



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 23, 2025

David Nam
Assistant City Attorney
City of Vacaville
650 Merchant Street
Vacaville, CA 95688

Re: Your Request for Advice
Our File No. A-25-064

Dear Mr. Nam:

This letter responds to your request for advice on behalf of City of Vacaville (“City”) Councilmember Michael Silva and City Attorney Melinda Stewart 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.

QUESTIONS

1. May Councilmember Silva participate in the Fire Hazard Severity Zone (“FHSZ”) map adoption ordinance decision where his real property interest in his residence is located in a proposed moderate FHSZ?

2. May City Attorney Stewart participate in the same decision due to her real property interest in her residence located within 500 feet of a proposed moderate FHSZ?

CONCLUSIONS

1. No. It is reasonably foreseeable that the decision will have a material financial impact on his property due to the fact that the decision relates to the property’s inclusion in the boundaries of the FHSZ and that inclusion may be considered for development criteria that will apply to the

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.

parcel. He has a disqualifying financial interest, has not established that the public generally exception applies, and he may not take part in the decision.

2. Yes. There is a presumption that the decision affecting property within 500 feet of her residential parcel will have a material impact on her property, and no facts have been provided to rebut this presumption with clear and convincing evidence. However, the effect of the decision on her residential property interest is indistinguishable from its effect on the public generally, where at least 15 percent of the public is affected, and the effect on the official's residential parcel is not "unique" compared to the effect on the significant segment. She may participate under the public generally exception.

FACTS AS PRESENTED BY REQUESTER

The City Council is required by state law to adopt FHSZ maps by ordinance within a specified time frame. The draft maps were prepared and issued by CalFire and establish areas designated as "moderate," "high," and "very high" zones. You clarified that while the City does not have any discretion to decrease the severity designation by CalFire, it may make decisions to increase the severity designation or it may increase the boundaries for a particular zone.² Neither the Fire Chief nor the Fire Marshall is recommending any deviation from the CalFire FHSZ maps. Staff's recommendation is that the City adopt the FHSZ maps from CalFire as submitted. Further, while the FHSZ is not a "zoning" decision by the City, under state law, the "very high" severity zones are subject to building code requirements for new development.

The City has a seven-member City Council, consisting of the Mayor, who is elected on an at-large basis, and six City Council members, each of whom is elected on a by-district basis. A quorum of the City Council lives more than 1,000 feet outside of any of the proposed Fire Hazard Severity Zones.

Councilmember Silva was elected to the City Council in 2020 and re-elected in 2024 by the voters of City Council District 3 ("CD 3").³ Councilmember Silva owns and resides in a single-family home located in CD 3. Councilmember Silva's residence is located in a proposed "moderate" FHSZ.

City Attorney Stewart serves as the appointed City Attorney for the City and owns and resides in a single-family home located in City Council District 5 ("CD 5"). City Attorney Stewart was appointed to the City Attorney position in 2016 when the City Council was comprised of 5 members, all elected at large. Her position did not change when the City Council adopted a by-district City Council election process. City Attorney Stewart's residence is situated within an established residential neighborhood and is not within a proposed FHSZ. It is within 500 feet of a

² In order to increase any severity designation to a "very high" fire hazard severity zone, the City must make a "finding supported by substantial evidence in the record that the requirements ... are necessary for effective fire protection within the area." (See Section 51179(b)(1).) It is your understanding that the City would not have the ability to make such a finding.

³ The City Council moved from being elected on an at-large basis to district-based elections with the general election in 2020.

proposed “moderate” FHSZ, which includes two vacant parcels within 500 feet of her property line to the north. Both parcels are city-owned and not planned for development for residential use.

The City is aware that real property owners would be required to disclose the FHSZ for a parcel at the time of sale under state law. Members of the public have expressed concerns in public comments that an FHSZ designation could impact home values and lead to increases in insurance rates. CalFire provided information about the FHSZ’s impacts on insurance in its Frequently Asked Questions (FAQs), which the City included in its agenda for this issue, and states, “Insurance companies use risk models, which differ from hazard models ... but much of the same data that is used in the fire hazard severity zone model are likely included in the insurance companies’ risk models.” The FAQs also state that the FHSZ designations “can be a factor in real estate disclosure, and local governments may consider them in their general plan.”

