



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 14, 2025

Nicholas R. Ghirelli
City Attorney
City of Seal Beach
1 Civic Center Circle
PO Box 1059
Brea, California 92822-1059

Re: Your Request for Formal Advice
Our File No. A-25-005

Dear Mr. Ghirelli:

This letter responds to your request on behalf of Seal Beach City Councilmember Patty Senecal for advice regarding the Political Reform Act (“Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

Also, note that we are not a finder of fact when rendering advice (*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 Orange 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

Under the Act and Section 1090, may Seal Beach City Councilmember Patty Senecal take part in governmental decisions relating to a residential development project, where the proposed project site is located approximately 1,023 feet from her residence?

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.

CONCLUSION

Yes, Councilmember Senecal may take part in the decisions. Because there is no clear and convincing evidence the project would have a substantial effect on her property located more than 1,000 feet away, the Act does not prohibit her from taking part in project-related decisions. However, if additional information comes to light and there is any uncertainty as to the Act's application based on those new facts, Councilmember Senecal should reach out for additional advice. With respect to Section 1090, that statute is not implicated under facts such as these, where the official's only "interest" in a government contract stems from the location of her residence located more than 1,000 feet from the proposed project development site.

FACTS AS PRESENTED BY REQUESTER

The City of Los Alamitos has approved the land use entitlements for a residential project located at 4665 Lampson Avenue (the "Project"), a 12.3-acre site situated northwest of the intersection of Lampson Avenue and Rose Street, directly across the street from the City of Seal Beach. The Seal Beach neighborhood closest to the Project site is known as College Park East.

City Councilmember Patty Senecal is a resident of College Park East. The Project applicant, Lampson Park Place, LLC, has proposed redeveloping the site and constructing 246 residential units, 170 of which are intended as market-rate and 76 designated as affordable units. The unit mix proposes 55 single-family detached homes, 114 townhomes in 18 buildings, and 77 multi-family apartment homes for rent in three buildings. The Project proposes a total of 577 parking spaces.

On November 18, 2024, the Los Alamitos City Council voted to approve the Project's tentative parcel map, affordable housing unit application, and site development permit and certified the environmental impact report (EIR) for the Project. The Los Alamitos Planning Commission had previously recommended approval of these entitlements to the Los Alamitos City Council.

As proposed, the Project is expected to require certain approvals and contracts from the City of Seal Beach. These approvals and contracts could include:

- **Inter-Jurisdictional Sewer Service Agreement.** The Project currently proposes to have the City of Seal Beach provide sewer service to the Project, even though the Project is not located within the City of Seal Beach's sewer service territory. The Project site is located within the jurisdictional boundaries of the Rossmoor/Los Alamitos Area Sewer District ("District"). The District has made representations that it will serve the Project so long as the Project applicant constructs the necessary infrastructure. However, the Project site is further in distance from District's nearest sewer line and would be more costly to connect to. Pursuant to Government Code Section 56133, the Seal Beach City Council must approve an inter-jurisdictional sewer service agreement ("Inter-Jurisdictional Agreement") with the District in order for Seal Beach to provide expanded sewer service to the site because it is located within the District's service area and outside the City's jurisdictional boundaries. The Inter-Jurisdictional Agreement would include the terms and conditions by which the City of Seal Beach provides sewer service to property within the District's service territory.
- **Encroachment Permits or Agreement.** The Project proposes to take access off of Lampson Avenue, which, except for a portion of the northerly sidewalk, is within the City of Seal

Beach. In order to make improvements to Lampson Avenue, such as curb cuts, sidewalks, and other improvements to the City's right-of-way, the Project's developer will require encroachment permits or agreements from the City. The developer has not yet applied for such permits. Depending on their scope, the City Council may be responsible for their approval.

- **Water Franchise.** The Project proposes to receive water from Golden State Water Company. In order to provide service to the Project site, Golden State may have to extend a water main line through Lampson Avenue. Use of the City's right-of-way for public utility service requires a franchise issued by the City Council, through adoption of a franchise ordinance.
- **Mitigation Agreement.** The developer's representative has proposed to provide the City of Seal Beach with certain financial contributions and other assistance in order to mitigate the Project's impacts on Seal Beach. These include mitigation for potential drainage, traffic, and park impacts that benefit College Park East. The terms of these mitigations have not been finalized and further negotiation between the City and the developer is expected.
- **CEQA.** Prior to the Seal Beach City Council's consideration of the proposed interjurisdictional agreement, encroachment permits, or water franchise, the City Council must consider the environmental effects of those actions. The City Council is a responsible agency for purposes of CEQA because it has discretionary approval authority over components of the Project. As a responsible agency, the City must make its own findings for each environment impact that relates to Seal Beach's actions.

