



**DATE:** April 25, 2017  
**TO:** Mayor & City Council  
**FROM:** City Manager  
**SUBJECT** Consideration of a Resolution Acknowledging Council Member Zermeño's Affiliation with La Alianza de Hayward

**RECOMMENDATION**

That Council adopts a resolution acknowledging Council Member Zermeño’s affiliation with La Alianza de Hayward.

**BACKGROUND**

California Government Code Section 1090 generally prohibits members of the legislature, state, county, judicial district, and city officers or employees from undertaking a financial interest in any contract with the body or board. Section 1090 is concerned with financial interests, other than a remote or minimal interest, that could 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.) A contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thompson v. Call* (1985) 38 Cal.3d 633, 646-649.) Governing bodies may not enter into any contract in which any member may have a financial interest, whether or not that member abstains.

The Legislature has created various exceptions to Section 1090’s prohibition where the financial interest involved is deemed a “remote interest,” as defined in Section 1091, or a “non-interest,” as defined in Section 1091.5. Individuals may fully participate in decisions in which they have one of the listed “non-interest” exceptions if they comply with the requirements of that section. If a “non-interest” is present, the contract may be made without the officer’s abstention.” (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515; 84 Ops.Cal.Atty.Gen. 158, 159-60 (2001).)

Section 1091.5(a)(8) states:

“(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:...

(8) That of a **non-compensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board** 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.” (Emphasis added.)

In other words, Section 1091.5(a)(8)'s non-interest exception applies to a public officer who also serves on the board of directors for a nonprofit, tax exempt organization if at least one of the organization's primary purposes supports the functions of the City.

Various agencies have interpreted this exception to apply in a case where a vice mayor who also served as an uncompensated Vice Commander for the Veterans of Foreign Wars because that nonprofit, tax exempt organization supported the functions of a city by providing veteran services to that city's residents. The non-interest exception has also been found applicable to a councilmember who also served as an uncompensated member of the Board of Directors of the local Rotary Club because that nonprofit, tax exempt organization supported the functions of a city by providing various beneficial services to that city.

## **DISCUSSION**

La Alianza De Hayward is a 501(c)(3) non-profit entity incorporated on or about February 10, 1999 to promote Mexican and Mexican-American culture, education, and civic community in Hayward.

### **Donations to La Alianza's Annual Cinco de Mayo Celebration**

In the past several years, the City has provided charitable contributions to La Alianza's annual Cinco de Mayo celebration. The celebration years and amounts are as follows:

<b>Year</b>	<b>Donation</b>
2014	\$2,524
2015	\$2,524
2016	\$2,524

Additionally, the City contributed \$2,000 to La Alianza for activity scholarships in 2014. In 2014, the most recent year for which data is available, the cost of the Cinco de Mayo event appears to be \$3,717 on Internal Revenue Service documents.

### **Council Member Zermeno's Affiliation with La Alianza**

Council Member Francisco Zermeño was an incorporating director of La Alianza De Hayward. Council Member Zermeño currently sits on the Board of Directors, is acting Treasurer for La Alianza, manages the organization's books, and is listed as the agent for service of process for the organization. La Alianza's 2014 tax returns, however, indicate that Council Member

Zermeño did not receive any compensation for the approximately 104 hours (2.0 hours x 52 weeks) of service he provided for the year.

Here, Section 1091.5(a)(8)'s non-interest exception applies to Council Member Zermeno since:

1. He is a non-compensated officer of La Alianza de Hayward, a nonprofit corporation, and
2. One of La Alianza's primary purposes is to support the functions of the City of Hayward by providing beneficial services to the City, including increasing awareness about cultural diversity and heritage.

Pursuant to Government Code Section 1091.5, the Council can adopt a resolution acknowledging Council Member Zermeño's affiliation with La Alianza so that his non-interest is formally noted in City records. This disclosure is consistent with other provisions of California law requiring disclosure of financial interests. Such a resolution will allow the City to provide a charitable contribution to La Alianza's 2017 Cinco de Mayo celebration.

#### **NEXT STEPS**

Per section 1091.5 of the Government Code, the Council can adopt a resolution acknowledging Council Member Zermeño's affiliation with La Alianza de Hayward.

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*Recommended by:* Michael Lawson, City Attorney

Approved by:



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Kelly McAdoo, City Manager