



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 10, 2025

Felicia Williams
City Councilmember, Pasadena

Re: Your Request for Advice
Our File No. A-24-124

Dear Ms. Williams:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.¹ 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 Section 1090 prohibit the City of Pasadena from entering a financial consulting services contract with you (or you acting as a subcontractor) related to public infrastructure investment in and around the areas covered by the Fair Oaks Specific Plan and SR 710 Northern Stub given your prior participation as a councilmember in official actions related to those specific areas?

CONCLUSION

Yes. As explained below, even though you are no longer a member of the Pasadena City Council, Section 1090 prohibits the City from entering a contract with you, or any firm that subcontracts your services, to provide financial consulting services related to those specific areas

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.

because you participated in making the proposed City contract through your official actions while serving on the City Council.

FACTS AS PRESENTED BY REQUESTER

You were a councilmember for the City of Pasadena and your term ended on December 9, 2024. Prior to the end of your term, you sought advice concerning a potential future consulting contract with the City of Pasadena. During your term on the City Council, you voted to approve the following agenda items:

- Updated South Fair Oaks Specific Plan (“SFOSP”) – Land use document identifying zoning, land use, and design standards that are not related to a specific project, entitlement, or development agreement approved by City Council on July 11, 2022.

According to a May 23, 2022 staff report in which the proposed SFOSP was presented to the City Council, the SFOSP involves an area envisioned as an innovative and health-oriented mixed-use community with multi-family housing, medical services, educational and employment opportunities that would be accessible to transit for residents, employees, students, and faculty. The purpose of the SFOSP is to establish new standards and guidelines to facilitate/encourage development and improvements for the area.

The City Council raised concerns about whether the SFOSP proposed in May of 2022 “appropriately balanced employment and housing opportunities near public transportation and institutions as well as the location of new housing, densities, and building heights in certain areas.” Therefore, City staff provided an alternative recommendation for the City Council to consider on July 11, 2022 that revised densities and building heights for specific areas of the plan, and “meets the City goals of allowing for new housing, especially where alternative transportation is available, while also allowing for commercial and jobs conveniently located near housing.”

- State Route 710 Northern Stub Relinquishment – In August 2022, Caltrans relinquished the SR 710 Northern Stub and transferred the right of way to City. City Council approvals included: (1) approval of Relinquishment Agreement between the City and Caltrans, including a \$5 million payment to City from Caltrans in May 2022; (2) creation of a Task Force to oversee the Master Plan process in February 2023; and (3) approval to accept a \$2 million Federal Highway Administration grant and match with City funds in August 2024.

According to the May 2, 2022 Agenda Report, “[f]ollowing the proposed relinquishment of the 710N stub area, a Citywide planning effort to re-envision the area, determine the transportation network, land use, and utility infrastructure will be initiated” as the City would “assume full ownership, responsibility, liability, maintenance, and control of the 710 relinquished area.”

- Contract for SR 710 Northern Stub Relinquishment Master Plan – On January 22, 2024, the City Council approved a \$2.8 million contract with Perkins Eastman to develop a Master Plan for the SR 710 Northern Stub Relinquishment to the City in August of 2022. The contract runs for a period of three years and authorizes the City Manager to extend it for up to two additional one-year periods. Seven other consultant teams submitted proposals for this work and were not awarded a contract.

According to the January 22, 2024 Agenda Report, The Master Plan will serve as the guiding planning document for the future development of the area and the foundation for the creation of a new SR 710 Northern Stub Area Specific Plan. The Agenda Report also states that the relinquishment of the 710 Stub became a historic opportunity for the City to develop the underutilized piece of land, and that the rare opportunity has garnered significant international attention while drawing the interest of several globally renowned consulting firms specializing in large-scale developments and land use planning. Perkins Eastman and its subconsultants, many of whom the City has worked with, have worked on diverse projects several cities including Los Angeles and Long Beach, and understand governmental entitlement processes, community engagement strategies, and land use solutions.

You have been an independent consultant providing services to local governments since 2017, including economics, finance, real estate and special district formation. Now that your term on the City Council has ended, you are interested in pursuing a contract with the City to provide financial consulting services related to public infrastructure investment in and around the areas covered by the Fair Oaks Specific Plan and SR 710 Northern Stub, but also including adjacent areas along transit corridors.

