



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Baker, Ortiz, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Subject: Advice Letter Report
Date: December 29, 2023

The following advice letters have been issued since the November 27, 2023, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the January 18, 2024, Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Campaign

April Boling

[I-23-152](#)

When a primarily formed or general purpose committee receives a donor list from a candidate's controlled committee fundraiser, that candidate makes an in-kind contribution to those committees. Using the donor list in connection with making expenditures that support the candidate or oppose the candidate's opponent will result in coordination with the candidate, and in that circumstance, all expenditures made by the committee to support the candidate or oppose the candidate's opponent will be considered contributions to the candidate and will be subject to the applicable contribution limit.

Peter Sullivan

[I-23-163](#)

State Senator selected to serve as President Pro Tempore may make campaign expenditures from his Senate 2022 campaign account for swearing-in ceremony celebration under Section 89513(f)(3), which states that an election victory celebration or similar campaign event is considered to be directly related to a political, legislative, or governmental purpose. An independently established 501(c)(4) organization may host a swearing in celebration for the Senator, so long as the Senator does not exercise control over the organization. However, any donations to the organization made at the Senator's behest will be subject to behested payment reporting requirements.

Conflict of Interest

Heather L. Stroud

[A-23-131](#)

City Councilmember is not prohibited from taking part in decisions regarding an area plan as it is not reasonably foreseeable the decisions will have a material financial effect on the Councilmember's interests in a restaurant and the property leased for the restaurant, within the area plan, as there is no indication the decisions will have a material financial effect on the

restaurant's revenues or costs, nor will they impact the term or value of the leasehold interest held by the business. Similarly, City Planning Manager with personal residence approximately 550 feet of separate area plan is not prohibited from taking part in decisions regarding the area plan because it is not foreseeable the zoning changes under the plan would have a material effect on the property considering the residence is outside of the area plan and the changes do not identify any new developments within the vicinity of the residence. Two separate councilmembers are potentially prohibited from taking part in decisions regarding the respective area plan in which the councilmembers have business and commercial property interests as it is reasonably foreseeable the decisions will have a material affect on these interests. However, the public generally exception may apply to the extent that the effect on the official is not unique.

Margaret Gossett**[A-23-165](#)**

Planning Commissioner is not prohibited from taking part in governmental decisions involving a 60-unit housing development for school district employees, located within 1,000 feet of the Commissioner's real property, as the development will take place on the school district's existing property and is consistent with the current use of the surrounding neighborhood. Accordingly, it is not reasonably foreseeable the project will have a material financial effect on the Commissioner's property as the project would not change the real property's development potential, income producing potential, highest and best use, character, or market value.

Section 84308**Phil Pogledich****[I-23-172](#)**

Where a final decision in an entitlement proceeding was reached prior to an official's appointment to the elected office, and the official did not otherwise have decision making authority over the proceeding or exercise authority or budgetary control over County officials who did, the official does not meet the definition of "an officer of an agency" for the particular proceeding. The Section 84308 prohibition on accepting, soliciting or directing contributions from a party or participant to the proceeding for 12 months following the final decision will not apply to the appointed official for contributions from a party or participant in the proceeding.

Section 1090**Warren T. Green****[A-23-140](#)**

Even though an agency's three independent contractors are subject to the provisions of Section 1090 as a result of their current contractual duties to assist the agency in public contracting for preliminary phases of a project, the agency may nonetheless enter into subsequent contracts with those independent contractors for design/design-build construction services associated with the project because they did not participate in the making of those contracts through the services provided under the current contracts.

Nicole C. Wright**[A-23-141](#)**

Under Section 1090, Councilmember has a financial interest in the contract between the City and a housing provider due to her employment with a utility company that will be paid by the City under the terms of the contract to complete the undergrounding of the company's existing

infrastructure should the project be approved. However, in order to perform essential government functions, the City may still enter the contract with the housing provider under the rule of necessity so long as the Councilmember recuses herself from the proceedings.

Jason Grani[A-23-153](#)

City may enter a second contract with an engineering firm to provide design services, even where the City's request for proposals is based in part on technical analysis provided by the contractor under its initial contract, because the firm's contractual and performed duties did not include engaging in or advising on the request for proposals or assisting in selecting a contractor for the subsequent contract on behalf of the City.

Brian Henley[A-23-158](#)

Under the Act, a former state agency employee's work for another state agency does not violate the Act's revolving door provisions. Under Section 1090, a former employee who was involved in the creation and implementation of a contract between two state agencies does not violate Section 1090 and invalidate the contract by working for the other agency and receiving reimbursements for actual and necessary expenses related to the position, because the reimbursements as an officer of a state agency are a noninterest under Section 1091.5 (a)(2).

Rick Koon[A-23-160](#)

Section 1090 prohibits Sanitation District Director from taking part in decisions concerning contracts that involve servicing the District's vehicles at a business he owns. In addition, because there are alternative sources the District can use to service the vehicles, the rule of necessity does not apply, and the District is prohibited from entering contracts with the Director's business to service the vehicles.

Richard Stout[A-23-167](#)

County Supervisor, who is also a volunteer firefighter receiving some salary and benefit payments from Fire Protection Authority, has a remote interest under Section 1091(b)(13) in a contract decision related to an environmental impact report and conditional use permit, where the terms require the applicant to pay \$300,000 per year to the Authority for fire services mitigation. While the County may enter the contract, the Supervisor must recuse himself from the decision unless he resigns from the Authority prior to the decision. To the extent the Supervisor resigns from the Authority in good faith, the Supervisor does not have a financial interest in the contract under Section 1090 and is similarly not disqualified from taking part in the decision under the Act.

Hassen Beshir[A-23-168](#)

Under Section 1090, a former employee of Transit District is prohibited from providing services for current employer, under the employer's contracts with the Transit District, because the former employee previously participated in the making of the contracts, and the selection of the employer, while employed by the Transit District.