



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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July 17, 2024

Elizabeth Wagner Hull  
for BEST BEST & KRIEGER LLP  
City of El Paso de Robles  
655 West Broadway, 15th Floor  
San Diego, California 92101

Re: Your Request for Advice  
**Our File No. A-24-026**

Dear Ms. Hull:

This letter is in response to your request for advice regarding conflict of interest provisions of the Political Reform Act<sup>1</sup> (the Act) and Section 1090, et seq. Please note that we are not providing advice under any 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, then 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 San Luis Obispo 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 the Act or Section 1090 prohibit Mayor Hamon from participating in governmental decisions related to the City of Paso Robles entering a contract with a new private fixed based operator (FBO) at the Paso Robles Municipal Airport.

### CONCLUSION

No. Section 1090 does not prohibit Mayor Hamon from participating in the decisions because his interest is that of a recipient of public services generally provided by the public body of which he is a member, on the same terms and conditions as if he were not a member of the body, thus the noninterest exception under Section 1091.5(a)(3) applies. Under the Act, the City's

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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.

decision to contract with a new FBO would have no reasonably foreseeable financial effect on Mayor Hamon's business entity or source of income interests. Therefore, Mayor Hamon may participate in City decisions related to the new FBO contract.

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

The City owns the Paso Robles Municipal Airport (airport), and currently contracts with an FBO to operate at the airport and provide aeronautical services to the public such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, and other related services. The City staff hired a consultant with expertise in FBO services who prepared a Request for Proposals (RFP) for an operator. The City issued the RFP for FBO services for the airport in April and plans to enter a lease with a private party to continue to provide services. The RFP requires the successful respondent to provide the following services:

- Retail aircraft fueling services (100LL and Jet A) and self-service fueling (100LL); receptive to exploring alternative fuel options such as sustainable aviation fuel (SAF), unleaded aviation fuel, electric, and hydrogen; and upgrading of current self-serve system such as addition of an electric hose reel; loyalty programs for based aircraft;
- Aircraft ground handling services (including parking guidance, towing, etc.);
- Crew and passenger services (including baggage handling, ground transportation arrangements, etc.);
- Operation of the Unicom radio, monitor the CTAF and issue necessary public information involving airport operations and status (NOTAMS);
- Tie-down and apron parking rental management;
- Crew and passenger amenities and facilities;
- Emergency service to disabled general aviation aircraft (i.e., towing/transporting disabled aircraft);
- Sale of miscellaneous retail pilot supplies;
- Aircraft maintenance, piston and jet (may be provided through a subcontractor); and
- Aircraft charter services (may be provided through a subcontractor).

These public services would be available to all airport users. The RFP also provides that if no capital investment will be made in the airport facilities on the portion of the airport property leased to the FBO, then the anticipated lease term is 5 years. If a capital investment will be made in the airport facilities on the portion of the airport property leased to the FBO, then the term of the lease will be negotiated with a maximum term of 40 years.

The City received two responses to the RFP, including the current operator. As a result, it is possible the City will retain the current airport operator.

Mayor Hamon and his wife lease two parcels on property belonging to the airport: (1) 3015-3071 Propeller Dr., with a lease term of October 31, 1979 to October 31, 2029 (Propeller Drive Property); and (2) 5060 Wing Way, Paso Robles, Hangar No. 30 (Hangar), with a lease term of April 1, 1995 to August 20, 2031. Both leases were originally entered into prior to the Mayor joining the City Council. The area leased to Mr. Hamon is not included in the area to be leased to the FBO.

Mayor Hamon and his wife currently sublease portions of the Propeller Drive Property to several commercial tenants that are not involved with aviation operations at the airport. These tenants are as follows: (1) Pacific Medical Data, which subleases its warehouse to a horseshoe supply company; (2) Belmonte Shutters, a manufacturer of wood window shutters; (3) Tom's Tile, a granite countertop manufacturer; (4) Coast Southwest Surfactants, a manufacturer of soap and shampoo products; and (5) Hamon Industrial Park LLC which is owned by the Mayor's son John III, which subleases its warehouse spaces on the Propeller Drive Property to Simplot, which provides agricultural products and services to local agricultural producers, and Hamon Overhead Door Company, which produces garage doors and is owned by John III. The properties are leased to businesses that are not related to airport services. They are warehouse-related services that are not impacted by airport operations.