The City has 32,398 parcels, 29,024 of which are residential. Of these residential parcels, 4,041 (14 percent) are in a proposed fire severity zone, and an additional 2,678 are within 500 feet of a proposed FHSZ, for a total of 6,719 residences (23 percent) within a designated zone or within 500 feet of a zone. The City estimates that there are 3,492 parcels in Councilmember Silva’s CD3 district, 2,955 of which are residential. Only 265 of these (7 percent) of the total parcels in the CD3 are located in the proposed FHSZ for that district. In the CD3, 256, or 8.7 percent of all residential parcels are located in the proposed FHSZ.

ANALYSIS

The Act’s conflict of interest provisions prohibit 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, distinguishable from the decision’s effect on the public generally. (Sections 87100 and 87103.) The financial interests that may give rise to an official’s disqualifying conflict of interest under the Act are set forth in Section 87103 and include any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Section 87103(b).) Councilmember Silva and City Attorney Stewart each have a real property interest in their primary residence.

Foreseeability and Materiality

Where the official’s financial interest is a named party in or the subject of the decision, it is presumed that it is reasonably foreseeable that the decision will have a financial effect on an official’s financial interest. (Regulation 18701(a).) A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6). (*Ibid.*) For a financial interest not explicitly involved in a decision, a financial effect need not be “likely” to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and is more than hypothetical or theoretical, it is reasonably foreseeable. (Regulation 18701(b).)

For an interest in real property, Regulation 18702.2 provides the standards for determining whether the decision’s financial effect is material. Relevant to Councilmember Silva’s real property

interest located within a proposed FHSZ, under Regulation 18702.2(a)(1), the reasonably foreseeable financial effect of a decision on an official's real property interest is material when it involves the adoption of a development plan or criteria applying to the parcel. The financial effect is also material, under Regulation 18702.2(a)(2), when the decision determines the parcel's zoning, or inclusion/exclusion from any city, county, district or local government subdivision or other boundaries (other than elective boundaries).

Relevant to City Attorney Stewart's real property interest, materiality is presumed if 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. (Regulation 18702.2(a)(7).)

Councilmember Silva

Here, due to the fact that the decision relates to Councilmember Silva's property's inclusion in the boundaries of the FHSZ and that inclusion may be considered for development criteria that will apply to the parcel, his property is the subject of the decision, and it is reasonably foreseeable that the decision will have a material financial impact on his property. (Regulations 18701(a) and 18702.2(a)(1) and (2).) He has a disqualifying financial interest in the decision and may not participate unless an exception applies.

City Attorney Stewart

There is a presumption that the decision affecting property within 500 feet of City Attorney Stewart's residential parcel will have a material impact on her property. No facts have been provided to rebut this presumption with clear and convincing evidence. However, we do not further consider whether it is reasonably foreseeable that the decision will have a material financial effect on the property. In light of the conclusion below that the effect of the decision on her residential property interest is indistinguishable from its effect on the public generally, City Attorney Stewart may take part in the decision notwithstanding a financial effect on her property.

Public Generally Exception

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of the official's interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a "significant segment" of the public is affected and the effect on the official's financial interest is not "unique" compared to the effect on the significant segment. (Regulation 18703(a).)

Relevant to these facts, a significant segment of the public is at least 15 percent of all residences within the official's jurisdiction if the official's only interest in the decision is their primary residence. (Regulation 18703(b)(1)(A).) Regulation 18703(d) defines "jurisdiction" as the designated geographical area the official was elected to represent or the area to which the official's authority and duties are limited if not elected." A "unique effect" on an official's financial interest

relevant to these facts includes a disproportionate effect on the development potential, or use of the official's real property or on the income producing potential of the official's real property. (Regulation 18703(c)(1).)

The City has 32,398 parcels, 29,024 of which are residential. Of these residential parcels, 4,041 (14 percent) are in a proposed fire severity zone, and an additional 2,678 are within 500 feet of a proposed FHSZ, for a total of 6,719 residences (23 percent) within a designated zone or within 500 feet of a zone. A significant segment of the City residential properties, 23 percent, will be affected similarly to City Attorney Stewart's property, in that the parcels are in, or within 500 feet of, a designated FHSZ. The facts do not indicate that City Attorney Stewart's interest in her residence is unique from that of the significant segment. Therefore, the public generally exception applies and she is not prohibited from participating in the decision due to her property interest.

The public generally exception does not apply to Councilmember Silva because only 14 percent of residential parcels city-wide and 8.7 percent of residential parcels within CD3 are within a proposed FHSZ. He has not established that a significant segment of the residential property in his jurisdiction is similarly affected by the decision. Councilmember Silva has a disqualifying interest in the decision.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

L. Karen Harrison
By: Senior Counsel, Legal Division

KH:aja