



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

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

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

**Date:** May 6, 2019

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The following advice letters have been issued since the March 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>.

### **Behested Payments**

**Honorable Luz M. Rivas**

**[I-19-056](#)**

Payments in response to a fundraising solicitation that “features” the elected officer, as that term is defined in Reg. 18215.3(b), are payments made at the behest of the elected officer where the elected officer granted the soliciting organization permission to (1) use his or her name or likeness, (2) feature him or her as an honoree, or (3) list him or her as a member of an honorary committee, for the fundraiser.

### **Campaign**

**Susan Candell**

**[A-19-071](#)**

A city councilmember, who had received multiple letters from a law firm alleging that she had a conflict of interest with regard to a real estate development project, could permissibly use campaign funds for attorney’s fees and other related costs in contemplation of litigation involving the alleged conflict because the litigation arose directly out of her activities, duties, or status as an elected officer.

### **Conflict of Interest**

**Michael J. Maurer**

**[A-19-007](#)**

A commissioner does not have a conflict of interest in a decision on a park project where that commissioner advocated for the project in the past because the Act only concerns financial conflicts of interest, and the commissioner has no financial interest in the matter. However, a second commissioner is disqualified from the decision. Because the commissioner owns real property within 500 feet of a park site, it is reasonably foreseeable that the decision will have a material financial effect on his residential property.

**Joel Fajardo****[I-19-015](#)**

An official may participate in the City's cannabis ordinance zoning decision, despite the proximity of his residence to the districts impacted by the decision. Based upon the facts provided, there is no indication that the decision to allow commercial cultivation, distribution, manufacturing and lab testing activity in an existing industrial, warehouse area that permits general commercial laboratory use, and located 615 feet from the official's residence, would impact his residence or residential neighborhood differently than the existing permitted types of business uses. Similarly, there is no indication that the decision to allow this same type of commercial cannabis business use in districts over 1,000 feet from his residence, would have any effect on his residential property.

**Janet E. Coleson, Esq.****[A-19-016](#)**

Mayor of the Town has a disqualifying conflict of interest prohibiting her from taking part in a Town Council decision to adopt an ordinance amending the Town's Zoning Code and setting forth criteria for a development district in which she resided.

**Shannon Eckmeyer****[A-19-018](#)**

A proposed General Plan Amendment increasing the permissible number of multifamily units in the affected districts would have reasonably foreseeable, material financial effects on two city councilmembers who own multiple properties within 500 feet of those districts. Therefore, the councilmembers may not take part in governmental decisions related to the General Plan Amendment unless the decisions are properly segmented.

**Celia Brewer****[A-19-019](#)**

An official may participate in the City's lagoon enhancement decisions, despite the proximity of her residence to the project. Notwithstanding the fact that the official's residence is located within 500 feet of a lagoon that is the subject of wetland and water quality enhancement decisions, the property is separated by geographical barriers (a steep bluff, vegetated lots, a major roadway), the decisions involve only sediment and wildlife water quality issues, and the lagoon is not open to public use. Accordingly, the facts as provided establish clear and convincing evidence that the decisions will not have any measurable impact on the official's parcel. Additionally, the official is not prohibited from serving on a Joint Powers Committee related to the lagoon; however, she is advised to seek additional advice if the Committee decisions involve any of her financial interests.

**Alan B. Fenstermacher, Esq.****[A-19-020](#)**

Three city councilmembers do not have disqualifying conflicts of interest in participating in decisions to supplement the budgets of two landscape maintenance districts. Based upon the limited nature of the maintenance provided and proximity to the officials' properties, it is not foreseeable that the decisions would not have material effects on their residences.

**Gregory D. Diaz****[A-19-021](#)**

A city councilmember could participate in governmental decisions related to the development of a "Specific Plan" development deal, despite having previously provided consulting services to a financially affected property owner. The official does not have a potentially disqualifying interest in the property owner, because the property owner had not been a source of income during the year prior to the governmental decisions at issue.

**Jeffrey Walter**[A-19-024](#)

A city attorney may draft documents necessary for the city to complete its monetary contribution toward a trust's purchase of a piece of property, despite two of the attorney's private clients being chairs of the trust's fundraising effort, where those clients had no financial interest in the trust or the purchase of the property (i.e., where the clients are merely volunteers).

