



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# First Quarter Update

Conflict of Interest, Revolving Door, and Statement of Economic Interests

## Regulations adopted by the Commission

The following are regulatory changes approved by the Commission during the past quarter concerning conflict of interest, revolving door, or statement of economic interests. To receive updates for all regulations before the Commission, please sign up for our [mailing list here](#).

None.

## Advice Letters

The following are advice letters issued by the Commission's Legal Division during the past quarter concerning questions about conflicts of interest, revolving door, or statement of economic interests. To receive the monthly report with all advice letters issued, please sign up for our [mailing list here](#).

### Conflict of Interest

#### **Damien Brower**

[A-21-159](#)

The Act's conflict of interest provisions do not prohibit three City Councilmembers whose respective residences are located within the boundaries of a homeowner's association from taking part in decisions relating to a project to replace a water feature on city-owned property at the entry of the neighborhood with a planter because those decisions would have only a nominal effect on the Councilmembers' respective real property interests in their residences.

#### **Timothy Carmel**

[I-21-149](#)

City Councilmembers with existing accessory dwelling units ("ADUs") are prohibited from taking part in ADU Ordinance decisions that would affect the land use entitlements of their property. Even though such a decision may impact all residential real property in the City, it would uniquely impact those with existing ADUs. Additionally, City Councilmembers with Vacation Rental permits and City Councilmember in the process of constructing ADUs, are similarly prohibited from taking part in Vacation Rental Ordinance decisions due to the unique effect the decisions would have on the development and income-producing potential of their real property. With respect to decisions involving either ordinance, otherwise disqualified officials would be permitted to take part in the decisions to meet the minimum quorum if selected randomly following the "legally required participation" provisions of Regulation 18705.

#### **Larissa Seto**

[A-21-169](#)

City Councilmember is prohibited from taking part in a decision approving a development project involving land adjacent to his aunt and uncle's real property where the aunt and uncle constitute a source of income and there is clear and convincing evidence the decision would have a substantial effect on their real property by preventing future development on adjacent land.

**Daniel G. Sodergren**

[A-21-164](#)

Councilmember has a potentially disqualifying financial interest in governmental decisions related to a Housing Sites Inventory for the City’s Housing Element Update, which include a site located less than 500 feet from his residence, because it is reasonably foreseeable that those decisions would have a material financial effect on the residence under Regulation 18702.2(a)(7). However, the decision to approve the list as a whole, and general policy discussions and decisions applicable to all properties on the list, do not have a unique effect on the official’s interest in comparison to other residences within a similar distance of the property subject to the decisions and which make up at least 15 percent of the residential properties within the City. Accordingly, the public generally exception applies to these decisions.

**Daniel G. Sodergren**

[A-21-170](#)

Vice Mayor has a potentially disqualifying financial interest in governmental decisions related to a Housing Sites Inventory for the City’s Housing Element Update, which include a site located less than 500 feet from her residence, because it is reasonably foreseeable that those decisions would have a material financial effect on the residence under Regulation 18702.2(a)(7). However, the decision to approve the list as a whole, and general policy discussions and decisions applicable to all properties on the list, do not have a unique effect on the official’s interest in comparison to other residences within a similar distance of the property subject to the decisions and which make up at least 15 percent of the residential properties within the City. Accordingly, the public generally exception applies to these decisions.

**Ricki Heck**

[A-22-005](#)

Water District Board Member may not take part in a water supply assessment decision pertaining to a project she believes would have a high likelihood of impacting the water quality available to her residential real property, as well as other surrounding properties. Based on the facts provided, the Board Member’s residential property is located above the mineral rights area of a proposed mining site, and it is reasonable foreseeable the decision will have a material financial effect on the property absent clear and convincing evidence the decision will no measurable impact.

**Robert Wishner**

[A-22-002](#)

The Act does not prohibit former Councilmember from accepting employment as Chief Executive Officer of a local development company, from administering the company’s project in the City, or from working on the company’s project outside the City, as long as the Councilmember adheres to the local one year ban under the Act that prohibits certain communications with, and appearances before, the City for a period of one year.

**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.

### Conflict of Interest Code

#### **Lauren F. Carroll**

[A-21-151](#)

An Airport/Community Roundtable is required to adopt a conflict of interest code and its members must file statements of economic interests because they have decisionmaking authority regarding the budgeting of their allocated funds and the expenditure or disbursement of the funds.

#### **Julian Gross**

[A-21-172](#)

A non-profit public benefit corporation established by a governmental agency that has its physical facilities located solely in one county, but by the terms of its federal funding provides services without regard to county geographical boundaries, is considered a multi-county agency. Under Section 82011, the Fair Political Practices Commission serves as the code reviewing body for multi-county agencies and the agency must follow the procedures outlined in Regulation 18750 for the approval of its conflict of interest code.

#### **Lisbeth Landsman-Smith**

[A-21-119](#)

With the primary responsibility for medical review recommendations under its contract with a state agency, the chief officers and directors of the independent contractor, who serve in a staff capacity for the agency and participate in making governmental decisions related to the recommendations to the agency, must be designated in agency's conflict of interest code. However, other employees of the contractor, including independent medical reviewers, are not required to be designated.

### Section 1090

#### **Andrew Morris**

[A-22-003](#)

Section 1090 does not prohibit a town from entering a contract with an independent contractor to construct specified infrastructure for a project where an entity related to the proposed contractor performed design services for the project's infrastructure. An independent contractor is only subject to the provisions of Section 1090 when it has responsibilities for public contracting on behalf of the public entity under the contract. Based on the facts provided, there is no indication the related entity had any duties under the initial contract to engage in or advise on public contracting on behalf of the town; instead, it was doing business in its private capacity as a provider of design services to the town.

#### **Jim McNeill**

[A-21-138](#)

City Councilmembers may participate in the decisions striking Proposition B and making conforming changes to the Municipal Code, as these actions are ministerial in nature because the actions have been mandated by court order. Accordingly, the actions are not prohibited by the Act. The Councilmembers identified may also participate in the decision regarding the related "make-whole" payments as they will not be receiving the payments and have no financial interest in any resulting contract under 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.

## Commission Opinions

None.

## Enforcement Matters

The following are summaries of significant enforcement actions approved by the Commission in the past quarter involving violations of the Act's conflicts of interest, revolving door, or statement of economic interests. To receive a monthly report of all enforcement actions, please sign up for our [mailing list here](#).

None.

## Legislation

**[AB 975](#) (Luz Rivas)** – Statements of economic interests and reimbursement for gifts.

Status: Passed in the Assembly on 1/31/22 (72-0)

Summary:

AB 975 would require certain public officials to file statements of economic interests using the Commission's electronic filing system and would revise and recast other provisions relating to those statements.

The bill would also extend the time that an official may pay reimbursement for a gift of admission to an invitation-only event from 30 days from the date of receipt of the gift, which is 30 days from the date of attendance, to 30 days from the end of the calendar quarter in which the gift was received, and would codify related regulations.

The bill would reduce the amount of time in which lobbyists, lobbying firms, and lobbyist employers must provide a beneficiary of a gift certain information about that gift from 30 days to 15 days following the end of each calendar quarter in which the gift was provided.