



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 21, 2025

Richard D. Pio Roda
San Leandro City Attorney
Redwood City Public Law
409 13th Street
Suite 600
Oakland, California 94607

Re: Your Request for Advice
Our File No. A-25-100

Dear Mr. Pio Roda:

This letter responds to your request for advice on behalf of City of San Leandro (“City”) Councilmember Fred Simon regarding the Political Reform Act (“the Act”) and Government Code Section 1090.¹ Please note that we are only providing advice under the Act and Section 1090, and 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 Alameda 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 City Councilmember Fred Simon have a disqualifying interest in the Lewelling Boulevard Streetscape Project (“Bike Lane Project”) due to his ownership of his residence, located over 1,000 feet from the Bike Lane Project, or due to his property’s Homeowners Association (“HOA”) boundary located 850 feet from the Bike Lane 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, Councilmember Simon does not have a financial interest in the decision under the Act, as the facts do not rebut the presumption that there will be no material financial effect on his property as a result of the Bike Lane Project decisions. Under Section 1090, there is not a sufficient connection between the contract decisions in question and the official's real property interest based on its location, nor do the facts indicate there will be any contracts that may result in increased or decreased expenditures or services for the HOA and its members. Councilmember Simon does not have a disqualifying interest in the Bike Lane Project decisions under Section 1090 related to his residential real property and HOA membership.

FACTS AS PRESENTED BY REQUESTER

The City has a current population of 85,784 and is approximately 15 square miles. Councilmember Simon currently owns a home located on Atlantus Road in San Leandro, which serves as his personal residence (the "Property"). The total fair market value of Councilmember Simon's economic interest in the Property is over \$2,000.

In 2022, the City of San Leandro applied for and received grant funds from the Alameda County Transportation Commission's Comprehensive Investment Plan. The proposed project, the Lewelling Boulevard Streetscape Project ("Bike Lane Project"), aims to improve the existing Class II bike lanes on Lewelling Boulevard between Wicks Boulevard and Washington Avenue. The Protected Class IV bike lane conversion will create a protected barrier between bicyclists and vehicles, improving riding conditions along the corridor. Though the Project may alter traffic levels on Lewelling Boulevard, the area is already in use as a major corridor for vehicle and bicycle traffic. The Bike Lane Project's nearest point to Councilmember Simon's Property is the intersection of Lewelling Boulevard and Wicks Boulevard, over 1,000 feet from his Property. His property is within a residential area, and located seven residential blocks from Lewelling Boulevard. The boundary of the HOA closest to the Project is approximately 850 feet away from the nearest point of the Bike Lane Project. Additionally, you state that there is no evidence to suggest that the HOA's character, development potential, highest or best use, or income-producing potential would be altered by the Project.

As a member of the City Council, Councilmember Simon will, in the future, have the opportunity to provide input on the Project. In particular, the City Council may be asked to approve uses of the grant funding, approve agreements with design consultants, engineers, and general contractors performing work for the Project, and accept the Project as complete at its conclusion.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial

effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).)

Section 87103 defines "financial interests" to include, relevant to these facts, an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) However, real property in which an official has a financial interest does not include any common area as part of the official's ownership interest in a common interest development as defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq.), including common interest property owned by a homeowners association. (Regulation 18702.2(d)(4); see also Cal. Civ. Code Sections 4080 & 4200.) As such, while Councilmember Simon has a real property interest in his primary residence, he does not have a real property interest in the HOA-owned subdivision or its common areas for purposes of the Act. We examine whether it is reasonably foreseeable that the Bike Lane Project decisions will have a material financial effect on his residential property located over 1,000 feet away.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. Regulation 18701(a) states that a financial interest is "the subject of" a proceeding under certain criteria, including where the decision affects a real property financial interest as described in the regulation setting forth the real property materiality standard, Regulation 18702.2, items (a)(1)-(6).² Where an official's economic interest is not explicitly involved in the governmental decision, as we have here, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). It states, "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."

Relevant to a government decision involving property located more than 1,000 feet from the official's parcel, Regulation 18702.2(b) states that the financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence.

Here, the facts do not rebut the presumption. The facts provided state that Lewelling Boulevard, the site of the Bike Lane Project improvements, is already in use as a major corridor for vehicle and bicycle traffic. The improvements will upgrade the existing Class II bike lanes on Lewelling Boulevard by adding a protected barrier between bicyclists and vehicles. The improvements may affect traffic levels and will occur between two major streets, the closest of which, Wicks Boulevard, is over 1,000 feet away from the official's residence. Therefore, it is not

² Regulation 18702.2(a)(6) states that an official's property is the "subject of a decision" where that decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the [official's] parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. However, this decision, which does involve the construction of improved bike lanes on Lewelling Boulevard, will provide improved services and traffic disruptions but will not provide disproportionate benefits or determinants to the official's property.

reasonably foreseeable that the Bike Lane Project decisions would have a material financial effect on the official's property, and Councilmember Simon does not have a disqualifying interest in the decisions.

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.) Section 1090 is intended not only to strike at actual impropriety but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Importantly, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is typically precluded from entering into the contract. (*Id.*, see also *Stigall v. City of Taft*, *supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

Decisions regarding the uses of the grant funding, agreements with design consultants, engineers, and general contractors performing work for the Project, and accepting the Project as "complete" under the contract are all decisions in the nature of a contract and subject to Section 1090. Section 1090 prohibits any City Council member from participating in contract decisions or negotiations where a council member has a financial interest in the decision. Additionally, we have previously advised that an official who is a HOA member has a financial interest in contract decisions between the agency and the official's HOA for enhanced services or contracts that may result in increased or decreased expenditures for the HOA and its members. (See, for example, *Summerhill* Advice Letter, A-24-128, the city's agreement to reimburse a HOA's infrastructure costs was a benefit to the HOA and the councilmember had a financial interest in the agreement as a member of the HOA.)

However, an official has a financial interest in a contract only when there is a sufficient connection between the contract in question and the interest held by the official. In this matter, Councilmember Simon does not have a financial interest in the Bike Lane Project contract decisions under Section 1090 solely because his residential property is located in the area. Similarly, Councilmember Simon does not have a financial interest in the contract decisions due to his HOA's boundary location of 850 feet from the Bike Lane Project area, where there is no indication of financial benefit or detriment to the HOA or its members. Barring additional facts, Section 1090 does not prohibit Councilmember Simon from making or participating in a Bike Lane Project decision.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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