



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

September 21, 2023

Lauren B. Langer  
Best Best & Krieger, LLP  
City of Downey  
300 South Grand Avenue, 25th Floor  
Los Angeles, California 90071

Re: Your Request for Advice  
**Our File No. A-23-100**

Dear Ms. Langer:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Los Angeles County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

## QUESTION

1. Under Section 1090, may Mayor Pro Tem Trujillo take part in contracts, including grants issued for the purpose of hosting Pride events, between the City and a non-profit organization on which he serves as an uncompensated boardmember?

---

<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.

2. Under the Act, may Mayor Pro Tem Trujillo take part in various annual City Council decisions concerning requests for City support for Pride events hosted by the nonprofit, given that he owns real property and is a landlord to tenant businesses in the vicinity of the events?

### **CONCLUSION**

1. Under Section 1090, Mayor Pro Tem Trujillo does not have a financial interest in contracts between the City and the non-profit organization because, under Section 1091.5(a)(8), he is a noncompensated officer of a nonprofit that, as one of its primary purposes, supports the functions of the City by promoting the health and general welfare of City residents. Moreover, his interest in property in the vicinity of the Pride events does not constitute an interest in a contract for purposes of Section 1090.

2. Under the Act and based on the facts provided, we advise it is reasonably foreseeable the Pride events may have a material financial effect on Mayor Pro Tem Trujillo's interests in his business entity and sources of income, which include interests in two restaurants and a night club within 500 feet of the events.

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

The Los Angeles Centers for Alcohol and Drug Abuse ("LA CADA") is a nonprofit 501(c)(3) organization with the primary purpose of offering outpatient, outreach, adult, youth, and residential treatment services. LA CADA is also a licensed and certified substance use and behavioral treatment provider by the State of California Department of Health Care Services and the County of Los Angeles Department of Public Health – Substance Abuse Prevention and Control.

For the past two years, the City has supported LA CADA in hosting a Downey Pride Family Picnic ("Family Picnic") as part of LA CADA's annual Pride Sunset Festival ("Pride Festival") (together, the "Events"). Last year, LA CADA advertised the Events with a post on its website stating, "[p]resenting sponsors, Supervisor Janice Hahn and the City of Downey are proud to honor and celebrate our LGBTQ community members and loved ones. All are welcome, as we come together to promote equality, love, and acceptance." According to LA, CADA's website, all proceeds raised from the Events benefit LA CADA.

LA CADA has approached the City to provide support again for a 2023 Pride Festival in August (there is no picnic planned for this year). In May 2023, the City Council approved the waiver of permit fees for the 2023 Pride Festival and approved the provision of the stage and audio equipment for the Pride Festival at no charge. The City Council denied LA CADA's request for a \$25,000 grant/donation in connection with the Pride Festival, but noted that LA CADA may apply for funding next year through a formal process for awarding grants to support nonprofit events that the City is currently in the process of creating.

Later this summer, the City Council will consider LA CADA's request to approve street closures for the 2023 Pride Festival in the City's downtown district and a request for law

enforcement services from City police officers to provide security at the Pride Festival at City expense.

The City anticipates that each year, LA CADA's request related to the Events will include a \$25,000 donation, use of public space, permit fee waivers, City police presence at the Events, street closures for the Pride Festival stage, and the provision of audio equipment at no charge.

Mayor Pro Tem Trujillo serves as a noncompensated member of the LA CADA Board of Directors ("Board"). He is not employed by LA CADA and does not receive any salary compensation, stipend or reimbursement from LA CADA. He also owns, through two limited liability corporations, two real properties in the City's downtown district that are located within 500 feet of the streets that will be temporarily closed for one day to facilitate the Pride Festival. A performance venue/bar/restaurant business is a tenant of one of Mayor Pro Tem Trujillo's properties. The other property has multiple tenants, including a sushi restaurant, nightclub, hair salons, retail storefront, and a hamburger café. The Pride Festival will feature food trucks, festival booths, live entertainment, and a beer garden. Businesses along the streets to be closed typically remain open during the Pride Festival and may experience an increase in business during the Pride Festival, as there is increased foot traffic in the downtown area.

Mayor Pro Tem Trujillo recused from participation in the request for City support for the Events.

In a follow-up phone call, you noted that the Events have an estimated attendance of approximately 2,000 people.

## ANALYSIS

### *Section 1090*

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." Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) 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.) 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. (*Id.* at pp. 647-649.)

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091, or a "noninterest," as defined in Section 1091.5. Relevant here, under Section 1091.5(a)(8), an officer shall not be deemed to be interested in a contract if the officer's interest is that of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the

functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

California courts have long recognized that, through the California Constitution's delegation of authority to local governments to adopt laws not in conflict with state law (i.e., "police powers"), those local governments also have a delegated sovereign duty to protect their citizens and provide for the health, safety, good order, and general welfare of society. (See, e.g., *McKay Jewelers, Inc. v. Bowron* (1942) 19 Cal.2d 595, 600; *Kellar v. Los Angeles* (1919) 179 Cal. 605; *McClain v. South Pasadena* (1957) 155 Cal.App.2d 423, 438; *Farrell v. Long Beach* (1955) 132 Cal.App.2d 818, 819.) LA CADA's primary purpose of offering outpatient, outreach, adult, youth, and residential treatment services supports the City's function in regard to care and support of City residents struggling with substance abuse issues. Additionally, LA CADA's efforts to plan and coordinate the Festival supports the City's efforts to foster inclusion, as well as support of the City's LGBTQ community.

