



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

March 27, 2023

Amy Ackerman
Town Attorney for Corte Madera
350 Sansome Street, Suite 300
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-23-041

Dear Ms. Ackerman:

This letter responds to your request for advice 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

Does the Act prohibit Councilmember Thomas from taking part in decisions related to the maintenance and improvement of a park that is located within 500 feet of her residence?

CONCLUSION

Yes, because Councilmember Thomas’s real property interest is located less than 500 feet from the park and there is no clear and convincing evidence that the decisions would not have any measurable impact on her real property, she is prohibited from taking part in the decisions. However, the Town may be able to segment decisions involving other parks to allow for the Councilmember’s participation.

FACTS AS PRESENTED BY REQUESTER

You are the Town Attorney for Corte Madera seeking this advice on behalf of Councilmember Rosa Thomas. The Town is in the process of creating a new Town Parks and

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.

Recreation Master Plan. It has conducted a facilities assessment to determine the maintenance/rehabilitation needs of its community center and 5 small parks. The Council will eventually review the facilities assessment, results of surveys and focus groups, and adopt a Master Plan intended to “create a road map for enhancing parks and recreation infrastructure, facilities, and programs for the next 3-10 years and to prioritize investments.”

Councilmember Thomas lives within 500 feet of a park that is property of a school district, but its use is shared with the Town under a joint use agreement. While the edge of the park is about 200 feet from her house, most of the facilities referenced in the facility assessment are more than 400 feet from her home. The Town and School District share planning and maintenance of the park. The councilmember cannot see the park from her house.

The facilities assessment identified the following recommendations for this Park: replacement of picnic tables; re-paving asphalt pathways, picnic areas, and parking spaces; fixing cracked, uneven sidewalks; improving drainage and re-grading the turf field.

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 includes an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) Councilmember Thomas has a real property interest in her residence.

Foreseeability and Materiality

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here, 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 more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable. (Regulation 18701(b).)

Regulation 18702.2 provides that the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material under certain enumerated circumstances. The regulation provides that the effect is material whenever the governmental decision “[i]nvolves 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).)

Here, the financial effect of the governmental decisions concerning the park within 500 feet of Councilmember Thomas’ residence is presumed material under Regulation 18702.2(a)(7) unless there is clear and convincing evidence that the decisions at issue would not have any measurable

impact on the residence owned by her. According to the facts, the Town conducted a facilities assessment of the park which recommends replacing the picnic tables; re-paving asphalt pathways, picnic areas, and parking spaces; fixing cracked, uneven sidewalks; improving drainage and re-grading the turf field. However, based on the facts provided, the decisions will “create a road map for enhancing parks and recreation infrastructure, facilities, and programs for the next 3-10 years and to prioritize investments.” Based on these facts, the decisions potentially involve improvements to the parks and there is not “clear and convincing evidence that the decision will not have any measurable impact” on her residence under Regulation 18702.2(a)(7). Therefore, Councilmember Thomas is disqualified from governmental decisions related to that park.²

However, the facts provided indicate the Councilmember Thomas is within 500 feet of one of five parks that are subject to the decisions. Accordingly, we note that the Town may be able to segment the decisions to allow Councilmember Thomas to take part in decisions limited to the other four parks. Pursuant to Regulation 18706(a), the Town may segment a decision in which a public official has a financial interest, to allow participation by the official, if:

- (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
- (2) The decision in which the official has a financial interest is segmented from the other decisions;
- (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

² While Regulation 18702.2(d) provides an exception to the materiality standard for a “decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities,” the facts provided are not limited to repair and maintenance. Accordingly, the exception does not apply. (See, e.g., *Ascarate* Advice Letter, No. A-04-012 [councilmember prohibited from taking part in decisions related to a park within 500 feet of her residence involving new picnic tables and benches which are improvements that, even on a small scale, will make the park a more attractive place for the public to visit, and increase the value of homes near the park]; *Davi* Advice Letter, No. A-19-082 [official prohibited from taking part in decisions related to a park within 500 feet of his residence involving installation of artificial turf on the infield and new sod in the outfield of baseball park as improvements will create more demand for the park and impact surrounding homes].)

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja