



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 9, 2025

Michelle Marchetta Kenyon  
Town Attorney  
1999 Harrison Street, Suite 1650  
Oakland, California 94612

Re: Your Request for Formal Advice  
**Our File No. A-25-076**

Dear Ms. Kenyon:

This letter responds to your request for advice, on behalf of Kerry Hillis, the Vice Mayor of the Town of Moraga (“Town”), 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

Under the Act, may Vice Mayor Kerry Hillis take part in Town Council decisions regarding the Operating Budget and Asset Replacement Plan for “The Hacienda,” a historic, town-owned property and venue located less than 500 feet from Vice Mayor Hillis’s residence?

### CONCLUSION

No, the Act prohibits Vice Mayor Hillis from taking part in the decisions because there is not clear and convincing evidence the decisions will have no measurable impact on the Vice Mayor’s real property, and the decisions do not solely relate to infrastructural repair and maintenance.

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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 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.

## FACTS AS PRESENTED BY REQUESTER

The Hacienda is a historic town-owned property that has a mansion, two smaller buildings (La Sala and Casita), a pavilion, lawn and public park. The Hacienda has been used as a wedding/event venue since 1974. Currently, the Town has a long-term lease with Z-Golf Food and Beverages LLC dba Wedgewood Weddings (Wedgewood) for use of portions of the Hacienda for weddings. The Town also uses portions of the Hacienda for offices, classes, recreational activities, Town Council workshops, and community meetings.

Pursuant to the terms of the Lease, Wedgewood pays the Town a base rent and a percentage rent, which is based on gross sales. Wedgewood also pays certain costs and expenses such as telephone, pest control, grease, routine maintenance of kitchen equipment, fire suppression equipment, governmental fees for licenses, and personal property taxes for all furniture, fixtures, equipment, and personal property licensed to Wedgewood. In addition, Wedgewood pays for cable television, satellite costs, internet services, and trash services.

Starting in 2024, the Lease required Wedgewood to pay, in addition to the base rent, \$48,000 per year into an account controlled by Wedgewood, with oversight by the Town, to be used for major repairs and capital purchases and improvements. Pursuant to the Lease, Wedgewood is responsible for maintaining and repairing certain non-structural, interior portions of the Hacienda while the Town is generally responsible for maintaining and repairing the structural portions of all buildings, the plumbing, HVAC, electrical systems, and the exterior site and grounds.

As part of its consideration of the Town's Fiscal Year ("FY") 2025-2026 and FY 2026-2027 biennial Operating and Capital Improvement Program Budget in June, the Council will be considering an Operating Budget and Asset Replacement Plan for the Hacienda. For FY 2025-2026 and FY 2026-2027, it is estimated that the Hacienda will have an operating budget of approximately \$300,000 primarily for maintenance and utilities. With regard to the Operating Budget, there are a number of considerations included in the expenses and revenues of the Hacienda such as rentals, fees, personnel, and maintenance costs.

With regard to the Asset Replacement Plan, this Plan provides a list of projects to be included in the Capital Improvement Program for the Hacienda. For the FY 2026 through FY 2030 Asset Replacement Plan, the following projects are identified for the Hacienda:

- Pavillion Flagstone Staircase - The proposed project would be a like-for-like replacement of the existing flagstone staircase. The proposed material may differ slightly due to safety or availability considerations, but the footprint and function will remain unchanged;
- Roof Replacement and Deck - The proposed project would replace the existing roof and integrated deck structure;
- Trash Enclosure - The proposed project would wall in an existing trash area to comply with current stormwater and public health codes by adding a roof and drainage to the trash enclosure area;
- HVAC - The proposed project would replace the aging HVAC system; and
- Exterior Paint - The proposed project would be to repaint the exterior to maintain existing facilities.

While Vice Mayor Hillis owns real property (his primary residence) within 500 feet of the Hacienda property line, his primary residence is over 500 feet from any of the structures, including the main house, on the Hacienda parcel. The Hacienda is not visible from his residence. The Hacienda is screened from public view by trees, walls, gates, and a row of homes.

As part of his role as the Vice Mayor, Vice Mayor Hillis also sits on a standing subcommittee known as the Audit and Finance Committee, comprised of two Councilmembers and three members of the public whose duties are to review the budget documents and make a recommendation to the full Council.

### ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).)

Vice Mayor Hillis has a real property interest in his residence, located less than 500 feet from the Hacienda property line.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[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. 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).”

Where, as here, an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[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.”

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental 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).) Given Regulation

18702.2(a)(7)'s reference to "the property line of the parcel," the relevant distance between a public official's real property and the real property at issue in a governmental decision, for purposes of the Act, is the distance measuring directly from parcel to parcel or "as the crow flies."

The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is not material if the decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage, or similar facilities. (Regulation 18702.2(d)(1).)

Based on the facts provided, decisions relating to the Operating Budget and Asset Replacement Plan for the Hacienda do not solely concern repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage, or similar facilities. While the Hacienda is publicly owned and a portion is used for community activities, it is also currently operated as a private wedding venue under a long-term lease with a private contractor. Accordingly, and notwithstanding the fact that the Asset Replacement Plan would generally involve replacing existing assets of the Hacienda, the replacement of the assets involves assets utilized for private commercial purposes. Under these circumstances, the assets identified are not facilities similar to streets, water, sewer, or storm drainage. Therefore, the exception under Regulation 18702.2(d)(1) does not apply.

The Hacienda's property line is located less than 500 feet from Vice Mayor Hillis's residence. Consequently, Vice Mayor Hillis is prohibited from taking part in the decisions unless there is clear and convincing evidence the decisions will not have any measurable impact on his real property. Although there is evidence of physical barriers between the two properties, there is not clear and convincing evidence of the decisions having no measurable impact on Vice Mayor Hillis's real property. Decisions relating to both the Operating Budget and the Asset Replacement Plan generally relate to the Town's responsibility for maintaining and repairing the structural portions of all buildings, the plumbing, HVAC, electrical systems, and the exterior site and grounds. In short, these decisions impact whether the Hacienda is well-maintained. Failure to maintain a historic site used for weddings and community gatherings, as well as other events, could impact the value of nearby properties. Accordingly, under the Act, Vice Mayor Hillis is prohibited from taking part in the decisions relating to the Operating Budget and Asset Replacement Plan.

If you have other questions on this matter, please contact me at [kcornwall@fppc.ca.gov](mailto:kcornwall@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel



By: Kevin Cornwall  
Senior Counsel, Legal Division

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