On December 3, 2024, you provided the following Scope of Services from the City concerning the potential Enhanced Infrastructure Financing District:

1) Enhanced Infrastructure Financing District Feasibility Analysis

a) District boundary determination – review existing/proposed City Specific Plans, land use, and new development to determine optimal district boundary in the general vicinity of 710 Northern Stub, South Fair Oaks Specific Plan, and Old Pasadena based on a balance of infrastructure funding and General Fund cash flow. Develop building, assessed value, and property tax assumptions for use in property tax increment and bonding projections prepared by staff or third party.

b) Public improvement list – work with Public Works/Planning Departments to identify needed and planned public infrastructure improvements within the proposed district boundaries or of communitywide significance with Rough Order of Magnitude (ROM) cost estimates.

c) Taxing entity partnership – Meetings with Los Angeles County Supervisorial District 5 and Los Angeles County Chief Executive Office;

prepare application to request property tax increment contribution from Los Angeles County based on adherence to EIFD/CRIA Participation Policy and public benefits.

d) Public outreach and education – Develop outreach strategy and materials (PowerPoint presentation, Fact Sheet/FAQ, website content) for use in public meetings with 710 Re-Connecting Communities Task Force, Planning Commission, or City Council to be scheduled and attended by staff or a third party.

e) Documentation – Prepare Staff reports, Resolution of Intent, and other necessary documents for City Council/Board of Supervisors approval of district formation. City Council meetings to be scheduled and attended by staff or a third party.

2) Enhanced Infrastructure Financing District Formation under Government Code sections 53398.50 - 53398.88.

a) Public Financing Authority – Assist with posting/appointment of Public Financing Authority (PFA) members which may include City Councilmembers, Board of Supervisor member, and public members; prepare materials and assist with scheduling, staff reports, agendas, notification, mailing, and posting of one (1) public meeting and three (3) public hearings with final majority protest at third public hearing for district formation and approval.

b) Infrastructure Financing Plan – Prepare two (2) drafts and one (1) final version of Infrastructure Financing Plan (IFP), excluding fiscal impact analysis and property tax increment/bonding projections to be prepared by staff or a third party. Staff to present IFP at PFA meetings and City Council/Board of Supervisors for approval.

c) State Board of Equalization Boundary Change – Prepare forms, calculate fees, and coordinate with taxing entities for change of boundaries related to district property taxes.

3) Additional Consulting Services

a) PFA annual meeting – agenda, notification, mailing, reports for annual PFA meeting to be held at the end of each fiscal year.

b) Grant writing – Identify State and Federal grant opportunities to complement infrastructure financing district and provide early revenue streams. Prepare and submit applications and directed by staff.

c) Project management – Additional tasks including developer RFP/RFQ, property development analysis, funding, outreach, or intergovernmental coordination related to other public-private partnerships and projects provided upon approval and staff direction.

ANALYSIS

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. 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) 103 Cal.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.)

Typically, a contract is “made” on mutual assent of the involved parties. (*Stigall, supra*, at p. 569.) In addition, making or participating in making a contract has been broadly construed to include those instances where a public official has influence over the contract or its terms. (See 80 Ops. Cal. Atty. Gen. 41.)

Notably, when members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract. (*Thomson v. Call, supra* at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).)

Here, the City will consider hiring an individual to provide financial consulting services related to public infrastructure investment in and around the areas covered by the Fair Oaks Specific Plan and SR 710 Northern Stub. If you were still a member of the City Council, you would not be able to enter into this contract with the City even if you did not participate in the decision to approve the contract because you would be “conclusively presumed to be involved in the making of all contracts” by the City. Therefore, Section 1090 would have prohibited you from entering the financial consulting services contract with the City while still serving as a member of the Board.

The determinative issue, therefore, is whether Section 1090 would prohibit the City from entering a contract with you for financial consulting services related to public infrastructure investment in and around the areas covered by the Fair Oaks Specific Plan and SR 710 Northern Stub in that you will be considered to have “made” the agreement through your prior official actions as a councilmember.

Section 1090 reaches beyond the officials who actually execute the contract and courts have broadly interpreted the “making” of a contract when applying the section:

The decisional law, therefore, has not interpreted section 1090 in a hypertechnical manner, but holds that an official (or a public employee) may be convicted of violation no matter whether he actually participated

personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.)

Thus, the “making” of a contract is defined broadly and includes any act involving the planning, preliminary discussions, negotiations, compromises, reasoning, 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.)

In the same vein, it is well established that a contract may be “made” by a public officer or employee within the meaning of Section 1090 even though the actual execution of the contract occurs after the individual leaves public office or employment. In *City Council v. McKinley* (1978) 80 Cal. App.3d 204, 212, the court stated:

If the date of final execution were the only time at which a conflict might occur, a city councilman could do all the work negotiating and affecting a final contract which would be available only to himself and then present the matter to the council, resigning his office immediately before the contract was executed. He would reap the benefits of his work without being on the council when the final act was completed. This is not the spirit or the intent of the law which precludes an officer from involving himself in the making of a contract.

