



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Baker, Cardenas, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Subject: Advice Letter Report and Commission Review
Date: March 30, 2022

The following advice letters have been issued since the February 25, 2022, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the April 2022 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Campaign

Amber Maltbie [I-22-013](#)

The fair market value of an in-kind campaign contribution of a single campaign-related software license, where the license is purchased from a seller by a third party as a package of licenses at a bulk rate, is the price the candidate would pay to purchase the license individually from the seller.

Conflict of Interest

Catherine C. Engberg [A-22-008](#)

The Act's conflict of interest exception to the materiality rules found in Regulation 18702.2(d)(1) for decisions that "solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities" applies to allow Planning Commissioner to make, as well as comment on, decisions related to a storm drain repair project.

Glen R. Googins [A-22-017](#)

Councilmember is prohibited from taking part in a tenant protection ordinance where the ordinance would impact landlords' property rights and the Councilmember is a landlord with 14 rental properties. Although the decision would impact a significant segment of the public, the Councilmember would be uniquely affected due to the number of rental properties he owns.

Jeffrey Ballinger [A-22-001](#)

Councilmember may participate in decisions regarding a proposed ground lease of city owned property to a golf course because the decisions will involve city property located more than 1,000 feet from the Councilmember's residence. Accordingly, the Councilmember is not

disqualified from the decisions unless there is clear and convincing evidence that the decision will have a substantial effect on the Councilmember's property.

Michael G. Vigilia

[I-21-173](#)

Assistant Director of Public Works is prohibited from reviewing and evaluating proposals by his former employer on behalf of the City. Given that the official is a current stockholder and creditor of the company, the official has interests in the former employer as an investment in the business and as a source of income. It is also reasonably foreseeable that decisions involving the former employer's contract with the City will have a material effect on the former employer.

Nancy Diamond

[A-22-012](#)

Mayor is prohibited from taking part in decisions relating to an area plan involving residential and mixed-use development approximately 138 acres in size because it is reasonably foreseeable that those decisions would have a disqualifying material effect on her real property located across the street, and within 500 feet, from the area boundary.

Steven C. Gross

[A-22-009](#)

Notwithstanding interests in properties served by the water lines and within 500 feet of the proposed work, District Director may take part in project decisions to repair and replace water lines under the public generally exception. Based on the facts provided, the project will affect a significant segment of the water district residential customers, the cost for the project will be equally assessed to the members of the significant segment, and there will be no unique effect on the Director.

Wei-Tai Kwok

[A-22-014](#)

Councilmember is not prohibited from taking part in a zoning decision affecting a parcel located more than 1,400 feet from the official's residence where there is no clear and convincing evidence to rebut the presumption that any potential financial effect on the official's residence would not be material.

David P. Hale

[I-21-174](#)

Whether Councilmember may take part in governmental decisions involving past or pending donors to his employer will depend on facts specific to each decision and formal advice cannot be given without a specific decision to analyze. In general, however, the Councilmember would not be prohibited from taking part in decisions involving parties that have previously made only a small donation to the nonprofit as it is not reasonably foreseeable that a decision implicating the donor would have a material financial effect on the nonprofit or the Councilmember's personal finances. The Councilmember should practice due diligence in determining whether a party to a City Council decision is a past or pending donor to his employer.

Mass Mailing**Jim Irizarry**[A-22-010](#)

Communications regarding an election, that include the County's Chief Elections Officer's name in the letterhead, are not prohibited mass mailings provided the items are not delivered to recipients at their residences, places of employment, or businesses. A communication will meet the definition of a mass mailing if more than 200 are delivered by any means to recipients at their residence, place of employment or business, or post office box. However, the communication would be permitted under the "letterhead" exception, except during the 60 days prior to the election where the chief elections officer will appear on the ballot.

Section 1090**Damien Brower**[A-21-159\(a\)](#)

The Act prohibits City Councilmembers from taking part in decisions that would potentially result in a \$770 assessment on their respective properties unless their participation is legally required, or the decisions they are disqualified from taking part in are properly segmented.

Gary S. Winuk[A-22-016](#)

The Act prohibits County Supervisor from taking part in decisions concerning the use of project labor agreements on County construction projects where the Supervisor's spouse is employed by a state union affiliated with the local County unions because of the impermissible nexus between the decisions and income his spouse will receive from the state union.

Samantha W. Zutler[A-22-006](#)

The conflict of interest provisions of the Act and Section 1090 do not prohibit specified City officials from taking part in governmental decisions involving parks to which the nonprofit organization where they are board members has donated funds. Because they are not compensated by the nonprofit, the City officials have no interest in the nonprofit under the Act. Similarly, the City officials have a noninterest under Section 1090 because they are uncompensated and a primary purpose of the nonprofit supports the functions of the City.

Samantha W. Zutler[A-21-132](#)

Councilmember who previously worked as a consultant for nonprofit the City is seeking to hire, to administer a City program, has an interest in the nonprofit as a source of income and is prohibited under the Act from taking part in governmental decisions regarding the contractor and the program. However, under Section 1090, the councilmember has no business relationship with the contractor and the City is not prohibited from entering the contract.

Sarah Lang[A-21-167](#)

Councilmember does not have a conflict of interest under the Act or Section 1090 that would prohibit him from participating in decisions involving approval of a subdivision site plan when his wife is an employee of the company that would provide waste management services to residents at the subdivision if it were built. Under the Act, the reasonably foreseeable financial effect of the subdivision site plan decision on the councilmember's financial interest in the waste

management company is not material under the thresholds provided in Regulation 18701.2. Under Section 1090, the site plan decisions are regulatory in nature and thus would not result in a contract subject to the prohibition.

Tricia Shafie

[A-21-147](#)

If an employee participates in the decisions regarding a proposed new construction notice, Section 1090 would prohibit City from subsequently awarding a contract to the contractor that subcontracts with the firm that employs the employee's spouse. So long as an employee of a department has no input or participation in the decisions regarding a proposed new construction notice, Section 1090 would not prohibit the City from entering into a contract with developer who subcontracts with the firm.