



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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November 22, 2022

Celeste Stahl Brady  
Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660

Re: Your Request for Advice  
**Our File No. A-22-118**

Dear Ms. Brady:

This letter responds to your request for advice on behalf of South Gate City Councilmember Gil Hurtado 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

Given the determination under Regulation 18702.5(a) that the City’s decision to select a waste hauling service provider would have a reasonably foreseeable and material impact on his personal financial interest in the value of his mobile home, is Councilmember Hurtado required to recuse himself from City Council actions to approve payments made under the contract?

### CONCLUSION

No. The facts do not indicate it is reasonably foreseeable that his financial interest in his mobile home’s value would be materially affected by this action under Regulations 18701(b) and 18702.5(a). Therefore, his participation in the action is not prohibited under the Act. Additionally, to the extent that the payment action meets the definition of a ministerial action, detailed below, his participation would not meet the definition of “making or participating in making a decision” under

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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.

Regulation 18704(d)(1) and the conflict of interest provisions would not be applicable to the action.<sup>2</sup>

### FACTS AS PRESENTED BY REQUESTER

In a previous advice letter, *Brady* Advice Letter A-22-027, staff advised Councilmember Hurtado that he had a reasonably foreseeable and material personal financial interest in his mobile home related to the City's decision to select a waste hauling service provider and that he may not participate in this decision. His mobile home is his personal property, and he leases the mobile home's lot space on a monthly basis. His mobile home lot is located adjacent to the Green Waste Recycling Center. In the event that Universal Waste Systems ("UWS") was selected to provide waste hauling services, the Green Waste Recycling Center was expected to experience an increase in activity causing an increase in noise, traffic, and airborne particulate matter in the nearby area, which had the potential to impact the value of his mobile home. In a decision in which the official did not participate, the City selected UWS as their waste hauling service provider. Now the City requests advice on whether the official must recuse himself from all future decisions involving the UWS contract, and specifically identified an upcoming action the City Council will consider involving an approval of payments made by the City under the contract.

In response to our request for additional information you provided the following information by email: In January, and each month after, the City will take action on a "warrant resolution" or "warrant run" that will include payments to UWS under the contract, as well as other payments to other parties. This is usually on a consent calendar with action by the City Council on the full warrant run. Typically the City Council is presented with a list of a series of payments, checks issued, by the City to pay its vendors for goods and services rendered. This occurs at the end of each City Council meeting as an agenda item that calls for the approval of all listed warrants/payments.

### ANALYSIS

#### *The Act*

Section 87100 prohibits any 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. 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).) Councilmember has identified a financial interest in his personal finances related to his mobile home, relative to this request.

As noted in the previous letter, the standard applicable to determine if the decision will have a reasonably foreseeable effect on his interest where his interest is not explicitly involved in the

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<sup>2</sup> We caution that our conclusion is based on the facts provided and limited to approval of payments on the consent calendar for services already rendered. To the extent that there are any indications that a payment or services provided are subject to dispute or that the approval or rejection of a payment may result in a change in the services provided under the contract or to the contract itself, Councilmember Hurtado should seek additional advice prior to taking part in the decision providing the factual circumstances known at the time.

decision, is if the effect can be recognized as a realistic possibility, more than hypothetical or theoretical. (18701(b).) Under Regulation 18702.5(a), a governmental decision's reasonably foreseeable financial effect on a public official's financial interest in personal finances is material "if the decision may result in the official receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision."

Here, the approval of payment for services rendered under the UWS contract does not appear to have any realistic possibility of having a financial impact on his mobile home's value. Therefore, Councilmember Hurtado is not prohibited from taking part in this action under the Act related to his interest in his mobile home.

Additionally, it appears that this type of action will meet the definition of a "ministerial" action, so long as the official has no discretion as to the whether the payments will be made and the amount that will be paid. Under Regulation 18704(d)(1), an official is not "making or participating in making a government decision" if the official's actions are solely ministerial, secretarial, manual, or clerical. The exception for ministerial actions is not specifically defined in the Act and has been narrowly construed. (*Torrance* Advice Letter, No. A-94-043.) "Ministerial" actions include those that do not involve discretion as to the results or performance or are pursuant to a clear objective. (*Id.*) Examples of ministerial actions include: the approval of an expenditure so long as the official had no discretion as to whether the expenditure would be made or the amount (*Klein* Advice Letter, No. A-84-152 and *Smith* Advice Letter, No. A-93-215); and the approval of board minutes, where comments are limited to accuracy issues (*Hickman* Advice Letter, No. A-15-086). In the *Smith* Advice Letter, *supra*, we advised that a city councilmember with a financial interest in a utility company could vote to approve payment of the city's monthly utility bills if the city council had no discretion as to whether or how much will be paid, as such action would be deemed a ministerial act. If there is a dispute over whether or how much will be paid, the action is not ministerial, and the official would be prohibited from participation.

The facts indicate that the warrant action is a consent item for approval of payments already made by the City and include those made under the contract with UWS. So long as Councilmember Hurtado has no discretion as to whether the payment is made or as to amounts, then the action meets the definition of a ministerial action and is not subject to the Act's conflict of interest prohibitions.

In the future, if Councilmember Hurtado is uncertain of potential conflicts regarding a specific governmental decision on the UWS contract, he may want to seek additional advice regarding that specific decision.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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