



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3050 • Sacramento, CA 95811

April 24, 2026

Heather Baker  
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City of Culver City  
9770 Culver Boulevard  
Culver City, CA 90232

**Re: Your Request for Informal Assistance  
Our File No. I-25-170**

Dear Ms. Baker:

This letter responds to your request for advice on behalf of Culver City Councilmember Dan O'Brien regarding the conflict of interest provisions of the Political Reform Act (the "Act") and Government Code Section 1090, *et seq.*<sup>1</sup> Please note that we are only providing advice under the conflict of interest provisions of the Act and Section 1090, and not under other general conflict of interest prohibitions such as common law conflict of interest or restrictions on incompatible activities.<sup>2</sup>

Because your questions are general in nature, we are treating your request as one for informal assistance.<sup>3</sup> 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

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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.

<sup>2</sup> State and local agencies may prohibit their employees from engaging in any outside employment, activities, or enterprises that are inconsistent or in conflict with their duties as agency employees. (Gov. Code Sections 19990 and 1126 *et seq.*) We do not advise on any local statement of incompatible activities that may apply, as this issue is outside the Act's jurisdiction.

<sup>3</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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

Where City of Culver City (“City”) Councilmember O’Brien recently accepted a paid independent contractor position as President & Chief Executive Officer (“CEO”) for the Culver City Chamber of Commerce (the “Chamber”) in his private capacity, does either the Act or Section 1090 prohibit him from participating in City Council decisions involving the Chamber?

### CONCLUSION

The facts do not identify any decisions before the City Council to determine whether Councilmember O’Brien is disqualified from taking part in a particular decision under the Act. As a general matter, he is potentially prohibited under the Act from taking part in any decision if it is reasonably foreseeable that the decision will have a material effect on his financial interest in the Chamber as a source of income, or his personal finances, as discussed below.

Nonetheless, whether Councilmember O’Brien is disqualified from any particular decision before the City is a factual determination that can be made only once the decision can be identified. For instance, Councilmember O’Brien was recently advised in regard to his involvement in specific decisions before the City in light of his employment with the Chamber. (See *Baker* Advice Letter, No. A-26-023.) At this time, we offer general assistance to aid in the future determination of any potential conflict.

Generally, we caution that due to his financial interest in the Chamber and the duties he has that involve the City, where he has a disqualifying financial interest, Councilmember O’Brien is prohibited from contacting or appearing before any City officer or employee to influence a decision, including any contract decision, discussion, or negotiation, regardless of whether he has recused himself from the decision as a council member. The Act, however, does not prohibit Councilmember O’Brien from making statements regarding the Chamber, so long as they are made only to the general public or media and are not made before any other Councilmember, City staff member, or consultant of the City, as discussed below.

Turning to Section 1090, you have not identified a particular contract, agreement, or grant between the City and the Chamber and we cannot provide specific advice regarding Section 1090 at this time. Generally, Section 1090 prohibits Councilmember O’Brien, as well as the City, from entering a contract in which the Councilmember has a financial interest unless an exception applies. However, we do note that Section 1091(b)(1) provides, in relevant part, that an officer or employee of a nonprofit corporation has only a remote interest in the contracts, purchases, and sales of that nonprofit entity. Under this exception, the governing board of an agency is not prohibited from entering into a contract if the member with a financial interest

discloses the interest to the board, the interest is noted in the board's official records, and the official abstains from *any* participation in the contracting process.<sup>4</sup>

## **FACTS AS PRESENTED BY REQUESTER**

### *Culver City Chamber of Commerce*

The Chamber is a 501(c)(6) entity that supports the City's business community by assisting its members in achieving their full business potential. In a follow-up email, you have confirmed that the Chamber is a nonprofit corporation. The Chamber is a voluntary, action-oriented organization of businesses and professionals working together to promote the commercial and economic vitality of the City, and to foster civic improvements that benefit the general welfare of those who live, work and visit the City. The Chamber advocates on behalf of over 500 investor businesses and 70,000 employees. The Chamber is entirely funded by membership investments, Chamber advertising media opportunities and special events.

### *Chamber President & CEO Duties*

Per the Chamber's Position Summary, the Chamber President & CEO reports to a 5-member Executive Committee and a 22-member Board of Directors, and directly supervises the Chamber's Director-Investor Relations, Office & Communications Coordinator and Office Volunteer. The position's interactions include the City and Los Angeles County elected and appointed officials, among others.

The President & CEO directs and implements the activities of the Chamber, working under policy guidelines of the Board of Directors and Executive Committee. The position represents the Chamber Board of Directors across varied interactions with membership, outside individuals, public sector agencies and officials, various constituencies, and with the public.