Mayor Hamon and his wife receive rental income from their tenants on the Propeller Drive Property. Mayor Hamon leases the Hangar as an individual for personal use pursuant to the City's approved Airport Leasing Policy on the same terms and conditions as any other tenant, and there is no business associated with that lease. The opportunity to lease a hangar at the airport is available to the public. The Hanger property is only used to store Mayor Hamon's private aircraft. None of the subtenants provide aeronautical-related services, or services to the airport itself, or lease any property that could be subject to future development pursuant to the terms of the RFP, and rent is determined by Mayor Hamon, not the FBO.

The City currently contracts with an FBO and has contracted with an FBO for the entire duration of the Mayor's leases to date. The next FBO would provide the same or substantially similar services as currently provided, and the contract would not establish a new type of service at the airport. The current FBO provides airport operations services, it does not manage the Mayor's lease, nor provide any services for lessees. The services that the current FBO provides are broadly available to all airport users. For example, emergency services for disabled aircraft are available for any aircraft that use the facility. Price-based services, such as fueling, are based on market rates for fuel and are not negotiated between the City and FBO as part of the FBO contract.

The City Council appointed a committee of two council members and two airport commissioners to review the proposals and request additional information from the respondents. Mayor Hamon was initially appointed to the ad hoc committee. But before ever meeting, he requested that the City Council assign another member to the committee so that he may seek the FPPC's advice. He never participated in any capacity as a member of the committee. Mayor Hamon now seeks advice as to whether he may participate in future City discussions and decisions regarding FBO services at the airport.

## ANALYSIS

### A. 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. City of 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.) 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.)

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; 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).) 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.)

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* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, at p. 569.)

Here, Section 1090 applies to Mayor Hamon as a City official and any agreement between the City or airport with the FBO for the FBO’s services or the FBO’s lease of property is a contract to which Section 1090 potentially applies. The determinative question is whether Mayor Hamon has a financial interest in the contract for purposes of Section 1090 resulting from the lease of the Propeller Drive Property and rental income from the subleasing of the property to various businesses unrelated to aviation or from the lease of an airport hangar for his personal use.

For the Propeller Drive Property, the facts indicate Mayor Hamon is currently leasing property consisting of commercial and industrial warehouse space, which has been subleased to other businesses for purposes wholly unrelated to the airport or aviation in general. Moreover, the facts indicate that the services provided by the FBO are unrelated to any of the businesses currently operated from the property and that the FBO does not provide any services related to the approval or management of the lease. Accordingly, Mayor Harmon’s lease of the Propeller Drive Property and interests in the tenants subleasing the property does not give rise to a financial interest in any a contract with the FBO for the FBO’s services or the FBO’s lease of airport property.

Turning to the lease of a hangar for his personal use, the Legislature has expressly defined certain financial interests as “remote” or “noninterest” exceptions to Section 1090’s general prohibition. Where a remote interest is present, the contract may be lawfully executed if: (1) the officer discloses his or her financial interest in the contract to the public agency; (2) the interest is noted in the public body’s official records; and (3) the officer completely abstains from any participation in the making of the contract. (Section 1091.) Where a noninterest is present, the contract may be executed without the abstention. (Section 1091.5.) Thus, the question is whether an exception applies to the facts presented.

The “noninterest” set forth in Section 1091.5(a)(3) provides that an officer or employee shall not be deemed to be interested in a contract if his or her interest is “[t]hat of a recipient of

public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.”

The California Supreme Court considered the application of this noninterest exception and determined that it established the following rule:

If the financial interest arises in the context of the affected official’s or employee’s role as a constituent of his or her public agency and recipient of its services, there is no conflict so long as the services are broadly available to all others similarly situated, rather than narrowly tailored to specially favor any official or group of officials, and are provided on substantially the same terms as for any other constituent.

(*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1092.)

“The phrase ‘public services generally provided’ is not self-defining, nor is there any useful legislative history that might shed light on the Legislature’s intent.” (*Lexin, supra*, at p. 1086.) “Public services generally provided” includes public utilities such as water, gas, and electricity. But qualifying “public services” are not limited to services provided to the general public or the public at large; “[p]ublic agencies provide many kinds of ‘public services’ that only a limited portion of the public needs or can use.” (92 Ops.Cal.Atty.Gen. 67, 70 (2009).)

