



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

The following advice letters have been issued since the August 25, 2023, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the October 19, 2023, Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Conflict of Interest

Molly McLean

[I-23-115](#)

Water board director receiving income from a nonprofit organization, advocating for conservancy along the river system, is likely disqualified under the Act from taking part in board decisions concerning the river system due to the nexus between the decisions and income he receives from his employer, for work that is very closely tied to advancing the interests of the employer. For purposes of Section 1090, the District cannot generally enter a contract in which the Director has a financial interest unless an exception applies. However, Section 1091(b)(1) provides that an officer or employee of a nonprofit corporation or 501(c)(3) entity has only a remote interest in the contracts involving the entity. Under this exception, a governing board is not prohibited from entering a contract, if the member with a financial interest discloses the interest to the board, the interest is noted in the board's official records, and the official abstains from the contracting process.

Steven Mattas

[I-23-128](#)

County-wide Regional Transportation Commission member may be prohibited from taking part in a decision affecting a rail line—a portion of which is located less than 500 feet from her leased property—where it is reasonably foreseeable the decision would have a material financial effect on the leased property—including impacts on the potential rental value or the official's use and enjoyment of the property. In determining whether the Public Generally Exception may apply to such a decision, the relevant jurisdiction to consider is the county the Commission serves, not the city the official also represents in her separate capacity as a city council member.

Quinn M. Barrow

[A-23-135](#)

For an official who owns several adjacent parcels that form the official's 80-acre ranch property, with one parcel located within 695 feet of one of 36 properties subject to a decision granting high-density multi-family housing development by right, it is reasonably foreseeable that the decision would have a material financial effect on the official's real property interests where

the official's property is undeveloped and the high density proposed on the undeveloped property subject to the decision would likely change the development and income producing potential, as well as the market value of the official's properties. (Regulation 18702.2(a)(8)(A)-(E).) The decision may be segmented in accordance with Regulation 18706 to remove the particular property from the decision concerning the remaining 35 properties.

Revolving Door

Ahmad Shah

[A-23-138](#)

Where the former agency supervisor had no participation in the agency's design contract with a private firm or the subcontract for particular design work under the agreement, as an agency employee or supervisor, the former supervisor is not prohibited from participating in this contract as a subcontractor's design team member or project manager to implement the agreement under the permanent ban. Under the one-year ban, the former supervisor may meet with the former agency's engineers on the project so long as the meetings are part of services to administer, implement, or fulfill the requirements of the existing contract.

Section 1090

Abel Salinas

[A-23-056](#)

District board members for a water agency who receive a per diem from their member agency to attend district board meetings, and others board members who have voluntarily waived their statutory attendance fee, each have a financial interest in a future contract between the district board and their member agency under Section 1090. However, because those members have a noninterest in the contract pursuant to Section 1091.5(a)(9), they may participate in the decisions provided they disclose their interest in the contract to the District Board and the interest is noted in the District Board's records.

Lauren B. Langer

[A-23-100](#)

Under Section 1090, Mayor Pro Tem is not prohibited from taking part in contracts between the City and a nonprofit organization he serves as a noncompensated board member when one of the primary purposes of that organization supports the functions of the City by promoting the health and general welfare of the City's citizens. However, for events located near sources of income to the official including restaurants and a nightclub, it is reasonable foreseeable the events would have a material financial effect on the official's interest based on the facts provided. Absent additional information regarding the official's interests, we must conservatively advise that the Mayor Pro Tem recuse himself from decisions pertaining to the events.

Rachel H. Richman

[A-23-110](#)

The Act generally prohibits two city officials who own rental properties from taking part in decisions whether to issue an RFP for a consultant to perform an analysis regarding the potential implementation costs and fees for property owners in connection with a rent control program, and which consultant to eventually hire, because their real property interests in their rental properties would be the "subject" of the decisions under Regulation 18702.2(a)(3) and (5).

However, the public generally exception in Regulation 18703(e)(4) applies to allow the official with three rental units to take part in the decisions. In addition, that official would not have a financial interest under Section 1090 with respect to any consultant contract to perform an analysis of costs and fees associated with the proposed rental ordinance.

Lauren B. Langer

[A-23-119](#)

Under Section 1090, a City may enter a second contract with the same Firm for the installation of a pre-engineered metal building notwithstanding the initial contract for the design of the building. Because the Firm would only be providing design services to the City under the first contract and would not be engaging in or advising the City on public contracting, the City is not prohibited from entering the second contract with the Firm.

Pete Benavidez

[A-23-122](#)

In general, Section 1090 prohibits a member of a city commission from participating in the making of grants to a nonprofit organization that is a source of income to the official. Prohibited conduct includes taking part in any discussion as a member of the city commission, as well as voting on recommendations to be made to the City Council. However, Section 1090 does not prohibit the Commission from making a recommendation on funding to the organization so long as the official abstains from the decision because the Commission is advisory and the official's interest is remote under Section 1091(b)(1).