



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

September 1, 2015

Caroline L. Fowler  
City Attorney  
Office of the City Attorney  
100 Santa Rosa Avenue, Room 8  
Santa Rosa, CA 95404

Re: Your Request for Advice  
**Our File No. A-15-145**

Dear Ms. Fowler:

This letter responds to your request for advice on behalf of Council Member Erin Carlstrom regarding the conflict of interest provisions of the Political Reform Act (the “Act”)<sup>1</sup> and Section 1090. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate.

Regarding our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General’s Office and the Sonoma 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).)

## QUESTIONS

1. Does Section 1090 preclude the City of Santa Rosa from entering contracts with PG&E (or third party vendors where there may be some resulting impact on PG&E) based on Council Member Carlstrom’s employment with PG&E.

2. Do the Act’s conflict of interest provisions prohibit Council Member Carlstrom from participating in any of the potential decisions relating to PG&E described below?

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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 18110 through 18997 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.

## CONCLUSIONS

1. No. Because there are no facts to suggest Council Member Carlstrom has a financial interest in the potential contracts with PG&E, Section 1090 does not preclude the City of Santa Rosa from entering into such contracts.

2. As explained below, Council Member Carlstrom may not participate in any of those decisions that will have a reasonably foreseeable material financial effect on PG&E.

## FACTS

Council Member Carlstrom has been hired by Pacific Gas & Electric Company (PG&E), a subsidiary of the publicly traded PG&E Corporation, to be a “Government Relations Representative.” The position is summarized as follows:

Work with the Local Government Relations team to develop and maintain a strong governmental, political and community network to engage various agencies and officials in the North Bay. This is a new position within the Local Government Relations organization and represents a singular focus on supporting a single major PG&E Project.

Some of her responsibilities will require her to:

- Develop and maintain strong governmental, political and community network in support of Line of Business’s goals and priorities.
- Provide oversight to public outreach consultants working on various projects.
- Work with consultants and contractors to develop collateral material, presentation and setup meetings as needed.
- Review and coordinate approval of project communications as needed.
- Work with Local Government Relations representatives to keep abreast of local political and legislative issues.

In addition, PG&E has prepared an Outside Employment Mitigation Agreement which provides further clarification of Council Member Carlstrom’s duties as PG&E employee as well as her responsibilities as a Council Member. The Agreement identifies potential situations in which a conflict of interest may arise and mitigation actions Council Member Carlstrom must take. In this regard, PG&E and Council Member Carlstrom have advised the City that she will not work on any projects within the City of Santa Rosa and that her employment will not involve lobbying of any Santa Rosa officials or representatives, or any interaction with City staff on their behalf. Her salary is anticipated to fall within the Form 700 reporting category of \$10,000-\$100,000 per year.

Council Member Carlstrom is currently the City’s representative on the Sonoma County Transportation Authority (“SCTA”) board, which administers Measure M funds (local transportation sales tax revenue). It acts as the county-wide planning and programing agency for transportation and lobbies for transportation funding. In addition, members of the SCTA board also

act as representatives in the Regional Climate Protection Agency (“RCPA”), which coordinates the regions climate protection plan and improves coordination on climate change issues and reduction of greenhouse gases. The RCPA does not have any regulatory authority over PG&E.

The City may enter into contracts involving or potentially impacting PG&E. For example, the City has previously received grants from PG&E to install energy efficient improvements in its facilities. These grants require the City to enter into a grant agreement with PG&E. In addition, the City has a long established Franchise Agreement with PG&E for the use of the City’s right of way for its transmission lines. There may be a need to amend this agreement at some point in the future. Finally, items may come before the City Council for purchase of energy efficient goods or products such as LED lights for street lights or use of solar panels. Such agreements are not with PG&E but rather with third party vendors. The City currently purchases its power from Sonoma Clean Power, however PG&E is the distributor for the energy under guidelines set by the CPUC.

Finally, the City Council is currently in the process of an annual evaluation, including compensation issues, with respect to the City Attorney and the City Manager. You have asked whether she may participate in decisions concerning their compensation because her employment with PG&E may benefit from relationships with these two City employees.

## ANALYSIS

### **Conflict of Interest under 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. 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) 103Cal.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.) Finally, 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. Instead, the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

We normally employ a six-step analysis to determine whether an official has conflict of interest under Section 1090. Council Member Carlstrom is an official subject to Section 1090 (Step One) who will be participating in decisions to approve contracts between the City and PG&E (Steps Two and Three).