The Attorney General has issued opinions examining the legislative history of the 1961 amendment that added the “public services” exemption to Section 1091.5. In a 2009 opinion, the Attorney General explained:

We believe that the exception for “public services” is intended to apply only to services for which rates and charges have been clearly established, and which are provided uniformly to all comers. Thus we have concluded that the exception applies to public utilities (such as water, gas, and electricity), and to the renting of hangar space in a municipal airport offered on a first come, first served basis.

(92 Ops. Cal. Atty. Gen. 67 (2009).) The furnishing of such public services would not involve the exercise of judgment or discretion by public agency officials. Rather, the rates and charges for the services would be previously established and administered uniformly to all members of the public. (See 80 Ops.Cal.Atty.Gen. 335, 338 (1997).)

Here, the facts provided indicate that the FBO contract would provide general aeronautical services to members of the public who use the airport. The only interest Mayor Harmon potentially has in the contract with the FBO is his interest resulting from the lease of a hangar for personal use. However, the FBO agreement merely involves an independent provider of aeronautical services similar to those provided by the existing FBO. This contract would have no impact on the lease of the hangar, and the only potential impact it may have on Mayor Harmon is a change in the provider of the existing services he may need and use. Nonetheless, any use of FBO services by Mayor Hamon would be on the same terms and conditions available to all members of the public generally. Thus, the noninterest exception under Section 1091.5(a)(3) applies to the hangar lease, and Mayor Hamon may participate in City decisions relevant to the new FBO contract under Section 1090.

**B. The Act.**

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using an official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) 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).)

Section 87103 of the Act lists several types of financial interests that can give rise to a conflict of interest, including:

- Any real property in which the public official has a direct or indirect interest of at least \$2,000. (Section 87103(b).)
- Any business entity in which the public official has a direct or indirect investment worth at least \$2,000 and any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any management position. (Section 87103(a) and (d).)
- Any source of income, such as a business entity, from which the official has received income of \$500 or more within 12 months before the decision. This also includes income from any business entity client of at least \$500, provided to and received by the public official within 12 months before making the decision. (Section 87103(c).)
- Any donor of gift(s) amounting to at least \$590 within 12 months before making a decision. (Section 87103(e).)
- A public official's finances or those of a member of their immediate family. (Section 87103.)<sup>2</sup>

Based on the facts provided, Mayor Hamon has interests in real property resulting from his leases of the Propeller Drive Property and Hanger, interests in a business acting as the lessor of the Propeller Drive Property as both a business entity and source of income, and potential interests in any tenants of the Propeller Drive Property as sources of income. At issue is whether it is reasonably foreseeable that the City's decision to contract with a new FBO will result in a material financial impact on Mayor Hamon's interests.

The standard for foreseeability varies depending on whether an interest is explicitly involved in the decision. Mayor Hamon's real property and source of income interests are not explicitly involved in the decisions at issue because none of these interests are the subject of, or named as a party in, the decisions at issue. (Regulation 18701(a).) For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

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<sup>2</sup> If a decision would have a reasonably foreseeable financial effect on the official's financial interest in a business entity or real property, any related effect on the official's personal finances is not considered separately. The financial effect on the business entity or real property is analyzed only under the respective materiality standards in Regulations 18702.1 and 18702.2. (Regulation 18702.5(c).)

## **1. Leasehold Interests.**

Regulation 18702.2(c) provides that the effect of a decision is material to a leasehold interest in real property if the decision will: (1) change the termination date of the lease; (2) increase or decrease the potential rental value of the property; (3) change the official's actual or legally allowable use of the real property; or (4) impact the official's use and enjoyment of the real property.

Here, the FBO contract is an agreement between the City and FBO to provide general aeronautical services to members of the public who use the airport. The facts provided indicate that the FBO agreement would not change the terms of Mayor Hamon's leases, including their termination dates, or the actual or legal use of his leasehold interests in the commercial rental space or the private aircraft storage. Thus, the issue is whether the FBO contract would increase or decrease the potential rental value of the properties or impact Mayor Hamon's use and enjoyment of the properties.

