



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 1, 2025

Alisha Patterson
City Attorney
Rutan & Tucker
18575 Jamboree Road, 9th Floor
Irvine, CA 92612

Re: Your Request for Advice
Our File No. A-25-024

Dear Ms. Patterson:

This letter is in response to your request for advice regarding the Political Reform Act¹ and Section 1090. 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, 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 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 the Act or Section 1090 prohibit Councilmember Ed Reece from participating in governmental decisions relating to the City's proposed Tenant Protection Measures, given that he owns rental properties in the City of Claremont?

CONCLUSIONS

Under the Act, it is reasonably foreseeable that decisions regarding the Tenant Protection Measures 1 and 3-5, identified below, may have a material financial effect on Councilmember Reece's interests in his real property. However, the "public generally" exception applies so long as the decisions apply to all residential rental properties within the jurisdiction (other than those excepted by the Costa-Hawkins Rental Housing Act) Based on the facts provided, and so long as

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.

Councilmember Reece has no other interest in the decision other than those identified herein, the Act:

- Prohibits him from taking part in decisions regarding Measure 1, which does not apply to all residential rental properties.
- Does not prohibit him from taking part in decisions regarding Measure 3, which applies to all residential rental properties.

Regarding Measures 2, 4, 5, and 6, there is insufficient information available to provide a definitive conclusion. However, as discussed in detail below, we can generally advise that Councilmember Reese will be permitted to take part in decisions regarding Measures 4 and 5, but only if the City first finds that those measures apply to all residential rental properties in the jurisdiction. For Measures 2 and 6, the facts provided do not sufficiently identify a specific decision before the City. Thus, prior to taking part in any decision involving these measures, Councilmember Reece should seek additional advice if he needs assistance regarding the application of the conflict of interest provisions once the specific nature of the decisions can be more fully described.

Similarly, under Section 1090, based on the facts provided, we cannot determine whether owning residential rental properties constitutes an interest in a contract until a potential contract is identified. We therefore recommend that Councilmember Reece seek additional advice as needed for a decision involving a particular contract when more information is available.

FACTS AS PRESENTED BY REQUESTER

The City of Claremont's City Councilmembers are elected by district. Councilmember Reece is the elected City Councilmember for District 2. He owns three or fewer residential rental units in the City as a revokable trust, and he also owns twelve non-residential rental units in the City as a limited liability corporation. Each of the rental units provides income to the Councilmember in excess of \$500 in any 12-month period.

There are at least six Tenant Protection Measures (Measures) that will likely come before the City Council. All of these Measures would be limited to residential rental properties.

Measure 1. Eviction Control. The City Council may consider amendments to the City's existing Just Cause for Eviction Ordinance, codified at Chapter 8.34 of the Claremont Municipal Code (CMC). This Ordinance created heightened protections for a tenant who is facing eviction resulting from a landlord's desire to substantially remodel or demolish the tenant's rental unit. This Ordinance is not "applicable to all residential rental properties within Councilmember Reece's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act. (Civil Code §§ 1954.40, et seq.)" For example, the Just Cause for Eviction does not apply "to residential tenancies in a building or in a complex of commonly owned buildings with nine or fewer rental units."² (CMC § 8.34.010(B).)

² The Just Cause for Eviction Ordinance also does not apply to "the types of residential real properties or residential circumstances that are exempt from AB 1482's just cause eviction provisions set forth in subsection (e) of Section 1946.2 of the California Civil Code" (CMC § 18.34.010(B)), but these are the same as units "excepted by the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.40, et seq.)." (Regulation 18703(e)(4).)

Measure 2. Tenant Assistance Program. On an ongoing basis, the City will need to consider whether to continue appropriating funding for the City's existing Temporary Housing Stabilization and Relocation Program, which provides financial assistance to qualifying residential renters and housing providers on a City-wide basis. The City Council may also consider changes to the Program's guidelines, such as eligibility criteria.

Measure 3. Rental Registry. The City Council will consider whether to pursue the creation and maintenance of a City-wide residential rental registry to account for each of the City's residential rental units and rents charged over time. If implemented, the rental registry would impact residential rental property owners City-wide by imposing new reporting obligations, such as providing information about each of their rental units to the City on an ongoing basis, and likely fees to pay for the costs of implementing and maintaining the registry.