Major duties and responsibilities of the President & CEO include, but are not limited to, the following:

- Provide high profile collaborative leadership, vision, goals, guidance and strategic direction for the programs, events, personnel, and membership of the Chamber;
- Maintain current statistics and familiarity of the economy of the City area, both inside and outside the Chamber membership;
- Drive the development and communication of the Chamber's governmental affairs policy positions at the local, state, and federal levels and direct all messaging as it

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<sup>4</sup> We note that under the Act, in addition to the requirements that the official not make, participate in making or use their official position to influence the decision as described below, an official with a disqualifying interest must recuse following the procedure outlined in Regulation 18707, which also requires the official to announce the interest and leave the room during the discussion and vote.

relates to public policy. Work with the Chamber's Political Action Committee to secure contributions and develop appropriate endorsements of business friendly candidates and issues;

- Cultivate strong relationships with City, Los Angeles County, state and federal governments and their elected officials and staff;
- Attend City Council as well as other City Committee meetings when necessary as it pertains to local business issues;
- Determine sources of income and develop methods for generating additional/enhanced revenue streams to support work of Chamber; and
- Inform the Executive Committee and Board of various problem areas and activities throughout the community that may affect the business sector.

The President & CEO is “the face” of the Chamber in the City. The position helps improve the economic prosperity and quality of life in the City, and is the principal advocate for, and provider of services to, its business community.

#### *Councilmember O'Brien*

Councilmember O'Brien began his first term as a City Councilmember on December 12, 2022, and served as Mayor, the presiding Member of the City Council, from December 9, 2024, through December 8, 2025. In a follow-up email, you confirmed that Councilmember O'Brien recently accepted a paid, independent contractor position as the President & CEO of the Chamber, commencing on January 1, 2026.

### **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 position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.”

A public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. The official is also prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) “A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency.” (Regulation 18704(a).) “A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision

without significant intervening substantive review.” (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official:

- (1) Contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision; or
- (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official’s authority or on behalf of the official’s agency in making the contact.

(Regulation 18704(c).)

We note that the President & CEO’s duties include serving as “the face” of the Chamber in the City, and the responsibility for cultivating strong relationships with the City and attending City meetings. Councilmember O’Brien would be prohibited from any contacts or appearances before the City, including City staff, for purposes of affecting a decision involving the Chamber in which he has a conflict.

However, we also note that making, participating in, or using a position to influence a governmental decision does not include communications by a public official to the general public or media. (Regulation 18704(d)(4).) Previously, we have advised that a city council member may express the official’s opinion to reporters and media outlets by writing a newspaper article or appearing on a radio program regarding a matter in which the official has a conflict of interest under the Act. (*Edelen* Advice Letter, No. 1-07-059 and *Acker* Advice Letter, No. A-01-117.) We have also advised that an official is free to discuss a project with the press, friends, neighbors or other members of the community, even if the official does so in an attempt to rally support or opposition to the project, unless they are members, officers, employees, or consultants of the city. (*Mizrahi* Advice Letter, No. A-12-036.) Accordingly, the Act does not generally prohibit Councilmember O’Brien from making statements when they are made only to the general public or media so long as the statements are not made before any other officer, employee, or consultant of the City.

### Financial Interests

An official’s financial interests, which may give rise to a disqualifying conflict of interest under the Act, are identified in Section 87103. The following interests are relevant to your situation:

- 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 their personal finances and those of immediate family members. (Section 87103.)

You have indicated that due to his recent employment, Councilmember O'Brien has a source of income interest in the Chamber to the extent that he has received income of \$500 or more for his employment as the Chamber's President & CEO.<sup>5</sup> Councilmember O'Brien also has an interest in his personal finances.

### Foreseeability and Materiality

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. It states, "[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." It further provides that 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. This also includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).<sup>6</sup>

#### *City Council Decisions Where the Chamber is Explicitly Involved*

Regulation 18702.3 provides the applicable standard for determining whether the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a nonprofit source of income is material. Generally speaking, if the Chamber is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding, it is explicitly involved in the decision, and therefore it is reasonably foreseeable that the decision will have a material effect on Councilmember O'Brien's financial interest, and he may not take part in the decision. (Regulation 18702.3(a)(1).)

#### *City Council Decisions Where the Chamber is Not Explicitly Involved*

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

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<sup>5</sup> Councilmember O'Brien does not have a business entity interest in the Chamber because the definition of "business entity" under Section 82005 excludes non-profit organizations.

<sup>6</sup> The facts do not address whether the Chamber has a real property interest that may be the subject of a City decision, so we do not discuss this standard further. Please seek additional advice as needed for such a decision.

Regulation 18702.3(a)(3) provides the standards for determining the materiality of a financial effect on a non-profit organization that is a source of income that is not explicitly involved in the decision. It requires the examination of three areas of possible impacts on the nonprofit entity as a result of the decision: annual gross receipts or asset/liability changes, changes to expenses, and impacts on the organization's known real property interest. Under the first category, a reasonably foreseeable financial effect on a non-profit that is a source of income is material if the decision may result in an increase or decrease of the organization's annual gross receipts, or the value of organization's assets or liabilities, in an amount equal to or more than: (1) \$1,000,000 or (2) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).)

For the second, the effect is material if the decision may cause the entity to incur or avoid additional expenses, or to reduce or eliminate expenses, in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).)

For the third, the financial effect is material if the official knows or has reason to know that the organization has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)

Generally speaking, if the Chamber is affected in any manner set forth above, it is reasonably foreseeable that the decision will have a material effect on his financial interest, and Councilmember O'Brien may not take part in the decision. (Regulation 18702.3(a).)

