



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Germond and Commissioners Cardenas, Hatch and Hayward

**From:** Dave Bainbridge, General Counsel  
Brian Lau, Assistant General Counsel

**Subject:** Advice Letter Report and Commission Review

**Date:** November 6, 2018

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The following advice letters have been issued since the October Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. Full copies of FPPC Advice Letters, including those listed below, are available at: <http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

### **Campaign**

**Sarah Lang**

[A-18-160](#)

A recipient committee was advised that it may satisfy the “top contributor” advertisement disclosure requirement as to affiliated entities qualifying as a top contributor by displaying the name of the filer appearing on the entities’ most recent Major Donor Report on its campaign advertisements.

**Eric S. Casher**

[A-18-187\(a\)](#)

This letter was a follow-up to the *Casher* Advice Letter, No. A-18-187 where the requestor was advised in part that the Act does not prohibit the city from televising video recorded arguments regarding a proposed ballot measure on the city owned public access channel so long as the proponent of a ballot measure and at least one opponent or their respective representative, are invited to participate in equal numbers. In this follow-up letter, it was further emphasized that an invitation to both the proponent and opponent of a ballot measure alone is not sufficient. To the extent that the City is broadcasting proponent and opponent arguments related to an initiative or ballot measure, the City must ensure a fair and balanced approach for each side, otherwise the broadcast could potentially become a reportable campaign expenditure.

### **Conflict of Interest**

**Shannon Eckmeyer**

[A-18-076\(a\)](#)

Councilmember who owns five properties, four residential and one commercial, with the potential for an Accessory Dwelling Unit (“ADU”), may not participate in an ordinance decision that will determine if he may build ADUs on his properties as the decision will have a reasonably foreseeable and material financial effect on his properties’ value. The public generally exception is not applicable because the impact of this decision on his financial interest will be unique, due to the number of properties owned, as compared to the general public.

**Michael C. Ghizzoni**[A-18-134](#)

Given the large-scale redevelopment of a once-dormant oil production field bordering a property in which the Supervisor has an interest, decisions regarding the project will have a reasonably foreseeable material financial effect on the Supervisor's interests.

**Theresa Fuentes**[A-18-171](#)

Councilmember and Mayor do not have a conflict of interest in participating in the signature gathering process required to form a landmark district, while acting in their private capacities, as this does not involve a governmental decision. However, they may not take part in decisions concerning the designation of the landmark district given the location of their respective residences, because there would be a material financial effect on the value of their real property interests as a result of the decision.

**Caren Ray**[A-18-176](#)

The Act does not prohibit the Mayor Pro Tem from taking part in decisions relating to the Road Interchange Project because those decisions would not have a reasonably foreseeable material financial effect on the Mayor Pro Tem's real property interest in her residence. While the decisions involve construction of or improvements to streets or similar facilities, the decisions would not confer a disproportionate benefit or detriment on the Mayor Pro Tem.

**Thomas E. Montgomery**[A-18-184](#)

The Act's conflict of interest provisions do not prohibit Supervisor from participating in a decision involving a proposed amendment to the County's General Plan to increase the density by 253 potential dwelling units in an area that encompasses almost 1,500 acres. The facts do not indicate that the decision will have a reasonably foreseeable material financial effect on the market value of the Supervisor's real property, located 3/4 mile from the southeaster border of the area at issue.

**Lynn Tracy Nerland**[A-18-192](#)

Councilmembers may take part in decisions related to the installation of supplemental safety measures that would allow for a reduction in train horn noise at railroad crossings located adjacent to their personal residences. While the reduction in noise may have a reasonably foreseeable material financial effect on the Councilmembers' real property interests, the effect would be indistinguishable from the effect on the public generally considering that a majority of residential properties within the City are located in a corridor running adjacent to, and within approximately 3,000 feet of the track.

**Steven T. Mattas**[A-18-193](#)

Councilmember has a conflict of interest under the Act and is prohibited from taking part in three proposals to significantly improve Town Hall facilities located within 500 feet of the Councilmember's residence.

**Oliver Smith**[A-18-200](#)

Planning Group Member may not take part in decision to include planted median project on Capital Improvements Projects list because facts provided indicate that it is reasonably foreseeable that the decision will have a material financial effect on the member's interest in his

business, owned by himself and his wife, located along the road on which the median will be installed.

**Molly Stump**[A-18-206](#)

The Act does not prohibit Councilmember from taking part in governmental decisions relating to a proposed Memorandum of Understanding between the City and the Caltrain Board regarding the electrification of Caltrain's commuter rail system within the City because those decisions would not have a reasonably foreseeable material financial effect on his real property interest in his leased residence located within 500 feet of the Caltrain tracks and an at-grade crossing within the City.

