



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: January 28, 2022

The following advice letters have been issued since the December 30, 2021, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the February 2022 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Campaign

Matthew C. Alvarez

[I-21-163](#)

Where the Commission is constitutionally prohibited from declaring Section 85501 unenforceable or unconstitutional, it is unable to advise whether Mayor may open up and control a committee that will raise and spend money on independent expenditures to support other candidates in the upcoming 2022 elections after a trial court found Section 85501 unconstitutional on its face. However, as the Commission has previously advised, if a candidate-controlled committee elects to make independent expenditures in light of that trial court decision, they should be made from the account established to support the candidate's own election to public office. Whether doing so would violate a local ordinance applicable to the mayor is outside the purview of the Act.

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.

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.

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.