



City of Rialto

Legislation Text

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For City Council Meeting [January 26, 2021]

TO: Honorable Mayor and City Council

APPROVAL: Sean Grayson, Acting City Manager

FROM: Randall Keen, Special Counsel

Request City Council to Adopt **Ordinance No. 1655**, to Amend the City of Rialto's Conflict of Interest Ordinances.

(ACTION)

BACKGROUND

In June 2019, a fiscal year-end audit identified conflict of interest concerns related to the City's federal program spending, and specifically with respect to federal CDBG grants. A subsequent review of the City's conflict of interest ordinances and internal controls process by Special Counsel identified several issues with these ordinances and processes. The current ordinances:

- Do not sufficiently address conflicts of interest arising from non-financial interests;
- Are redundant as relates to existing state law regarding financial conflicts of interest;
- Do not make explicit the type of actions from which a City officer or employee must abstain; and
- Do not contain clear disclosure or enforcement provisions.

The conflict of interest issue first identified in the 2019 audit was resolved by the City Council on June 9, 2020.

Subsequent to the resolution of the initial conflict of interest, the federal Department of Housing and Urban Development (HUD) requested that the City take steps such as updating and strengthening its conflict of interest ordinance and internal controls process, to avoid similar future conflicts of interest.

ANALYSIS/DISCUSSION

Proposed Amendments to City of Rialto Code of Ordinances Sections 2.48.140 and 2.48.145

The proposed new conflict of interest ordinances would minimize the potential for future conflicts of interest in the award of City contracts and grants, and in particular, federal CDBG grants. The proposal would delete the current conflict of interest ordinance at City of Rialto Code of Ordinances section 2.48.140 and replace it with a new ordinance. The changes in the proposed Ordinance would:

1. Eliminate the city's prohibition on financial conflicts of interest, which are already addressed by

- state law, and impose a prohibition on non-financial conflicts of interest in the making of contract and grants;
2. Make explicit the type of actions from which a City officer or employee must abstain;
 3. Provide provisions for the enforcement of the City's conflict of interest ordinance; and
 4. Strengthen and clarify the disclosure process for individuals, entities and businesses contracting with or seeking funding from the city, to better identify and thus avoid future conflict of interest issues related to contracting and grant awards.

The proposal would also amend and replace the City's current conflict of interest disclosure ordinance, at City of Rialto Code of Ordinances Section 2.48.145, to make clear that a conflict of interest exists where there is a financial **or other non-financial personal benefit** to any person related to a city officer or employee, including where such a related person holds a position of leadership or control, whether paid or volunteer, in the entity seeking to contract with the City.

The attached Ordinance was drafted by Special Counsel, and the substantive changes have been reviewed and approved by HUD. HUD legal counsel indicated:

We reviewed your proposed recommendations against our HUD regulations at 24 CFR 570.611(b) and found it to be consistent, and further noted that your recommendations more clearly delineate the definitions of financial vs non-financial benefits, which definitely will help to avoid confusion.

Adoption of the attached Ordinance would bring the City's conflict of interest rules in line with best practices and would bring the City into compliance with HUD's request for additional conflict of interest regulations and controls.

Alternative Language for City of Rialto Code of Ordinances Section 2.48.140

The proposed amendments to the City's conflict of interest ordinance at Section 2.48.140 do not include a provision for voiding of a contract made where there is a conflict of interest. While there is precedent in state law for this type of action, it is onerous, can lead to expensive litigation, and can harm contractors or grantees who did not themselves violate the ordinance. While this is not recommended, If the City Council would like to include such a provision, the below language can be added as a subsection (h) to the new City of Rialto Code of Ordinances Section 2.48.140:

(h) Any contract made in violation of this Ordinance may be invalidated by a vote of the City Council. The City Manager may likewise invalidate any such contract made in violation of this Ordinance, pursuant to City of Rialto Code of Ordinances Section 2.04.080, and must thereafter report to the City Council detailing the violation. Any action of the City Council or City Manager to invalidate a contract under this section must be commenced within 30 days after the execution of the agreement in question.

Updated Disclosure Form

In addition to the proposed amendments to the Code of Ordinances, the proposed actions instruct the City Manager to update the City's required disclosure form, in line with the new ordinances. A proposed updated disclosure form is attached as Exhibit 2.

ENVIRONMENTAL IMPACT

The proposed actions do not constitute a “project” as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(b)(5), a Project does not include: “[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.”

GENERAL PLAN CONSISTENCY

This action is consistent with the City of Rialto General Plan Goal and Policies Guiding Principles 3C & 4A in the General Plan:

Our City government will lead by example, and will operate in an open, transparent, and responsive manner that meets the needs of the citizens and is a good place to do business.

LEGAL REVIEW

The Special Counsel prepared this staff report. The City Attorney reviewed and supports this staff report.

FINANCIAL IMPACT

None. The proposed actions would require the City Manager and/or City staff to update the required conflict of interest disclosure form.

RECOMMENDATION

Staff recommends City Council adopt the proposed Ordinance and authorize the City Manager and City Attorney to update the required conflict of interest disclosure form, as per newly-amended City of Rialto Code of Ordinances Section 2.48.145.