The Seal Beach City Council has not taken action on any of the above approvals and contracts. The Project developer has not presently submitted an application to the City for sewer service or encroachments on Lampson Avenue. The scope of the Golden State Water Company franchise of the Inter-Jurisdictional Agreement with the District is also not certain at this time.

Councilmember Senecal has not participated in any official proceedings or discussions regarding the Project in her capacity as a member of the Seal Beach City Council. As a candidate, Councilmember Senecal participated in the public hearing process before the Los Alamitos Planning Commission and City Council, and also submitted written comments to the City of Los Alamitos as part of its EIR process. She commented that the Project could cause parking, traffic, and public safety impacts to the neighborhood of College Park East and Lampson Avenue.

Councilmember Senecal owns her home and it is valued at more than \$2,000. The home is located approximately 1,023 feet from the nearest property line of the Project site. You are unaware of any applications that would result in construction closer than 1,000 feet from Councilmember Senecal's home. You also note, however, that you are not aware of the scope of any submittal by Golden State Water Company to provide water service to the project, and it is possible that such applications could result in impacts to property—generally limited to construction, such as temporary lane closures—within 1,000 feet.

Along with your request for advice, you also included a copy of the public comment Councilmember Senecal submitted to the City Council, in her capacity as a College Park East resident and prior to her election as a City Councilmember.

In a follow-up email, you clarified the Project site is not visible from Councilmember Senecal's residence. Additionally, her residence is separated from the site by approximately six rows of houses along the streets in between the properties.

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 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 has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).)

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. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where an official’s economic interest is not explicitly involved in the governmental decision, 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.”

The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official’s property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official’s property. (Regulation 18702.2(b).) While the scope of the proposed redevelopment project is not insignificant, no facts have been provided that establish clear and convincing evidence of a substantial effect on Councilmember Senecal’s real property. Here, not only is Councilmember Senecal’s residence more than 1,000 feet from the proposed Project site, but the properties are also separated by approximately six rows of houses. Consequently, the Project site is not visible from Councilmember Senecal’s residence. Based on the available information, there is no clear and convincing evidence of a substantial effect on Councilmember Senecal’s real property. Therefore, under the Act, she may take part in City Council decisions relating to the Project.

We note, however, that the above conclusion is based on the information known at this time. It is possible that additional information could impact that conclusion. For example, you noted an upcoming Inter-Jurisdictional Sewer Service Agreement. Under Regulation 18702.2(a)(6), a financial effect on an official's real property is considered material when it "[i]nvolves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services" Therefore, if additional facts came to light such that Regulation 18702.2(a)(6) would be implicated, Councilmember Senecal would likely be prohibited from taking part in those decisions. Likewise, if during the CEQA process, an environmental impact report included clear and convincing evidence that Councilmember Senecal's *would* experience a substantial effect as a result of the Project, she would similarly be disqualified. If Councilmember Senecal has any uncertainty about her ability to take part in future questions based on additional information she learns of, she should contact us for additional advice.

Section 1090

There is a second type of prohibition relating to contract decisions that we must examine in considering the County's Relinquishment Agreement. Under Section 1090, public officials "shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are a member." 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.) Where a prohibited interest is found, the affected contract is "void from its inception," regardless of "whether the terms of the contract are fair and equitable to all parties." (*Thomson v. Call* (1985) 38 Cal.3d 633, pp. 646-649.) 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.) Virtually all board members, officers, and employees are public officials within the meaning of section 1090. (See, e.g., *Thomson v. Call, supra.*)

We have previously advised under Section 1090, that an official has a financial interest in a contract only when there is a sufficient connection between the contract in question and the interest held by the official. In *Bordson* Advice Letter, No. A-17-059, we advised for the purposes of Section 1090 that several officials did not have a financial interest in a contract involving a Highway 99 corridor project agreement between a city and Caltrans, which involved frontage road improvements affecting the officials' real properties and business interests, simply because the officials' interests were adjacent to the project and would peripherally benefit along with numerous other properties and business along the route. In *Collins* Advice Letter, No. A-17-184, we advised that several officials did not have an interest in a contract to slurry-seal all residential neighborhoods, including their residential street, where the officials' properties would peripherally benefit from the contract along with all residential streets in the jurisdiction. Similarly, here, Section 1090 is not implicated merely as a result of Councilmember Senecal's residence located more than 1,000 feet from the proposed Project site.

If you have other questions on this matter, please contact me at kcornwall@fppc.ca.gov or (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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