



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

November 3, 2023

Karen K. Goh  
Mayor  
City of Bakersfield  
1501 Truxtun Avenue  
Bakersfield, CA 93301

Re: Your Request for Advice

**Our File No. A-23-136**

Dear Ms. Goh:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under 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 Kern 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

Under Section 1090, may the City of Bakersfield City Council enter into a contract with Garden Pathways, Inc., awarding the company with a grant, when City Mayor, Karen Goh, is the President/CEO of Garden Pathways but has not been involved in any way in the grant process?

---

<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.

## CONCLUSION

Yes. Pursuant to Section 1091, Mayor Goh has a remote interest in the contract as she is the President/CEO of and receives a salary from Garden Pathways, Inc., a nonprofit entity; therefore, as long as she states her interest on the record and recuses herself from the decision, the City may enter a contract with Garden Pathways, Inc.

## FACTS AS PRESENTED BY REQUESTER

You are the Mayor of the City of Bakersfield (“City”). You are also the President/CEO of Garden Pathways, Inc., a nonprofit organization, in which you receive a salary. Garden Pathways has applied to the City for a California Violence Intervention and Prevention (CalVIP) grant.

The CalVIP grant provides funding for cities and community-based organizations with the goal of reducing violence the city and adjacent areas. You have not participated in the grant application, nor will you participate in the selection process. If the City chooses to award a grant to Garden Pathways, the City Council must consider for approval a contract with Garden Pathways. If Garden Pathways is awarded the grant, you will not be voting on or signing the contract. You are requesting advice as to whether the City can still award the grant under Section 1090 given your lack of participation in the process.

## ANALYSIS

Under Section 1090, city officers “shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are a member.” Section 1090 is “concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of” their respective agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) 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.) A contract that violates Section 1090 is void, 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.)

Section 1090 prohibits the use of a public position for self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124 [independent contractor leveraged his public position for access to city officials and influenced them for his pecuniary benefit]; *California Housing Finance Agency v. Hanover* (2007) 148 Cal.App.4th 682, 690 [“Section 1090 places responsibility for acts of self-dealing on the public servant where he or she exercises sufficient control over the public entity, i.e., where the agent is in a position to contract in his or her official capacity”]; *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090 [The purpose of Section 1090 is to prohibit self-dealing, not representation of the interests of others].)

Generally, when Section 1090 is applicable to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647-649.)

However, the Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a remote interest is present, the contract may be made if: (1) the officer discloses the interest in the contract to his or her public agency; (2) that interest is noted in the agency's official records; and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a).) If a noninterest is present, the contract may be made without the officer's abstention, and a noninterest generally does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

Pertinent to the present situation, Section 1091(b)(1) defines a "remote interest" to include :

That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

Here, because you are an officer of Garden Pathways, a nonprofit entity, your interest in any contract between the City and Garden Pathways would be considered remote, such that the contract would not violate Section 1090 as long as you disclose your interest to the City Council, have your interest noted in its official records, and recuse yourself from the contracting process.<sup>2</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

By:   
Valerie Nuding  
Counsel, Legal Division

VN:aja

---

<sup>2</sup> Because the Councilmember must abstain from taking part in the contract with Garden Pathways, we do not need to further analyze the potential conflict of interest issue under the Act. By following the abstention requirements of Section 1090 and additionally leaving the room during the decisions, the Councilmember would satisfy the Act's recusal provisions set forth in Section 87105 and Regulation 18707. As such, we do not analyze the Act's conflict of interest provisions.