**Step Four: Does Council Member Carlstrom have a financial interest in the potential contracts?**

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest” (*People v. Honig, supra*, 48 Cal.App.4th at p. 333), and officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although section 1090 nowhere specifically defines 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. (*Thomson v. Call, supra*, 38 Cal.3d at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

In *Eden Township Healthcare Dist. v. Sutter Health* (2011) 202 Cal.App.4th 208, the First District Court of Appeal found that, under Section 1090, “if the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract. . . .” (*Id.* at p. 228.) In analyzing the “financial interest” element of Section 1090, the court noted that in prior cases where a prohibited conflict was found, “the party who was found to have had a prohibited financial interest received a tangible benefit that arose out of the contract at issue.” (*Id.* at 226.) The court further noted that, although the public official who was alleged to have violated Section 1090 participated in his official capacity in making a contract with his private employer, there was no evidence that the contract would affect the official’s “salary, benefits, or status.” (*Id.* at p. 227.) Put another way, the “mere prospect that the official’s judgment will be colored because he or she receives income from the party with whom the official’s agency is contracting” is not enough, in itself, to violate Section 1090. (*Ibid.*)

You have generally identified possible contracts between the City and PG&E that include grants from PG&E to install energy efficient improvements in City facilities, amendment of a Franchise Agreement with PG&E for the use of the City’s right of way for its transmission lines and the purchase of energy efficient goods or products third party vendors that may have some impact on PG&E. Consistent with the findings in *Eden*, the main issue distills to whether these potential contracts will benefit Council Member Carlstrom directly or indirectly in the form of a “tangible benefit” such as impacting her “salary, benefits, or status.” You have provided no facts to suggest that such a tangible benefit will arise out of any of the potential contracts described. For example, there is no indication the Council Member will receive any type of bonus or pay raise as the result of the contracts, or that those contracts bear any relationship to her continued employment with PG&E.

Accordingly, based on the facts you have provided, Council Member Carlstrom and the Santa Rosa City Council will not violate Section 1090 by entering into the contracts described.<sup>2</sup>

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<sup>2</sup> Of course, if at some point new facts emerge that would change this analysis, we urge you to request further advice based on the new facts.

**Conflict of Interest under the Act:**

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has a financial interest.

Financial interests include:

- Any real property in which the public official has a direct or indirect interest of at least \$2,000. (Section 87103(b).)
- Any business entity in which the public official has a direct or indirect investment worth at least \$2,000 and any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a) and (d).)
- Any source of income, such as a business entity, from which the official has received income of \$500 or more within 12 months before the decision. This also includes income from any client of the business entity of at least \$500, provided to and received by the public official within 12 months before the decision is made. (Section 87103(c).)
- Any donor of gift(s) amounting to a total of at least \$460 within 12 months before a decision is made. (Section 87103(e).)
- A public official's own personal finances, or those of a member of his or her immediate family. (Section 87103.)

Council Member Carlstrom is a public official with a financial interest in PG&E as a business entity and as a source of income.

**Foreseeability**

A financial interest is explicitly involved, and thus the financial effect is presumed reasonably foreseeable, if the financial interest is the subject of a governmental decision before the official or the official's agency. (Regulation 18701(a).) 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. (Regulation 18701(a).)

Where there is no presumption of foreseeability under Regulation 18701(a), the applicable foreseeability standard is set forth in Regulation 18701(b) as follows: "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."

*Evaluations of City Manager and City Attorney:*

Here, PG&E is not explicitly involved in the decision so there is no presumption of foreseeability. Thus, there must be a realistic possibility that Council Member Carlstrom's participation in the annual evaluations, which include issues of compensation, regarding the City Manager and City Attorney will have a financial effect on PG&E. Based on your general statement that her employment with PG&E may benefit from relationships with these two City employees, we are unable to conclude that such financial effect is reasonably foreseeable. Therefore Council Member Carlstrom may participate in the evaluations.

*Regional Climate Protection Agency:*

As stated above, as a member of the Sonoma County Transportation Authority, Council Member Carlstrom also acts as representative in the Regional Climate Protection Agency ("RCPA"), which coordinates the regions climate protection plan and improves coordination on climate change issues and reduction of greenhouse gases. As a representative in the RCPA, she may vote on greenhouse reduction goals.

Here again, there is no indication that PG&E is explicitly involved in such decisions so there is no presumption of foreseeability. And you have provided no facts to support the conclusion that there is a realistic possibility that Council Member Carlstrom's participation in votes on greenhouse reduction goals will have any financial effect on PG&E.

*PG&E Grants and Franchise Agreement:*

As mentioned, the City Council may have to vote on certain grants and a franchise agreement with PG&E. Because PG&E will be explicitly involved in the decisions, the financial effect is presumed reasonably foreseeable.<sup>3</sup> In addition, such financial effect is material because PG&E "is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding." (Regulation 18702.3(a)(1).)

Accordingly, Council Member Carlstrom would have a disqualifying financial interest in these decisions and is prohibited from voting on, directly participating in, or influencing them. Section 87105 and Regulation 18707 require her to publicly identify each type of financial interest involved that gives rise to the disqualifying conflict of interest. The identification must be made after the announcement of the agenda item to be discussed or voted upon, but before the discussion or vote commences. She must also recuse herself and leave the room after identifying the forms of conflict.

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<sup>3</sup> However, with respect to the City's purchase of energy efficient goods or products from vendors other than PG&E, or its purchase of power from Sonoma Clean Power, PG&E is not explicitly involved in those decisions and a financial effect cannot be reasonably presumed. Additionally, there are simply no facts to suggest a realistic possibility that these decisions will have any financial effect on PG&E. Therefore, Council Member Carlstrom may participate in such decisions.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Jack Woodside  
Senior Counsel, Legal Division

JW:jgl