



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: October 29, 2021

The following advice letters have been issued since the September 24, 2021, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the November 2021 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Campaign

Phaedra A. Norton

[A-21-120](#)

Communications related to a ballot measure planned by the City are independent expenditures or contributions under the Act that may qualify the City as a campaign committee subject to campaign reporting and are potentially prohibited mass mailing if the communications unambiguously urge a particular result in an election. A communication unambiguously urges a particular result in an election if it is clearly campaign material or activity or if the communication (1) can be reasonably characterized as campaign material or activity and (2) is not a fair presentation of facts serving only an informational purpose when taking into account the style, tenor, and timing of the communication. In regard to the communications identified by the City, and based on the facts provided, the communications with the exception of the proposed Public FAQ unambiguously urge a particular result in an election that may qualify the City as a campaign committee subject to reporting and are prohibited to the extent the communications are a mass mailing.

Conflict of Interest

Amanda B. Freeman

[A-21-135](#)

A City Mayor may take part in a City Council decision regarding a “no smoking” ordinance applicable to multi-unit rental properties, despite the Mayor owning five multi-unit rental property units, where multi-unit rental property units make up 33 percent of the City’s residential properties and the decision’s financial effect on the Mayor is not unique compared to the effect on the public generally.

Kevin G. Ennis[A-21-128](#)

Where the official has a one percent partnership interest in a law firm, the official has a business entity and source of income financial interest in the law firm. Where the facts do not indicate any impact on the law firm's gross income, assets or liabilities, and there is no nexus established between a goal of the law firm and the official's compensation, the official is not prohibited from participating in the decision to amend the City's cannabis ordinance.

Section 1090**Jason Grani**[A-21-122](#)

Section 1090 does not prohibit City from entering a contract with an independent contractor to design a fire station where the same independent contractor performed architectural design services for undisclosed future fire station projects under a previous contract with the City. 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. Here, there is not indication the independent contractor had any duties under the initial contract to engage in or advise on public contracting on behalf of the City; instead, it was doing business in its private capacity as a provider of architectural services to the City.

Maria Sullivan[A-21-136](#)

The conflict of interest provisions of the Act and Section 1090 do not prohibit a County Supervisor from taking part in governmental decisions relating to a nonprofit organization for which he is President. Because he is not compensated by the nonprofit, the Supervisor has no interest in the nonprofit under the Act. Similarly, the Supervisor has a noninterest under Section 1090, because he is uncompensated, and a primary purpose of the nonprofit supports the functions of the County.

Marni von Wilpert[A-21-114](#)

Councilmember, who is also a former City employee, may participate in Council decisions concerning the removal of an invalidated pension proposition language from the City Charter and making necessary amendments to the Municipal Code because these actions are specifically required as the result of a court order and are thus ministerial in nature. However, Section 1090 prohibits the Councilmember from participating in the making of collective bargaining agreements necessary to remedy the loss of retirement benefits for previous employees under the invalidated proposition. The "rule of necessity" applies to allow the City Council to enter into such agreements, so long as the Councilmember does not participate in any manner.

Nicholas Sanders[A-21-110](#)

Under the Act and Section 1090, a Port Commissioner may not take part in governmental decisions/contracting processes related to contracts for which a source of income has submitted a bid. However, if the criteria of Section 1091(b)(3) are satisfied—including the requirement that the source of income has submitted the lowest bid—the Commission and its staff may still contract with the source of income.