



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

November 9, 2023

Roxanne Diaz
Hidden Hills City Attorney
350 South Grand Avenue
37th Floor
Los Angeles, CA 90071-3101

Re: Your Request for Advice
Our File No. A-23-161

Dear Ms. Diaz:

This letter responds to your request for advice on behalf of City of Hidden Hills (“City”) Council Member Joe Loggia regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹

Please note that we are only providing advice under the conflict of interest provisions of 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. Lastly, the Commission does not provide advice with respect to past conduct. Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

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).)

QUESTIONS

Does Council Member Loggia have a disqualifying financial interest under the Political Reform Act or Section 1090 related to the City’s upcoming decision on a solid waste franchise agreement, including extending an existing agreement or entering into a new agreement with Waste

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.

Management or issuing a request for proposals given Council Member Loggia's recent sale of his shares of stock in Waste Management?

CONCLUSIONS

No. Under the Act, Council Member Loggia has neither a business entity interest nor a source of income interest in Waste Management related to the sale of his Waste Management stock shares, as discussed below. Therefore, he does not have a prohibitive financial interest in the decision under the Act. Similarly, the facts indicate that he does not have any remaining financial ties to Waste Management in regard to the upcoming decision and, therefore, does not have a financial interest in the decision under Section 1090. Based on the facts provided, neither the Act nor Section 1090 precludes Council Member Loggia from taking part in the decision.

FACTS AS PRESENTED BY REQUESTER

The City has an exclusive solid waste franchise agreement with Waste Management for solid waste and recycling collection, transportation, processing, and disposal services ("solid waste services") dated December 12, 2016 ("Solid Waste Agreement"). The Solid Waste Agreement is for a term of seven years with an option for an additional three-year extension. If not extended, the Solid Waste Agreement will terminate on December 31, 2023. Waste Management has requested a three-year extension to the Solid Waste Agreement or alternatively has proposed a new ten-year solid waste agreement.

The proposed extension or alternative proposal came before the City Council for their discussion and/or approval at the October 23, 2023, City Council meeting. The City Council did not make a decision on the proposed extension or alternative proposal from Waste Management. Instead, the Council directed City staff to obtain the services of a consultant to assist the City in this matter. This matter will return to the City Council prior to December 31, 2023, for City Council discussion and action. The possible outcomes include an extension of the Solid Waste Agreement or a new agreement with Waste Management or the issuance of a request for proposals for solid waste services wherein solid waste companies, including Waste Management, may submit a proposal for entering a new solid waste franchise agreement.

Council Member Loggia previously had an investment worth \$2,000 or more in Waste Management as the owner of Waste Management stock. This stock is registered with the Securities and Exchange Commission. On October 23, 2023, Council Member Loggia sold his investment in Waste Management stock through his personal licensed investment advisor. It was traded on a stock exchange, and Council Member Loggia does not know the purchaser's identity.

Council Member Loggia did not participate in the matter regarding the extension of the Solid Waste Agreement when it came before the City at the October 23, 2023, City Council meeting. Before the item was heard, Council Member Loggia disclosed that he was the owner of Waste Management stock, had sold the stock that morning, and was going to recuse himself. On October 23, 2023, Council Member Loggia sought informal telephone advice from the FPPC regarding the sale of the stock and was advised not to participate in the matter and seek a formal opinion from the FPPC.

ANALYSIS

The Act

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” The financial interests that may give rise to an official’s disqualifying conflict of interest under the Act are set forth in Section 87103. Among those specified economic interests are “[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more,” and “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(a), (c).)

Financial Interest

Under Section 82034, any financial interest in a security issued by a business entity, including common stock, is an “investment.” Before selling his stock on October 23, 2023, Council Member Loggia had a business entity interest in Waste Management due to his investment in the stock shares of the business worth \$2,000 or more. Upon selling the shares, he no longer has a business entity interest in Waste Management.

As to the proceeds from the sale of his stock, the Act’s definition of “income” exempts stock sale proceeds so long as the securities are registered with and sold on the Securities and Exchange Commission of the United States government and the official does not know or have reason to know the identity of the purchaser. (Section 82030(b)(12).) The facts indicate that Council Member Loggia’s sale meets these requirements, and the proceeds are exempt from the definition of income under Section 82030(b)(12). Therefore, Council Member Loggia has neither a business entity interest nor a source of income interest in Waste Management at present due to the sale of his stock, and he is not prohibited from taking part in the decisions under the Act.

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 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.) Section 1090 is a separate body of law and requires a separate analysis related to whether an official is “financially interested” in the making of a contract.

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.) An officer is conclusively presumed to be involved in the making of agency contracts when the officer is a member of a board or commission that has the authority to execute the contract at issue. (*Id.* at pp.

645 and 649.) Significantly, 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; the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647-649.)

Financial Interest

At issue is whether Council Member Loggia has a financial interest in Waste Management related to the upcoming decisions on the City's Solid Waste Agreement under Section 1090 due to the recent sale of his stock.

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. (*Thomson v. Call*, supra, at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Furthermore, case law and statutory exceptions to Section 1090 make clear that the term "financially interested" must be liberally interpreted. It cannot be interpreted in a restricted and technical manner. (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1298.) The phrase "financially interested" broadly encompasses anything that would tie a public official's fortunes to the existence of a public contract. (*Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1335.) Additionally, the Legislature has defined certain financial interests involved in a contract as "remote interests" in Section 1091 or "noninterests" in Section 1091.5, which provide particular exceptions to the Section 1090 prohibitions on participation.

In this case, Council Member Loggia's Waste Management stock was sold on October 23, 2023, and he is no longer a stockholder in the company. Further, no facts indicate Council Member Loggia has any additional circumstances that would tie his finances to Waste Management at this time, including any contract between Waste Management and the City. Therefore, there is no indication that he has a financial interest in this decision under Section 1090, and he is not prohibited from taking part in the decisions. Similarly, the City is not prohibited from entering into the agreement.

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
Counsel, Legal Division

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