Measure 4. Rent Stabilization/Rent Control. The City Council will consider whether to pursue rent stabilization or rent control measures. If ultimately adopted, these measures would have financial impacts on residential rental property owners. For instance, these measures would decrease the potential rental value of properties by limiting the amount rent can be increased each year. Without direction from the City Council, it is not yet known whether these measures would be applicable to all residential rental properties within Councilmember Reece's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act.

Measure 5. Anti-Harassment Measures. The City Council will consider whether to pursue anti-harassment measures to better protect residential tenants from harassment and retaliation. If ultimately adopted, these measures would potentially have financial impacts on residential rental property owners. For instance, these measures would likely impose financial penalties as a punishment for harassing or retaliatory conduct. Staff anticipates these measures would be applicable to all residential rental properties within Councilmember Reece's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act.

Measure 6. Ongoing Contracting and Budgeting Decisions Relating to Tenant Protections. Each of the above-listed Measures requires ongoing contracting decisions and budget appropriations that must be approved by the City Council. For example, if the City Council approves the rental registry, that work will likely be performed by a third-party consulting firm pursuant to a contract.

ANALYSIS

A. The Act.

Under 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 official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." (Section 87100.) "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of

the official's immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests are:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, 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.)

As a landlord, Councilmember Reece has a business entity interest in his rental units. He also has real property interests in the underlying properties, as well as source of income interests in his rental business as well as his tenants. Whether he will be able to take part in any governmental decisions revising or implementing the Measures will depend on whether it is reasonably foreseeable the decision would have a material financial effect on any of those economic interests.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision:

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. 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, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

Where an official's economic interest is not explicitly involved in the governmental decision, Regulation 18701(b) sets forth the applicable standard for determining the foreseeability of a financial effect on the economic interest:

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. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the official's real property is the subject of the governmental decision under Regulation 18702.2(a)(1)-(6). This includes any governmental decision that:

- Involves the adoption of or amendment to a development plan or criteria applying to the parcel;

- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel; or
- Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property.

(Regulation 18702.2(a)(1), (3) and (5).)

Under the above standards, decisions regarding Measures 1, 3, 4, and 5 would impact the entitlements or permissible uses of the rental properties. Measure 1 would add conditions to a landlord's desire to substantially remodel or demolish the tenant's rental unit. Measure 3 would impose new reporting obligations for a rental registry. Measure 4 would impose rent stabilization or rent control measures that would financially impact residential rental property owners. Measure 5 would create residential tenant protections that could potentially have financial impacts on residential rental property owners. Accordingly, the property interests are explicitly involved in these decisions because each decision would involve the issuance, renewal, approval, denial or revocation of an entitlement to the financial interest. Moreover, it is reasonably foreseeable the decisions will have a material financial effect on the properties under Regulation 18702.2(a)(1)(6).

It is also reasonably foreseeable that the decisions will have a material financial effect on Councilmember Reece's interests in his rental business under Regulation 18702.1(a)(4)(A), which provides that a reasonably foreseeable financial effect on a business entity is material if the official knows or has reason to know the business has property explicitly involved in the decision.³ Consequently, unless an exception applies, Councilmember Reece is prohibited from taking part in decisions regarding Measures 1 and 3 through 5.

Notably, we are unable to fully analyze Councilmember Reece's involvement in Measures 2 or 6. The application of the Act's conflict of interest provisions is fact-specific and requires case-by-case analysis based on the specific factual circumstances of the decision before the official. However, Measure 2 is described only as a continued appropriation of funds for assistance to tenants and some landlords that may include changes to the qualification requirements. The details of the program are not provided, nor are the proposed changes to the qualification requirements. For instance, there is no indication of the scope of the program, whether it could potentially boost the rental market, or whether the Councilmember qualifies as a landlord for assistance under existing or proposed criteria. Similarly, the facts provided regarding Measure 6 lack the specificity needed to provide a thorough analysis. The facts state only that Measure 6 involves various contracts and budget appropriations as needed to implement the various Measures, but a specific governmental decision or contract has not been identified.

Based on the facts provided, our advice would be too speculative without a more specific description of the decisions before the City. Thus, we reach no determination regarding whether the Councilmember can take part in these decisions and can only generally advise that he recuse himself from the decisions unless he can determine it is not reasonably foreseeable the decisions will have a financial effect on his interest under the standards above. Should Councilmember Reece

³ Because no facts have been provided regarding Councilmember Reece's tenants as sources of income, we do not analyze whether decisions on the Measures would have a reasonably foreseeable, material financial effect on them aside from their leasehold interests.

need additional assistance regarding his involvement in decisions regarding Measures 2 or 6, he should seek additional advice once the specific nature of the decisions can be more fully described.

