



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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(916) 322-5660 • Fax (916) 322-0886

November 21, 2022

Theresa Olivares
Assistant City Manager
City of Irwindale
5050 N Irwindale Avenue
Irwindale, CA 91706

Re: Your Request for Advice
Our File No. A-22-111

Dear Ms. Olivares:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

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.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Los Angeles County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

QUESTION

Does either the Act or Section 1090 prohibit you from taking part in decisions, including the decision to contract with a consultant, regarding the City Hall/Police Department Facility Needs Assessment and potential intensification/expansion decisions where your residential real property is located between 500 to 1,000 feet from this project?

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.

CONCLUSION

No. Because your property is separated by at least three city blocks of established residential and commercial buildings and there is no indication that the project would alter the character of your parcel or its market value, you do not have a prohibitive financial interest in your residential real property under the Act. For the same reasons, you do not have a financial interest under Section 1090 in a consultant contract for the facility needs assessment or construction contracts based on the needs assessment concerning the City Hall/Police Department facility.

FACTS AS PRESENTED BY REQUESTER

You are the Assistant City Manager for the City of Irwindale where you own a residence located approximately 940 feet from the grounds of the City Hall/Police Department. The residence is separated by at least three city blocks of established residential and commercial buildings.

The City will be performing a City Hall/Police Department facility needs assessment. The City Council will have to enter into a contract with a consultant to perform/assist with this assessment. You will be involved in the contracting process. The City Council will be considering and taking actions based on this needs assessment, such as construction contracts, which may result in expansion or intensification of the City Hall and Police Department facilities. While the City Hall/Police Department structure is not currently located within the 1,000 foot radius of your residence, there may be potential for expansion of the structure into the 1,000 foot radius of your home. Currently, the grounds are landscaped with grassy area and trees.²

ANALYSIS

The Act

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a 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 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests that is distinguishable from the decision's effect on the public generally.

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts presented and the decision at issue, an official has a potentially disqualifying conflict if the decision will have a reasonably foreseeable and material financial effect on an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Accordingly, we must analyze the potential financial effect of the decisions at issue on your interest in your residential property.

² On November 10, 2022, you confirmed that you have not taken part in any decisions related to the City Hall/Police Department Facility Needs Assessment.

Foreseeability and Materiality

Where, as here, the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) Therefore, you will have a financial interest in the relevant decisions if there is a realistic possibility the decisions will have a material financial effect on your real property interest.

Your residence is located approximately 940 feet from the Property at issue. Regulation 18702.2(a)(8), regarding real property within 500 to 1,000 feet from the property involved in a decision, is the applicable standard. Under Regulation 18702.2(a)(8), a decision's effect on an official's real property interest is material if the decision would change the parcel's market value, development potential, income producing potential, highest and best use, or character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality.

The City Hall/Police Department Facility is in close proximity to the Irwindale Public Library/Dan Diaz Recreation Center Capital Improvements Project, which was the subject of the *Miranda/Olivares* Advice Letter, No. A-22-029.³ There, the Commission analyzed whether the Act prohibited you from taking part in the Public Library/Dan Diaz Recreation Center Capital Improvements Project given your residence is located between 500 and 1000 feet from that project.

According to the facts in that matter, the building of the new Library and expansion of the Recreation Center were anticipated to substantially alter traffic levels, intensity of use, parking, and noise in the immediate neighborhood area. However, because your residence was not located in the immediate neighborhood of the area and was three blocks of residential and commercial buildings away from that project, the letter stated it was less likely that your residential neighborhood would experience an increase in construction noise and traffic, or parking disruptions given this distance. In addition, it stated your residence was less likely to see a market value change due to the project. The letter concluded that considering the size of the project and the fact that the project involves facilities and services already provided in the location, it was not reasonable foreseeable that the decisions would have a material effect on your real property interest under Regulation 18702.2(a)(8).

The same is true in the current situation. Assuming the City decides to expand the City Hall and Police Department Facility, thereby substantially altering traffic levels, intensity of use, parking, and noise in the immediate neighborhood area, it is less likely your residential neighborhood located three blocks of residential and commercial buildings away from the project would experience those effects. Nor is it likely that your residence will see a market value change due to the project. When considering the size of the project, which involves a facility and services already being provided at the location, it is not reasonable foreseeable that the decisions would have a material effect on your real property interest under Regulation 18702.2(a)(8).

³ The map provided for that request shows that the structures for the two projects are located on properties immediately adjacent to each other.

Accordingly, the Act does not prohibit you from taking part in decisions regarding the City Hall/Police Department Facility Needs Assessment and potential intensification/expansion decisions concerning the project.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) A contract that violates Section 1090 is void, and the prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn.5; 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

The facts state that in order to get a needs assessment for the City Hall/Police Department facility, the City Council must first enter into a contract with a consultant to perform this assessment. While you will be involved in the contracting process, you do not have a financial interest in the contract itself, for purposes of Section 1090, where it will simply provide the City with information or recommendations as to what improvements should be made to the facility. Moreover, there are no facts to suggest that you will have a financial interest in any of the construction contracts that will be based on the needs assessment.

Accordingly, Section 1090 does not prohibit you from taking part in contractual decisions concerning the City Hall/Police Department facility.⁴

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

Sincerely,

⁴ This conclusion is consistent with the California Supreme Court’s instruction in *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090-91, that Section 1090 should be harmonized with the Act when possible.

Dave Bainbridge
General Counsel

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

JW:aja