



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:** July 29, 2021

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The following advice letters have been issued since the June 25, 2021, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the August 2021 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

### *Behested Payments*

#### **Rei Onishi**

[I-21-084](#)

When reporting a behested payment made by a donor advised fund (“DAF”) on a Behested Payment Report, an elected official should identify the “payor” of the behested payment with as much specificity as the official knows or can determine by inquiring with the sponsoring organization. In those instances in which the official knows or can determine a person who is the source of a behested payment made through a DAF, the official should identify that person as the “payor.” If the official does not know the identity of the person whose DAF is being used to make a behested payment and the sponsoring organization will not identify that person, the official should report that the payment was made by a DAF, provide the name of the DAF, if known, and the name of the sponsoring organization.

### *Campaign*

#### **Ashlee N. Titus**

[I-21-079](#)

A fundraising structure where a vendor pays a subvendor’s fees, commissions or costs from a donor’s contribution prior to providing the net proceeds of the contribution to the candidate’s committee, does not comply with the one bank account rule (Section 85201). Any payments made by a vendor to a subvendor would need to be made with funds that originate in the Committee’s single campaign bank account. Further, these payments may be reportable subvendor payments under Section 84303.

### ***Conflict of Interest***

**Andrea Visveshwara**[A-21-069](#)

The Act's conflict of interest provisions do not prohibit a Planning Commissioner from taking part in the determination of whether a final development plan for the current phase of a long-standing, multi-phase project substantially conforms to the preliminary development plan for that project because it is not reasonably foreseeable that determination would have a material financial effect on the commissioner's condominium unit located between 500 and 1,000 of the nearest boundary of the project.

**Brian Pierik**[A-21-083](#)

Councilmember who owns real property within 500 feet of an environmentally sensitive habitat area is not prohibited from taking part in decisions regarding the potential modification of the City's pesticide policy applicable to the habitat area. Based on the information provided, there is clear and convincing evidence that a decision would have no measurable impact on the councilmember's property interests.

**Gregory G. Diaz**[A-21-100](#)

Councilmember may not participate in decisions to review and possibly change the city's short term vacation rental permitting ordinance where the official owns a residence eligible for a permit in a part of the city that contains the majority of the permits. To the extent that the STVR decisions will affect his property or property in the 500 to 1,000 foot proximity of his residence, the decisions would have a reasonably foreseeable and material financial effect on his real property interest, and he has not established that the financial effect is indistinguishable from its effect on the public generally.

**Katherine Wisinki**[A-21-090](#)

City Mayor may take part in a decision involving the extension of a franchise agreement permitting a corporation's continued use and operation of an underground gas/oil pipeline, despite the mayor owning residential real property between 500 and 1000 feet from a portion of the pipeline, where the decision would not change the development potential, income producing potential, highest and best use, character, or market value of the Mayor's real property.

**Margaret Long**[I-21-089](#)

There is nothing in the Act that prohibits an official from holding the position of County Counsel while his wife is employed by a state agency. Moreover, the official does not have a financial interest in his wife's government agency employer and is not generally disqualified from decisions implicating the agency, so long as there is no potential effect on his or his wife's personal finances.

### ***Gifts***

**Tyrone Buckley**[A-21-051](#)

The Act does not prohibit an official from participation in a home renovation show. To the extent that the official pays for all components of the project, participating on the show will not result in

income or a gift to the official. Additionally, if the network makes a payment for unanticipated costs necessary to complete the project and the final production from the reserve it sets aside for all participants, the payment is a discount offered in the normal course of business and is neither income nor a gift to the official.

### ***Section 1090***

#### **David B. Cosgrove**

[A-21-076](#)

Section 1090 does not prohibit a water conservation district's contract general counsel, on behalf of that individual's law firm, from entering into a contract directly with the district to serve as an in-house counsel so long as that individual has refrained and continues to refrain from making or participating in the making of that contract in the individual's official capacity as general counsel.

#### **Julia M. Lew**

[A-21-073](#)

The Act generally prohibits Councilmember from taking part in any decisions that will have both a foreseeable and material financial effect on the Indian Tribe that gives her more than \$500 annually or her employer. In addition, under Section 1090, the Councilmember has a financial interest in an amended agreement between the City and the Tribe and may therefore not participate in making the amended agreement. However, the rule of necessity applies to allow the City Council to amend the agreement so long as the Councilmember abstains from any participation in her official capacity.

#### **Leticia Ramirez**

[A-21-053](#)

Under Section 1090, a parent corporation and its wholly owned subsidiary are considered the same interest. To the extent that either entity is subject to Section 1090, as a governmental consultant or contractor, neither entity can participate in the making of a subsequent contract in which the entities have a financial interest. However, Section 1090 does not prohibit the City from entering a contract with a parent corporation as the construction contractor because the facts indicated that its subsidiary, the design contractor, had no responsibilities for public contracting on the city's behalf in performing the prior work on the project and was, therefore, not subject to Section 1090.

#### **Melissa Crosthwaite**

[A-21-080](#)

Under Section 1090, an official serving as Interim City Manager for a limited term is prohibited from taking part in labor negotiations with a bargaining group where the negotiations would impact his potential future salary and benefits at the end of the limited term, upon returning to his former position as a member of the bargaining group.

#### **Scott E. Porter**

[A-21-088](#)

Where an official does not have a financial relationship with an adult child and has not identified any other financial interest related to the decisions, neither the Act nor Section 1090 prohibits her from participating in City decisions to enter a franchise agreement with a solid waste hauling company that employs her adult child.