Additionally, Regulation 18702.3 provides a separate standard for determining the materiality of an official's financial interest in a source of income where there is a "nexus" between the official's income and the governmental decision. Under the "nexus test," any reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

In regard to matters implicating the Chamber<sup>7</sup>, in which the Chamber is not explicitly involved, any determination of disqualification would have to be based on the factual

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<sup>7</sup> We caution that in some circumstances, decision implicating the Chamber may include decisions involving a member or potential member of the Chamber if there are factual circumstances indicating that the decision could also have a financial effect on the Chamber itself or the compensation Councilmember O'Brien receives from the Chamber. For instance, under similar circumstances involving city officials employed by a chamber of commerce, we have previously advised that the Chamber or the official's personal finances could be financially affected if, at the time of the decision, the official was soliciting the business to become a member of the Chamber or a Chamber sponsor, and the business has not yet responded to the solicitation; or the business has implied that the decision's effect may influence whether the business may join or remain a member of the Chamber or become or remain a Chamber sponsor. (See *House Advice Letter*, No. I-13-016; and *Cavanaugh Advice Letter*, No. I-17-166.) To the extent you need additional assistance determining whether a decision regarding a member or

circumstances specific to the decision. Accordingly, we cannot reach any conclusions regarding Councilmember O'Brien taking part in matters in which the Chamber is not explicitly involved, including whether the nexus test may apply. If Councilmember O'Brien needs additional assistance regarding matters in which the Chamber is not explicitly involved, he should seek further advice, identifying the specific decisions and providing facts to apply the above standards.

### Personal Finances

Regulation 18702.5 provides that a decision's reasonably foreseeable financial effect on an official's personal finances or those of an immediate family member is material if the official or an immediate family member will receive a measurable financial benefit or loss from the decision. In addition to the potential effect on the Chamber, Councilmember O'Brien must also consider whether a decision may have an effect on the compensation he receives from the Chamber, including any increase or reduction in his compensation, and his continued employment or termination.

Again, a determination of whether a decision will have a financial effect on Councilmember O'Brien's personal finances cannot be made absent the factual circumstances of a specific decision. We can only generally advise that the Act prohibits Councilmember O'Brien from taking part in a decision relating to the Chamber, if it is reasonably foreseeable that Councilmember O'Brien, or an immediate family member, will receive a measurable benefit or loss from that decision.

### *Section 1090*

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Therefore, "the test is whether the officer or employee participated in the making of the contract in (their) official capacity." (*People v. Gnass*, (2002) 101 Cal.App.4th 1271, 1292 quoting *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 236-237.) The prohibition applies even when the terms of the proposed contract are demonstrably fair and equitable, or are plainly to the public entity's advantage. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) 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) 103 Cal.App.3d 191, 197.) A contract that violates Section 1090 is void. (*Thomson, supra*, at p. 646.) Grants, agreements, and donations are generally contracts within the meaning of Section 1090. (See *People v. Honig* (1996) 48 Cal.App.4th 289; 89 Ops.Cal.Atty.Gen. 258 (2006); 85 Ops.Cal.Atty.Gen. 176 (2002).)

As a general rule, 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;

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potential member of the Chamber may have a financial effect on the Chamber or Councilmember O'Brien's personal finances, you should seek additional advice identifying the decision.

the entire governing body is precluded from entering into the contract. (*Thomson v. Call, supra*, at pp. 647-649; *Stigall v. Taft* (1962) 58 Cal.2d 565, 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) Participation is defined broadly and includes any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae, supra*, at pp. 237; see also *Stigall, supra* at p. 569.) For example, an official (or a public employee) may be convicted of a violation of Section 1090 if it is established that he or she had the opportunity to, and did, influence execution of the contract directly or indirectly to promote his or her personal interests. (*People v. Sobel, supra* at p. 1052.)

We can provide specific advice related to Section 1090 only if an actual contract is identified along with the factual circumstances pertaining to the decisions related to the contract. Generally, we can advise that Section 1090 prohibits Councilmember O'Brien, as well as the City, from entering a contract in which the Councilmember has a financial interest based on his employment with the Chamber unless an exception applies.

While we cannot determine whether an exception applies until a contract is identified, we note that Section 1091(b)(1) provides, in relevant part, that an officer or employee of a nonprofit corporation has only a remote interest in the contracts, purchases, and sales of that nonprofit entity. Moreover, if a "remote interest" is present, the contract may be made if (1) the official in question discloses his or her financial interest in the contract to the public agency, (2) the 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).) Please note that if Councilmember O'Brien is prohibited from participating in a decision under the Act, he must also leave the room prior to the consideration of the item.

If Councilmember O'Brien or the City needs additional assistance regarding Section 1090, and particularly whether the remote interest exception permits the City to enter into any specific contract with the Chamber, provided the Councilmember has abstained from any participation relating to that contract, you should seek further advice once a contract is identified.

If you have other questions on this matter, please contact me at [znorton@fppc.ca.gov](mailto:znorton@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

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