The scope of what it means to participate in the making of a contract was illustrated by *Stigall, supra*, where a demurrer to the complaint that alleged a violation of Section 1090 was sustained by the trial court and subsequently reversed by the California Supreme Court. There, a city councilmember who oversaw the councils building committee owned more than 3 percent of a plumbing company. (*Stigall, supra*, at p. 567.) The building committee had responsibility for drawing of plans and specifications in connection with the construction of a civic center. (*Ibid.*) After bids for the civic center’s construction had been submitted, it was revealed that the councilmember’s company was the low bidder for the plumbing. (*Ibid.*) The councilmember resigned from the council after objections resulted in a new round of bidding. (*Ibid.*) After his resignation, the construction contract was awarded to a general contractor that included the former councilmember’s plumbing company as a subcontractor. (*Ibid.*)

In determining whether the councilmember “made” the contract for purposes of Section 1090, the Supreme Court stated it must “construe its statutory meaning to encompass the planning, preliminary discussions, compromises, drawing of plans and specifications and solicitation of bids, in all of which [the councilmember] participated.” (*Id.* at p. 571.)

Similarly, the Attorney General’s Office has opined that county employees could not propose an agreement for consulting services, then resign, and provide the proposed services. (66 Ops.Cal.Atty.Gen. 156 (1983); see also 81 Ops.Cal.Atty.Gen. 317 (1998) [after leaving office and establishing a private business, Section 1090 precluded former councilmember from participating in City’s loan program where he had been involved in the “planning, discussions, and approval necessary to implement [the] loan program” and “had the opportunity and did participate in the

policy decision to create the government program under which the contract would later be executed”].)²

In all of these matters, Section 1090 prohibited an official from participating in the making of a contract and attempting to enter the contract after resigning from office. Here, the facts show that you participated in making the proposed City contract for financial consulting services related to public infrastructure investment in and around the areas covered by the Fair Oaks Specific Plan and SR 710 Northern Stub through your official actions while serving on the City Council. You voted to approve items that directly relate to and form the foundation for the proposed consulting work, including the South Fair Oaks Specific Plan, the SR 710 Northern Stub Relinquishment, and the \$2.8 million Master Plan contract with Perkins Eastman. These actions helped establish the framework, funding, and planning processes for the exact areas where you now seek to provide financial consulting services for the City. Indeed, your official actions as a councilmember were instrumental in creating the conditions and opportunities that would make the proposed consulting work possible – work that is similar to the type of services that you have been providing as an independent consultant to local governments since 2017.

As mentioned, the courts and Attorney General opinions have consistently interpreted Section 1090’s prohibition on “making” contracts broadly, extending beyond mere execution to include preliminary discussions, planning and other acts that influence the contract’s eventual formation. And as demonstrated in *City Council v. McKinley* and similar cases, an official cannot participate in laying the groundwork for a contract that would later financially benefit them personally, even if the official resigns prior to its execution. Here, your votes on the specific plan, relinquishment agreement, and master planning contract shaped the scope of the proposed City consulting work you now seek to obtain.

Accordingly, Section 1090 prohibits the City from entering a contract with you, or any firm that subcontracts your services, to provide financial consulting services related to public infrastructure investment in and around the areas covered by the Fair Oaks Specific Plan and SR 710 Northern Stub.³

² We note that it is not necessary to show at the time an official participates in setting up a government program that the official had subjective intent to contract with the agency after leaving office. (See 66 Ops.Cal.Atty.Gen. 153, 159-160.) Instead, the determination under Section 1090 is whether the official had the opportunity and did participate in the policy decision to create the government program under which the contract would later be executed. (*Ibid.*)

³ In addition to the prohibition under Section 1090, the Political Reform Act’s one-year ban prohibits specified officials (including city councilmembers), for one year after leaving local government office or employment, from representing any other person, for compensation, by appearing before or communicating with their former agency in an attempt to influence the agency’s decisions regarding any legislative or administrative action, or any discretionary act involving the issuance, amending, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. While there is an exception to this rule under Regulation 18746.3 for appearances or communications made to represent one’s personal interests, including a business owned solely by an official (or the official and immediate family members), the exception does not apply where the appearance or communication is made in a quasi-judicial proceeding, such as a contract, in which the official previously participated. Nonetheless, it is unnecessary to further consider the Act’s one-year ban in light of the conclusions reached herein under Section 1090.

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

Sincerely,

Dave Bainbridge
General Counsel

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

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