**Eric Lucan**[A-18-208](#)

The Act prohibits Councilmember from taking part in governmental decisions relating to the City's potential provision of additional financial assistance to a theatre group for the reconstruction of a theatre because those decisions would have a reasonably foreseeable measurable impact on the Councilmember's real property interest in his residential rental property located within 300 feet of the theater.

**Gifts****Rhonda Garietz**[I-18-175](#)

City is not required to file a Form 801 to report the donations that are used to purchase equipment, such as ballistic vests, helmets, Tasers, and bicycles for non-designated officials. Moreover, the City is not required to file a Form 801 to report the donation to purchase equipment, such as ballistic vests, helmets, Tasers, and bicycles for the collective use of the department that are not assigned to a specific designated official. However, a gift may result if a donation is used to purchase equipment used exclusively by designated officials depending on the specific nature of the purchase.

**Bill Brand**[A-18-189](#)

Payments for airfare, ground transportation, lodging and meals made to Mayor from the Anchorage Museum to attend the Mayors Institute for Community Design Conference are reportable gifts, but are not subject to the \$470 gift limit, because the payments are reasonably related to a legislative or governmental purpose and are provided by a non-profit 501(c)(3) organization.

**Marisa Yeager**[A-18-199](#)

Payments for airfare, ground transportation, lodging and meals made by the American Israel Education Foundation ("AIEF") for the Transportation Authority's Senior Manager of Intergovernmental Affairs and Transportation Policy to attend the AIEF's "Educational Seminar in Israel for Southern Pacific Latino Leaders" are reportable gifts, but are not be subject to the \$470 gift limit, because the payments are reasonably related to a legislative or governmental purpose and are provided by a non-profit 501(c)(3) organization.

**Jill Maland**[A-18-215](#)

Payments for airfare, ground transportation, lodging and meals made by the American Israel Education Foundation (“AIEF”) for Councilmember to attend the AIEF’s “Educational Seminar in Israel for Southern Pacific Latino Leaders” are reportable gifts, but are not be subject to the \$470 gift limit, because the payments are reasonably related to a legislative or governmental purpose and are provided by a non-profit 501(c)(3) organization.

**Andrea Beth Damsky**[A-18-228](#)

Payments for airfare, ground transportation, lodging and meals made by the American Israel Education Foundation (“AIEF”) for Commissioner of Environmental Sustainability Commission to attend the AIEF’s “Educational Seminar in Israel for Southern Pacific Progressive Leaders” are reportable gifts, but are not be subject to the \$470 gift limit, because the payments are reasonably related to a legislative or governmental purpose and are provided by a non-profit 501(c)(3) organization.

**MaryAnn McNett Mason**[A-18-235](#)

Payments for airfare, ground transportation, lodging and meals made by the American Israel Education Foundation (“AIEF”) for County Supervisor to attend the AIEF’s “Educational Seminar in Israel for Pacific Northwest Progressive Leaders” are reportable gifts, but are not be subject to the \$470 gift limit, because the payments are reasonably related to a legislative or governmental purpose and are provided by a non-profit 501(c)(3) organization.

**Mass Mailing****Rebecca Moon**[A-18-173](#)

City staff may prepare and distribute a newsletter containing a list of all candidates, including two Councilmembers who are seeking re-election, so long as the newsletter is prepared and sent completely independent of the City Council and does not “feature,” or otherwise single out, either Councilmember seeking re-election.

**Jeffrey J. Giba**[A-18-201](#)

Councilmember’s letter to agency staff sent via intra-agency mail does not violate the mass mailing provisions because the contents of the letter bear a strong relationship to the functions carried out by the official’s office, and the distribution of the letter qualifies under the exception enumerated in Section 89002(b)(4) for an intra-agency communication sent in the normal course of business.

**Revolving Door****Robin Bolster-Grant**[A-18-195](#)

County licensing manager was advised that the Act’s restrictions on negotiating prospective employment would apply to her prior to leaving her position of employment with the county. She was also advised that the local one-year revolving door ban did not apply to her upon leaving her position with the county because she is not employed in a position to which that the local ban applies.

**Steven G. Churchwell**[I-18-159](#)

The Act's revolving door provisions apply to a former retired annuitant at a state agency, notwithstanding the fact that the official declined pay and volunteered his services to the state. Accordingly, the one-year ban prohibits the official from communicating with his former agency for compensation and for the purpose of influencing administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property for one year. Additionally, the permanent ban prohibits the official from participating in any proceeding involving his former agency or assisting others in such a proceeding if the proceeding is one in which he participated while employed by the state.

