



## FAIR POLITICAL PRACTICES COMMISSION

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February 10, 2015

Anthony P. Condotti  
Assistant City Attorney  
City of Capitola  
P. O. Box 481  
Santa Cruz CA 95601-0481

Re: Your Request for Advice  
**Our File No. A-15-022**

Dear Mr. Condotti:

This letter responds to your request for advice regarding the public generally small jurisdiction exception (Regulation 18707.10) to the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Our advice is limited to the conflict of interest provisions of the Act and does not apply under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. We are also 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.

### QUESTION

May Capitola City Councilmember Jacques Bertrand participate, under the small jurisdiction exception to the public generally rules in Regulation 18707.10, in a governmental decision to consider a proposal to locate a skateboard facility at Monterey Park?

### CONCLUSION

Yes. According to your facts, Councilmember Bertrand meets all the conditions required to apply the small jurisdiction public generally test, and he may participate in the decision.

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<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 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

The City of Capitola is a small coastal city in Santa Cruz County with a population of approximately 10,000 covering 1.7 square miles. On February 12, 2015, the city council will consider a proposal to locate a skateboard facility at Monterey Park, a small neighborhood park on Monterey Avenue adjacent to New Brighton Middle School.

Councilmember Jacques Bertrand was elected to the city council in November 2014. The residential property on which his domicile sits is located across the street and approximately 320 feet from the nearest boundary of the park. The lot size is less than a quarter acre and there are at least 20 other properties under separate ownership within a 500 foot radius of the park. He was elected at large and is required to live within the district.

## ANALYSIS

Section 87100 prohibits public officials from participating in governmental decisions in which they have a financial interest. Section 87103 defines a financial interest to include any real property that will reasonably foreseeably be materially financially affected by the decision in a manner distinguishable from the financial effect on the “public generally.” Without analyzing whether or not the reasonably foreseeable financial effects of the decision will have a material effect on Councilmember Bertrand’s property, you seek advice solely with respect to the public generally rules.

Regulations 18707 through 18707.10 set forth the rules determining when the “public generally” condition is met. Regulation 18707.10<sup>2</sup> provides a separate test for small jurisdictions which states:

“(a) The effect of a governmental decision on the residential property that is the domicile of a public official is not distinguishable from the effect on the public generally if all of the following conditions are met:

(1) The jurisdiction of the public official’s agency has a population of 30,000 or less and covers a geographically area of ten square miles or less;

(2) The public official is required to live within the jurisdiction;

(3) The public official, if elected, has been elected in an at-large jurisdiction;

(4) The official’s property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;

(5) The official’s property is located on a lot not more than one-quarter acre in size or not larger than 125 percent of the median residential lot size of the jurisdiction; and

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<sup>2</sup> Please note that the Commission will be considering the repeal of this exception at the March 2015 Commission meeting. If the decision is not made until after that date you should contact us for further advice.

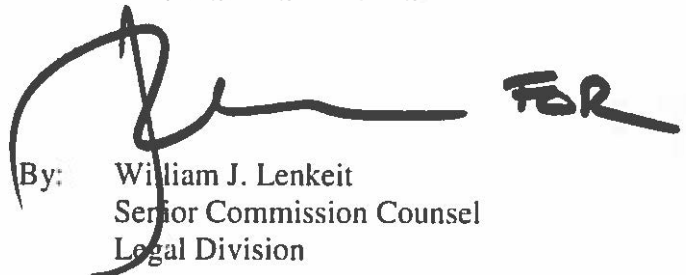
(6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value.”

By 20 feet, Councilmember Bertrand has met all of the above condition. Accordingly, the public generally determination applicable to small jurisdictions applies and he may participate in the decision.

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

Sincerely,

John W. Wallace  
Assistant General Counsel

 A handwritten signature in black ink, appearing to read 'WJL', followed by the initials 'FOR' in a bold, blocky font.

By: William J. Lenkeit  
Senior Commission Counsel  
Legal Division

WJL:jgl