Public Generally Exception

As discussed above, the decisions regarding Measures 1, 3, 4, and 5 would have reasonably foreseeable, material financial effects on Councilmember Reece's real property and rental property business interests. However, the "public generally exception" allows an official, otherwise disqualified from taking part in a decision, to take part in some decisions. Under the Act's conflict of interest provisions, a public official is only disqualified from taking part in a governmental decision if it would have a reasonably foreseeable, material financial effect on an economic interest *distinguishable from the effect on the public generally*. (Section 87103 [emphasis added].)

Regulation 18703 sets forth the public generally exception and includes a provision specifically relating to rental properties, providing:

The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes ... [t]he decision is limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property, including a decision regarding a rent control ordinance or tenant protection measures, provided all of the following criteria are met:

(A) The decision is applicable to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.40, et seq.).

(B) The official owns three or fewer residential rental units. For purposes of this regulation, a residential rental unit is each individual unit consisting of a single-family household.

(C) The only interests affected by the decision are:

(i) Interests resulting from the official's lease of residential real property, as the lessor of the property.

(ii) An interest in the official's primary residence as either a lessee or owner of the property.

(Regulation 18703(e)(4).)

Councilmember Reece owns three or fewer residential rental units in the City as a revocable trust, and twelve non-residential rental units in the City as a limited liability corporation. There is no indication that the Measures would affect any interest other than the interest resulting from the Councilmember's lease of the residential rental units. Accordingly, Regulation 18703(e)(4) will permit Councilmember Reece to take part in decisions on Tenant Protection Measures 1 and 3 through 5, as long as the decisions are applicable to all residential rental properties in the jurisdiction, other than those excepted by the Costa-Hawkins Rental Housing Act.

Based on the facts provided:

- Measure 1 is not applicable to all residential rental properties in the jurisdiction;
- Measures 3 applies to residential rental properties City-wide;
- The application of Measure 4 to all residential rental properties is currently unknown; and
- City staff “anticipates” Measure 5 will be applicable to all residential rental properties in the jurisdiction.

Thus, the public generally exception in Regulation 18703(e)(4) does not apply to allow Councilmember Reece to take part in the decisions regarding Measure 1 because it is not applicable to all residential rental properties in the jurisdiction. However, so long as the Councilmember has no other interest in the decisions other than those identified in the request for advice, the public generally exception applies to allow the Councilmember to take part in the decisions regarding Measure 3. The exception may also apply to Measures 4 and 5 if the City finds that those Measures apply to all residential rental properties in the jurisdiction. However, unless the City can make this determination, we must conservatively advise that Councilmember Reece recuse himself from decisions regarding Measures 4 and 5.⁴

We note that there is no indication that either Measure 2 or 6 will apply to all residential rental properties within the jurisdiction. Thus, the facts provided do not support the application of the public generally exception to either of these two measures.

B. 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) 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 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 precluded from entering into the contract. (*Id.* at pp. 647- 649.)

The facts here state that each Measure, if approved, will require ongoing contracting decisions. Therefore, the issue is whether Councilmember Reece would have a prohibited financial

⁴ In light of our conclusion that Councilmember Reece is potentially disqualified based on his interests in his properties but permitted to participate in the decisions under the public generally exception, it is unnecessary to further consider his interests in his business or sources of income to his business.

interest under Section 1090 in a contract between the City and the successful contractor related to any of the City's proposed Measures.

Although Section 1090 does not specifically define the term "financial interest," courts have explained it as follows:

The [phrase] "financially interested" as used in Government Code section 1090 means any financial interest which might interfere with a city officer's unqualified devotion to his public duty. The interest may be direct or indirect. It includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the city officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer's relationship to the individual or business firm at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual or business firm has received.

(*People v. Watson*, 15 Cal.App.3d 28, 37-38 (1971).)

A Section 1090 conflict of interest may therefore exist if a councilmember had a financial relationship with or interest in a potential contractor to provide services related to tenant protection measures. Here, based on the facts provided, we cannot determine whether owning residential rental properties constitutes an interest in a contract until a potential contract is identified. We therefore recommend that you seek additional advice as needed for a decision involving a particular contract when more information is available.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JF:aja