**Thomas Watson**[I-19-026](#)

A city councilmember may take part in governmental decisions as an alternate on the County's Fire Authority Board, despite her husband being a Division Chief in the City Fire Department, so long as the decisions will not have any reasonably foreseeable, material financial effect on her personal finances, such as promoting her husband.

**Heather Minner**[A-19-032](#)

Vice Mayor, who owns her personal residence located 939 feet away from a large scale mixed-use project at the current site of a large shopping mall, has a potentially disqualifying conflict of interest in governmental decisions involving the project because the decisions will have a foreseeable and material effect on her real property interest. However, the public generally exception applies to allow her to take part in the decisions.

**Jean B. Savaree**[A-19-035](#)

City officials with residences that will be subject to amended development standards applicable to the neighborhood in which the properties are located, have a disqualifying conflict of interest and may not make, participate in making, or use their official positions to influence a governmental decision regarding the development standards.

**Aaron Harp**[A-19-040](#)

The Act does not prohibit a city councilmember from taking part in governmental decisions relating to a potential partnership with a neighboring city regarding the neighboring city's project to establish a 50-bed permanent homeless shelter. While the law firm that employs the councilmember is located approximately 750 feet of the project, there is no indication that decisions relating to the potential partnership would contribute to a change in the value of the law firm.

**Dwight L. Moore**[I-19-044](#)

Under the "public generally" exception, a city councilmember may take part in governmental decisions pertaining to the selection, formation, and governance of a sewer/assessment district that would cover 90 percent of commercial real property within the jurisdiction despite owning commercial property in the affected area.

**Sue Gallagher**[A-19-045](#)

City councilmember may take part in a decision regarding land use entitlements for a new hotel where he is the Executive Director of a local non-profit organization and a donor to the non-profit currently opposes the hotel project. It is not reasonably foreseeable that the official's non-profit employer will receive a measurable financial benefit or loss as a result of the decision.

**Andrew Morris**[A-19-059](#)

The Act prohibits a town planning commissioner from taking part in governmental decisions relating to a development project to construct 177 residential units located within approximately 900 feet of a restaurant, bar and distillery in which the commissioner has an ownership interest because it is reasonably foreseeable that the effect of those decisions would contribute to a change in the value of the restaurant, bar and distillery.

**Lynn Compton**[A-19-072](#)

The conflict of interest provisions of the Act do not prohibit county supervisor from taking part in a decision made by the County and County Council of Governments to modify an intersection. Based upon the facts provided, the Supervisor's property is located well over 1,000 feet from the intersection and from any surrounding streets/intersections that may be affected by the intersection modification. Accordingly, the property is not explicitly involved in the decision, and there is no reasonably foreseeable material effect on the property under either Regulation 18702.2(a)(1) or (6).

**Kristen Barneich**[A-19-074](#)

A city councilmember does not have a disqualifying conflict of interest under the Act that would prohibit her from taking part in the city's decision of whether to take a formal stance regarding the potential development of a homeless center in a neighboring city, where the councilmember was an uncompensated volunteer member of the non-profit organization developing the homeless center project.

**Gifts****Angie Palmerin, Esq.**[A-19-033](#)

An attorney with a state agency does not receive a reportable or potentially disqualifying gift under the Act if a nonprofit organization waives the attorney's spouse's registration fee to attend an annual convention, as it does for any student of an educational program the nonprofit helped establish, where the educational program is paid for by the spouse's private employer.

**Section 1090****Karin Salameh**[A-18-204](#)

Section 1090 does not prohibit City from entering into a prospective contract with a contractor to prepare plans, specifications and estimations for a storm drain system repair project where the contractor, under another contract with the City, previously provided a study, survey and report on some, but not all, of the storm drains in the project. Based upon the facts provided, the contractor did not participate in the making of the second contract through its performance of the first contract and did not impose considerable or undue influence over the City regarding the second contract.

**Tom Schroeter**[A-18-258](#)

The Act's conflict of interest provisions and Section 1090 prohibit a city councilmember from participating in approval decisions of prior City purchases of fuel from the Councilmember's private employer. However, the City Council is not prohibited from approving City transactions with the company under Section 1090 because the remote interest exception for employee of a private company in Section 1091(b)(2) applies.

