumed that the financial effect of the decision on Council Member DePhillippo’s real property interest will not be material. The presumption is not rebutted

---

<sup>1</sup> 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.

by clear and convincing evidence of a substantial effect on the official's property. The facts indicate the decision would leave the adjacent 68.3 acres otherwise unchanged, thus having little to no impact on the official's property. Therefore, Council Member DePhillippo does not have a prohibitive interest in the decision under the Act and may participate.

### **FACTS AS PRESENTED BY REQUESTER**

In the southeast portion of the City, there is a 78.3 acre vacant parcel (the "Property") located on Clinton Keith Road between Saldia Del Sol and Elizabeth Lane. The City is considering purchasing the southernmost 10 acres of the Property to use for the construction of a new City Hall and Fire Station. The purchase would require a new parcel map and would result in three separate and unequal parcels: one for the new City Hall, one for the Fire Station, and another for the remainder of the Property.

City Council Member Ashlee DePhillippo owns her primary residence, which is located in a neighborhood that borders the northeast corner of the Property. Council Member DePhillippo's residence is approximately 250 feet from the Property, measured from the property line of Council Member DePhillippo's residence to the closest property line of the Property. The distance between Council Member DePhillippo's residence and the closest parcel proposed to be acquired by the City is approximately 2,086 feet, measured from the property line of Council Member DePhillippo's residence to the corner of the proposed Fire Station parcel.

In response to our request for further information, Deputy City Attorney Chad Herrington provided by email that while the City has not done any formal studies regarding how the purchase of the southern portion of the parcel may impact the official's residence, the City cites as evidence of a lack of impact: (1) the 2,000 foot distance of the new 10 acre parcel where the possible City Hall and Fire Station would be located from the official's residence, and (2) that the purchase of the southern portion of the parcel will have no impact on the Rural Residential zoning of the remaining portion of the parcel, 68.3 acres, that is within 500 feet of the official's residence.

### **ANALYSIS**

The Act's conflict of interest provisions prohibit 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. (Section 87100.) 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 a financial interest to include any real property in which the public official has a direct or indirect interest worth \$2,000 or more. Council Member DePhillippo has identified that she has a real property interest in her primary residence related to this decision.

#### *Foreseeability and Materiality*

A financial effect is presumed reasonably foreseeable where the official's financial interest is explicitly involved as a named party in, or subject of, the decision. (Regulation 18701(a).) Where the financial interest is not explicitly involved in the decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical.

(Regulation 18701(b).) This decision does not explicitly involve Council Member DePhillippo's real property interest, and thus the latter standard applies.

*Materiality: Real Property Interest*

Regulation 18702.2 provides the materiality standards for determining the materiality of a financial effect on an interest in real property. Relevant to these facts, 18702.2(a)(7) states that the reasonably foreseeable financial effect of a government decision on a real property parcel is material where the decision "involves property located 500 feet or less *from the property line of the parcel* unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property." (Emphasis added.) Thus, the relevant distance is generally the distance from the official's parcel to the property line of the parcel subject to the decision.

However, in cases where the decision affects only a clearly defined, specific and isolated site, such as a particular building on a large tract of land, we have advised that the parcel to parcel measurement would not be the appropriate distance to determine materiality. (See for example, *Leishman* Advice Letter, No. A-21-154.) Here, the decision would affect a large tract of land, create two new parcels for the City Hall and Fire Department project on the 10 acres farthest from the official's property, and leave the adjacent 68.3 acres otherwise unaffected with its zoning still Rural Residential. Therefore, the applicable standard in this matter is the 2,000 foot distance of the official's property to the proposed two parcels. Regulation 18702.2(b), provides the relevant materiality standard:

(b) The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.

Under this standard, it is presumed that the financial effect on Council Member DePhillippo's real property interest will not be material, unless the presumption is rebutted by clear and convincing evidence of a substantial effect on the official's property. The facts here indicate that the decision, leaving the adjacent 68.3 acres unchanged, would have little to no impact on the official's property and do not rebut the presumption. Therefore, Council Member DePhillippo does not have a prohibitive interest in the decision and may participate.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

KH:aja