### **a. Propeller Drive Property.**

The facts provided state that Mayor Hamon subleases these properties to various businesses that are not related to airport services. Each sublease is a warehouse-related service that is not impacted by airport operations. Therefore, the facts indicate that decisions regarding the airport's FBO would not change the rental value of these properties, nor would the decisions impact the Mayor's use and enjoyment of the Propeller Drive Property. Therefore, based on the facts provided, it is not reasonably foreseeable the City's decisions regarding a contract with a new FBO would have a material financial effect on Mayor Hamon's real property interests in the Propeller Drive Property.

### **b. Hangar Property.**

Based on the facts provided, the Hangar Property is used only to store Mayor Hamon's private aircraft and its location on the property would be separate from the area to be leased to, and operated by, the FBO. Moreover, the City currently contracts with an FBO and has contracted with an FBO for the entire duration of the Mayor's leases to date. The next FBO would provide the same or substantially similar services as are currently provided, and the contract would not establish a new type of service at the airport. The current FBO does not manage Mayor Hamon's lease, nor provide any services for lessees. The FBO services airport operations that would not affect the use or enjoyment of hangar space located near the FBO-managed airport property.

Finally, the services that the FBO provides are broadly available to all airport users, there are no services provided exclusively to lessees of hangar space. For example, emergency services for disabled aircraft are available for any aircraft that use the facility. Price-based services, such as fuel, are based on the market rates and are not negotiated between the City and FBO as part of the FBO contract. The facts provided indicate, therefore, that decisions regarding a new FBO contract would not impact the rental value of the property or the use and enjoyment of Mayor Hamon's leased Hangar Property.

Therefore, based on the facts provided, it is not reasonably foreseeable that the City's decisions regarding a contract with a new FBO would have a material financial effect on Mayor Hamon's real property interests in the Hangar Property.

## **2. Business and Source of Income Interests.**

Under Regulation 18702.1, a governmental decision's reasonably foreseeable financial effect on a public official's financial interest in the official's business is material if the business is explicitly involved (the named party in, or subject of the decision). If the business is not explicitly involved in the decision, a reasonably foreseeable financial effect on the officials interest in the business is material if (1) the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than \$1,000,000 or five percent of the entity's annual gross revenues and at least \$10,000; (2) the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000 or one percent of the entity's annual gross revenues and at least \$2,500; or (3) the official knows or has reason to know that the entity has an interest in real property that is a named party in, or the subject of, the decision or there is clear and convincing evidence the decision would have a substantial effect on the property. The same standards apply when determining the materiality of a governmental decision's financial effect on a source of income that is a business entity. (Regulation 18702.3(a)(4).)

### **a. Rental Business.**

Mayor Hamon has a direct investment worth \$2,000 or more in his rental business at the Propeller Drive Property, interests that are not explicitly involved in decisions regarding the FBO. Regarding his business interests, the question is whether it is reasonably foreseeable the decisions at issue would result in an increase or decrease in revenue or expenses exceeding the materiality thresholds set forth in Regulation 18702.1. Based on the facts provided, Mayor Hamon leases property to businesses that are unrelated to airport services, provide no aeronautical-related services or services to the airport itself. Thus, it is not reasonably foreseeable that decisions regarding the FBO would result in changes to Mayor Hamon's gross revenues or expenses of his rental business, nor is there clear and convincing evidence the decision would have a substantial effect on the business's leasehold interests.

### **b. Tenants.**

Mayor Hamon also has an interest in any tenant of the Propeller Drive Property if he has received income from the tenant of \$500 or more in the past twelve months. (Section 87103(c).) As discussed above, Mayor Hamon leases property to various businesses that are unrelated to airport services. None of the subtenants provide aeronautical-related services or services to the airport itself, and none of the subtenants lease any property that could be subject to future development pursuant to the terms of the RFP. Moreover, rent is determined by Mayor Hamon, not the FBO, and any services provided by the FBO under a new contract would be substantially the same as currently provided by the existing FBO. Therefore, based on the facts provided, there would be no significant change in the status quo, and it is not reasonably foreseeable the City's decisions regarding a contract with a new FBO would have a material financial effect on Mayor Hamon's interests in his tenants as sources of income to his rental business.



For the above reasons, neither the Act nor Section 1090 prohibit Mayor Hamon from taking part in the City's discussions or decisions regarding a new FBO contract. 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

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