**Gary S. Winuk**[A-18-275](#)

A councilmember may continue a pre-existing lease with the City, under the present terms and conditions of the lease until the lease expiration, as the mere continuation of the existing leases does not involve the making of any governmental decisions, and does not implicate either the Act or Section 1090. However, the Councilmember has a “financial interest” in the businesses located on city owned property, and Section 1090 prohibits the renewal or amendment of these leases. Additionally, we are unable to determine whether approvals to city-owned property required under the leases create a conflict of interest under Section 1090 or 87100 without identifying the specific decision and the nature of the decision, but note that generally, routine or administrative approvals of permits or design and site plans, without negotiated conditions of approval, are not contractual in nature and do not generally implicate Section 1090.

**Krishan Chopra**[A-19-023](#)

Section 1090 does not prohibit a city councilmember’s ice cream store from entering into a standard form agreement with the city for advertising space on a baseball scoreboard at a city park because the noninterest exception for public services generally provided, set forth in Section 1091.5(a)(3), would apply to the councilmember’s interest in that potential contract.

**Daniel G. Sodergren, Esq.**[A-19-025](#)

A city councilmember does not have a disqualifying conflict of interest in voting on grants to a nonprofit organization of which she was a non-compensated board member. Under Section 1090, the noninterest exception set forth in Section 1091.5(a)(8) allows the councilmember and the City to make the funding decisions relating to the nonprofit so long as the councilmember’s interest is noted in the City’s official records.

**Meera H. Bhatt**[A-19-038](#)

City may renegotiate its existing agreement with large company for the treatment of wastewater despite the fact that a city councilmember is an employee of the company. Based upon the facts provided, the councilmember’s interest is a remote interest under Section 1091(b)(2), and the City may renegotiate its agreement so long as the councilmember with the financial interest abstains.

**Christine Dietrick**[A-19-039](#)

A State University is not a “business entity” under the Act, and a city councilmember employed by the University does not have a source of income interest in the University because the “government salary exception” to the Act’s definition of income applies. In addition, Section 1090 does not prohibit the councilmember from making or participating in making, or the city from entering into, certain specified contracts between the city and the university because the noninterest exception for salary from a government entity, set forth in Section 1091.5(a)(9), applies.

**Kenneth R. Hetge**[A-19-047](#)

Unlike the Act, which includes limited exceptions that allow an otherwise disqualified public official from speaking as a member of the general public and speaking to the media, Section 1090 contains no similar exception. Accordingly, a city councilmember disqualified under Section 1090 from taking part in the contracting process for repairs to the municipal airport is not permitted to attempt to influence the other members of the city council at a public meeting, speaking as a member of the general public.

**Jimmy Paulding**[A-19-053](#)

A city councilmember does not have a disqualifying conflict of interest under the Act and has a “noninterest” under Section 1090 where his spouse was a volunteer of a 501(c)(3) non-profit organization. Accordingly, the councilmember is not disqualified from taking part in decisions regarding the organization’s application for a grant.

**Kara K. Ueda**[A-19-073](#)

The conflict of interest provisions of the Act do not prohibit the incoming Executive Director of the Agency from taking part in decisions concerning a potential contract between the Agency and the official’s former employer. The official’s interest in the former employers defined contribution plan does not disqualify the official from decisions affecting the employer. Moreover, the official does not have a disqualifying interest in any salary received pursuant to her former employment under the limited exception in Regulation 18700.1(b) concerning former employers. Finally, neither her former employment or pension plan is a financial interest in the contract between the Agency and the former employer under Section 1090.

**Revolving Door****Michael Bradbury**[I-19-037](#)

A retired state employee, who seeks to work as a sub-contractor for a local joint powers authority, is permanently prohibited from working to acquire any permit he previously worked on as the Permit Program Manager, if the matter is before an administrative agency of the State. However, he may participate in (1) new proceedings, (2) proceedings he did not previously participate in, and (3) proceedings he did participate in, but are before a non-state administrative agency. Additionally, under the Act’s “one-year ban,” he is prohibited from appearing before or communicating with his former agency for the purpose of influencing certain administrative and legislative actions as well as actions involving permits, licenses, grants, contracts, or the sales of goods or services.

**Lisa Marie Varner**[A-19-042](#)

Local government officials who leave governmental service are subject to the Act’s “local one-year ban.” However, Section 87406.3’s one-year prohibition only applies to local elected officials, chief administrative officers of a county, city managers, or general managers or chief administrators of a special district. In addition, an investment in diversified mutual funds registered with the SEC or an exchange traded fund that meets the requirements outlined in Regulation 18237, is not a reportable investment interest.