Given that LA CADA's primary purposes relate to the maintenance of health, safety, good order, and general welfare of the City's residents, Section 1091.5(a)(8) is applicable with respect to contracts between the City and LA CADA, including grants, as long as Mayor Pro Tem Trujillo is a noncompensated board member and his interest as a noncompensated board member is noted in the City's official records. Assuming those criteria are satisfied and Mayor Pro Tem Trujillo does not have any other financial interest in a contract between the City and LA CADA, the City may enter such a contract with LA CADA and Mayor Pro Tem Trujillo may take part in the contracting process.

We have also previously advised that an official does not have an interest in a contract based on the proximity of the official's real property to a highway project site. (See, e.g., *Ramirez Advice Letter*, No. A-23-070.) Similarly, here, the fact that Mayor Pro Tem Trujillo owns real property located near the potential site of the Events does not establish an interest in a contract between the City and LA CADA related to the Events. However, for reasons discussed below, Mayor Pro Tem Trujillo should recuse himself from such decisions based on disqualification under the Act.

### *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 are:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103.) Mayor Pro Tem Trujillo does not have an interest in LA CADA as a business entity or source of income. However, he does have real property interests that may be impacted by decisions related to the Events. He also has economic interests in his rental business as a business entity and source of income as well as his tenants as sources of income.

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 reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).) Notwithstanding this provision, the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant. (Regulation 18702(b).)

The City anticipates that each year, LA CADA’s requests related to the Events will include a \$25,000 donation, use of public space, permit fee waivers, City police presence at the Events, street closures for the Pride Festival stage, and the provision of audio equipment at no charge. The relevance of such governmental decisions in relation to Mayor Pro Tem Trujillo’s real property interests are whether they would impact the Events being held in close proximity to the properties and whether that would have any financial impact on the properties.

In regard to Mayor Pro Tem’s property interest, the Events being held in close proximity would not appear to impact the development potential, income producing potential, highest and best use, or market value of the real property in that the Events are limited to a single day of a street

closure and would have only minor and temporary impacts on traffic levels, intensity of use, parking, and noise levels. (See *Barth* Advice Letter, No. A-13-019 [“We do not think, however, that the Commission intended to apply such a hard and fast rule to every governmental decision that had a physical location attached to it. Instead, we think the intent was to apply the rule to decisions that affect such things as the character, nature, value, improvements to, or overall permanent use of a particular parcel of real property.”].) However, it is unnecessary to further consider the potential effect on the Mayor Pro Tem’s property interests, in light of our conclusion that it is reasonably foreseeable the decisions will have a material financial effect on his interests in his business entity and sources of income.

With respect to potential financial effects on Mayor Pro Tem Trujillo’s interests in his rental business and tenants, the reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a business entity and sources of income that are business entities is material if the source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).)

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a business entity is material if 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 greater than: (A) \$1,000,000; or (B) five percent of the entity’s annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)

The reasonably foreseeable financial effect on a business entity is also 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: (A) \$250,000; or (B) one percent of the entity’s annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

The reasonably foreseeable financial effect on a business entity is also material if the official knows or has reason to know that the entity 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 18702.1(a)(4).)

While you have not provided the gross revenues or value of Mayor Pro Tem Trujillo’s rental business and have informed us that Mayor Pro Tem Trujillo’s does not have this information for his respective tenants, we can proceed with our analysis of whether it is reasonably foreseeable the Events will lead to a material financial effect on his business entity and sources of income by examining the likelihood the Events will affect his interest by the general thresholds for materiality. In this case, Mayor Pro Tem Trujillo’s tenants include a nightclub and two restaurants and the facts provided indicate the Event will draw an estimated 2,000 attendees. Significantly, the nightclub and restaurants are within 500 feet of the Events primary location and may draw a significant number of attendees during and after the Events’ scheduled festivities. Moreover, it is possible that the economic boost to service industry businesses in close proximity to the Events may have impacts on the viability of the businesses as well as the viability of Major Pro Tem Truillo’s rental business. Accordingly, it appears more than merely hypothetical that the Events may increase a restaurant’s annual gross revenue by \$10,000 or increase expenses by at least \$2,500 depending, in part, on how many additional customers the Events bring in. (Regulation 18702.1(a)(2)(B), (a)(3)(B).)

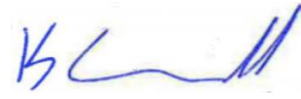
Based on the limited information available, discussed above, it appears reasonably foreseeable from the facts provided that decisions regarding the Events may have material financial effects on Mayor Pro Tem Trujillo's interests in his rental business and tenants. Accordingly, we can only conservatively advise Mayor Pro Tem Trujillo should recuse himself from governmental decisions relating to the Events. We emphasize that this conclusion is limited by the facts provided and that at this time there is no information regarding the gross revenues or value of Mayor Pro Tem Trujillo's rental business or the tenants of the rental business. To the extent Mayor Pro Tem Trujillo can subsequently determine these numbers, he may wish to seek further advice at that time.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Counsel, Legal Division

KMC:aja