



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 10, 2025

Jim Light  
415 Diamond Street  
Redondo Beach, CA 90277

Re: Your Request for Advice  
**Our File No. A-24-145**

Dear Mr. Light:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> 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, including Public Contract Code.

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 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).)

### QUESTION

Does either the Act or Section 1090 prohibit you from taking part in future contract decisions between the three specified nonprofit organizations, where you or your spouse are noncompensated board members, and the City of Redondo Beach?

### CONCLUSION

As explained below, while you have a financial interest under Section 1090 in decisions concerning two nonprofit organizations, South Bay Parkland Conservancy and Marine Mammal Care Center, Section 1091.5(a)(8) would apply to allow you to take part in those decisions given

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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.

their primary purposes support the functions of the City Council. Similarly, the Act would not prohibit you from taking part in those decisions. As to the remaining nonprofit organization, King Harbor Yacht Club, the remote interest exception under Section 1091(b)(1) would apply to allow the City to enter into the contract so long as your interest in the contract is disclosed to the City Council, noted in its official records, and you abstain from any participation in the making of the contract. Given this conclusion, it is not necessary that we analyze whether the Act would likewise prohibit you from taking part in decisions concerning that nonprofit organization.

### **FACTS AS PRESENTED BY REQUESTER**

You are currently the Mayor of the City of Redondo Beach. You and your spouse are active in the non-profit community so you seek advice on potential conflicts of interest with respect to your current board memberships and potential board membership as they relate to your role as Mayor. The Mayor position in Redondo is not a voting member of the Council, except to break a tie, but the Mayor does have veto power.

You are an unpaid board member with a local 501(c)(3), South Bay Parkland Conservancy (“SBPC”), a nonprofit “committed to preserving open space and creating more parks in the coastal cities of the South Bay in Los Angeles.”<sup>2</sup> SBPC has an ongoing relationship through the City with an MOU to plant and care for native plants in an 11 acre park; and with an MOU for operation of the City’s Community Garden. In the park MOU, the City reimburses SBPC for plants, tools, delivery costs, and hours of the project leader. In the Community Garden MOU, there is no monetary exchange with the City. SBPC administers the garden on behalf of the City, collects dues from the gardener, and oversees maintenance of the grounds. It is likely the City will deliberate extending these MOUs and possibly add more work for a new site either on the existing MOUs or through a separate agreement.

Your spouse is currently an unpaid board member of King Harbor Yacht Club (“KHYC”), a 501(c)(7) nonprofit organization in Redondo’s harbor, where you are both general members of the club as well.<sup>3</sup> KHYC is currently a sublessee to a master leaseholder in the City’s harbor. Harbor Lands are public land administered by the City of Redondo Beach. The City may be negotiating a direct lease of harbor land with KHYC in the foreseeable future.

Finally, your spouse was recently asked to be an unpaid member of the board of directors for Marine Mammal Care Center (“MMCC”), a 501(c)(3) that rescues marine mammals in your City and neighboring Cities. According to its website, MMCC provides care for marine mammals that strand on the beaches from Malibu to Long Beach due to illness, injury and malnutrition with the goal of rehabilitating and releasing them back to their ocean home.<sup>4</sup> The City has a contract with

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<sup>2</sup> See <https://www.southbayparks.org/about-sbpc>.

<sup>3</sup> KHYC is a member owned mutual benefit corporation, and members are obligated to pay dues and assessments. (<https://khyc.org/about-our-club>.) According to the website, membership in the yacht club is one of the best ways we know to get the most from your boat and/or your interest in yachting.

<sup>4</sup> See <https://marinemammalcare.org>.

MMCC to collect sick and injured marine mammals and rehabilitate them. The City is also negotiating a license agreement with MMCC for property in the harbor.

## ANALYSIS

### *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. (*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).)

Importantly, the Legislature has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5.<sup>5</sup> If a noninterest is present, the public official's abstention is generally not required, and the contract may be made by the agency. If a "remote interest" is present, the contract may be made if (1) the official in question discloses their financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the official abstains from any participation in the making of the contract. (Section 1091(a); 88 Ops.Cal.Atty.Gen. 106, 108 (2005).)

Pertinent to the present situation, Section 1091.5(a)(8) establishes that an officer is not interested in a contract if his or her interest is:

That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

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<sup>5</sup> It is appropriate to look to the definitions of the remote and noninterest exceptions contained in sections 1091 and 1091.5 for guidance in determining what falls within the scope of the term "financial interest" as used in Section 1090. (See 85 Ops.Cal.Atty.Gen. 34, 36 (2002).) In addition, any, any remote or noninterest exception that would apply to your spouse is equally applicable to you. (See, e.g., 78 Ops.Cal.Atty.Gen. 230, 235 (1995).)