**Section 1090****Julia Lew**[A-18-149](#)

Promotion of a city director to Deputy City Manager would neither create a disqualifying conflict of interest under the Act or Section 1090. However, Section 1090 and the Act would prohibit the official from taking part in future decisions involving her spouse's terms of employment or amending his contract, as he is an employee with the City's Fire Department.

**Gerald Riss and Marcia L. Scully**[A-18-153](#)

Section 1090 prohibits an agency from contracting with a business where one of the members of its board of directors is as an employee and corporate officer.

**Jeff Walter**[A-18-155](#)

Mayor may take part in City Council decisions to approve a lease of a City-owned property to the local Boys & Girls Club because he does not have a disqualifying conflict of interest in the decisions under the Act. Additionally, under Section 1091.5(a)(8), the Mayor has a noninterest in a lease between the City and the Boys & Girls Club. Therefore, Section 1090 does not preclude the Mayor or City Council from making or participating in the lease decision.

**Jay Wilverding**[A-18-162](#)

Under the Act, Board of Supervisor's consideration of a pay supplement to the County Auditor-Controller would not result in a reasonably foreseeable material financial effect on his interests, pursuant to the materiality exception established by Regulation 18702.5(b)(1). Under Section 1090, the Auditor-Controller is prohibited from presenting the pay supplement change to the Board in his official capacity. So long as the Auditor-Controller explicitly acts in his individual and private capacity, he may appear and contact the Board regarding the pay supplement.

**Peter Lambert**[A-18-168](#)

The Act does not prohibit a member of community services district board from making a donation to the district in order to cover costs to resurface the street upon which he owns real property, and the official is not prohibited from taking part in the decisions related to the street repairs or water main lines below the street under the Act because there is an exception for decisions that solely concern repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities. Additionally, Section 1090 does not prohibit the official's participation because he does not have a financial interest in a contract.

**Dennis J. Stryker**[A-18-179](#)

Section 1090 does not prohibit City from contracting with engineering company for the design of a road and bridge widening where the engineering company had previously provided information and data associated with the development of environmental reports in connection with the project because it was a subcontractor that provided technical analysis and not subject to Section 1090. The engineering company did not impose considerable influence over the City regarding the new contract, derived no unfair advantage in procuring the new contract by the work it performed under the first contract, and did not participate in the making of a new contract through its performance of the first contract.

**Kyle Holmes & Dean Markham**[A-18-180 & 181](#)

Under the remote interest provisions of Section 1091(b)(15), a Trustee and the School District may enter into agreements if the agreements are part of a settlement of litigation in which the District is represented by legal counsel; a court of competent jurisdiction finds that the agreements serve the public interest; and the Trustee recuses himself from all participation, direct or indirect, in the making of the agreements in his official capacity on behalf of the District. In addition to the abstention requirements for remote interests, the Act requires the Trustee to leave the room during any Board decisions related to settlement agreements with the School District.

**Heather L. Stroud**[A-18-185](#)

Section 1090 does not prohibit City from contracting with pool design company to perform the design services for the city pool facility where the design company performed a needs assessment study for the same facility under a prior contract. The company did not participate in the making of the subsequent design services contract through its performance of the initial “assessment needs” contract. Moreover, there is no indication that company imposed considerable influence over the City regarding the design services contract or derived an unfair advantage as a potential bidder for that contract through the work it performed under the initial contract.

**Tom Schroeter**[A-18-196](#)

Councilmembers do not have a conflict under the Act or Section 1090 in a decision to create a grant program to benefit non-profit organizations within the City, where the Councilmembers are also members of non-profit organizations. However, a Councilmember would have a remote interest under Section 1090 in the event that he becomes an officer of a non-profit, and the City Council considers a grant to that organization and will need to recuse him or herself from the contract under Section 1091.

**Steven P. Rice**[A-18-203](#)

Section 1090 prohibits County Retirement Association Board from entering a new contract with an existing asset manager if a Trustee’s company enters into a consulting agreement with that asset manager. The Trustee would have a financial interest in any new contract between the Board and the asset manager based on her business relationship with the asset manager as a supplier of services. The prohibition would apply to any decision to modify, extend, or renegotiate the existing contract between the Board and the asset manager.

**Robert N. Black**

[A-18-213](#)

Section 1090 prohibits a Councilmember from making or participating in the making of agreements with the Councilmember's employer, a 501(c)(3) organization. However, if the Councilmember recuses herself from the decisions, the City may enter into an agreement with the nonprofit organization, because the Councilmember's interest in the nonprofit organization is a remote interest under Section 1091(b)(1). Additionally, the Councilmember must leave the room during the consideration of any such contracts pursuant to the Act's recusal requirements. Where the Councilmember participates in the approval of a prime contract, Section 1090 further prohibits the City and general contractor from subcontracting with the Councilmember's employer.