For purposes of this paragraph, an officer is “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

#### South Bay Parkland Conservancy

You are a noncompensated member of SBPC’s Board. SBPC is a nonprofit organization with a primary purpose of preserving open space and creating more parks in Redondo Beach. This mission serves a function of the City Council to ensure City property is properly managed. Based on these facts, you would have a noninterest in the two current agreements between SBPC and the City that the City may extend or any new agreements between the City and SBPC. However, in order to participate in decisions involving SBPC, you must disclose your interest in the official records of the City Council.

#### Marine Mammal Care Center

Your spouse is considering a position as a noncompensated member of the MMCC Board, a nonprofit organization for marine mammals that become stranded on the City’s beaches due to things such as illness and injury. This mission serves an important City function of providing the necessary care and rehabilitation services to mammals in need on City property while also maintaining the City’s beaches. As above, you must disclose your interest in the official records of the City Council to participate in City decisions involving MMCC.

#### King Harbor Yacht Club

Your spouse is currently a noncompensated board member of KHYC where you are both general members of the club as well. There is a possibility that the City may enter a future lease for harbor land directly with KHYC. According to KHYC’s website, membership in the yacht club is one of the best ways to get the most from a member’s boat and/or their interest in yachting. Supporting the functions of the City Council does not appear to be a primary purpose of KHYC, and the City Council is not legally obligated to give KHYC any particular consideration. Therefore, the noninterest exception in Section 1091.5(a)(8) does not apply.

We next consider the applicability of the remote interest exception in Section 1091(b)(1). Section 1091(a) provides that an officer shall not be deemed to be interested in a contract:

[I]f the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.”

Section 1091(b)(1) further provides that “remote interest” includes an interest if the interest is “[t]hat of an officer or employee of a ... nonprofit corporation.” Pursuant to this exception, your interest resulting from your spouse’s board position with KHYC is only a remote interest.

Therefore, Section 1090 would not prohibit the City from entering into a contract with KHYC so long as your interest in the contract is disclosed to the City Council, noted in its official records, and you abstain from any participation in the making of the contract.

### *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. Pertinent to your facts, the Act's conflict of interest provisions apply to financial interests based on the following:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

The Act's definition of an "indirect investment" includes any investment or interest owned by the public official's spouse. (Section 87103.) "Income" includes any community property interest in a spouse's income. (Section 82030(a).)

According to your facts, neither you nor your spouse will receive compensation for your services as members of any of the nonprofit organizations identified above; therefore, you do not have an interest in those nonprofits as a source of income. Additionally, you do not have a business interest in any of the nonprofit organizations because they are not considered business entities under the Act. (Section 82005.)<sup>6</sup> Finally, there is no indication from the facts that City decisions related to SBPC or MMCC will have any financial effect on your personal finances. Therefore, based on the facts provided, you would not have a disqualifying conflict of interest under the Act in the potential City decisions involving those nonprofit organizations.

However, you and your spouse are general members of KHYC, which may be negotiating a direct lease of harbor land with the City in the foreseeable future. Therefore, the determinative question is whether a lease with the City would have a reasonably foreseeable and material financial effect on your personal finances.

### Foreseeability and Materiality

Regulation 18701(a) states that a financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in the decisions. An interest is explicitly involved in a decision if the interest is a named party in, or the subject of, the

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<sup>6</sup> Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

governmental decisions. For a financial interest that is not explicitly involved in a decision, Regulation 18701(b) provides, “[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.”

Regulation 18702.5(a) sets forth the materiality standard applicable to a decision’s reasonably foreseeable financial effect on an official’s personal finances, also referred to as a “personal financial effect,” and provides that such an effect is material if “the decision may result in the official or the official’s immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision.”

Your letter does not mention any impact on your (or your spouse’s) personal finances as the result of the potential KHYC lease with the City but note that a conflict of interest may arise if it is reasonably foreseeable that the decision will have a material effect on your personal finances. For instance, if the City Council decision to lease harbor land directly to KHYC will impact the personal finances of you and your spouse either positively or negatively (such as increasing or reducing the amount your membership fees) by \$500 or more in a 12-month period, you will have a conflict of interest in the decision because it would have a reasonably foreseeable and material financial effect on your personal finances. However, given you are prohibited under Section 1090 from taking part in the potential KHYC lease with the City, it is not necessary that we further analyze this issue. So long as you abstain from the decisions under Section 1090, you do not violate the Act in that you would not be making, participating in making, or using your position to influence the decision. Although, we caution that under the Act’s recusal requirements you must also leave the room during the discussions, and we conservatively advise you to leave the room during any discussions of the KHYC lease to avoid any potential violation under the Act.<sup>7</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

JW:aja

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

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<sup>7</sup> The Act’s recusal requirements in Regulation 18707 state that you must publicly identify your financial interests that give rise to the conflict prior to consideration of the item, leave the room, and refrain from any participation in the decision before the City Council.

