



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

Third 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

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.

Brian Pierik

[A-21-109](#)

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.

Jeffrey Ballinger

[A-21-066](#)

A Councilmember has a conflict of interest and may not take part in decisions concerning the operations of, or improvements to, a Golf Resort located within 500 feet of the Councilmember's residence. The Councilmember is also prohibited from taking part in decisions relating to an Energy Efficiency Project if it includes projects located within the Golf Resort. However, the Councilmember is prohibited from taking part in decisions relating to the Energy Efficiency Project if it includes property within 1,000 feet of the residence, but does not include property within 500 feet, only if the project will change her parcel's development or income producing potential, highest and best use, character, or market value.

Nicole C. Wright

[A-21-104](#)

Councilmembers may not take part in decisions relating to a parking structure because their residences are located between 500 and 1,000 feet from the parcel subject to the decision and the construction of a new downtown parking structure would substantially alter traffic levels, intensity of use, parking, and air quality in the vicinity of their residences. However, Councilmember with property more than 1,000 feet from the parcel subject to the decision may take part in the decision because there are no clear and convincing indications that the decision would have a substantial effect on her property.

Thomas D. Jex

[I-21-063](#)

Where an official has a real property interest eligible for a short-term vacation rental permit ("STVR"), the official may not take part in the broad consideration of limitations on STVR permit eligibility and the scope of the permits because it is reasonably foreseeable the decisions will have a material financial effect on the real property interest. The official must demonstrate that the financial effect of the decision is indistinguishable from the effect on the public for the public generally exception to apply, and the officials are unable to do so at this time. However, Regulation 18705 sets forth the requirements for participation of officials with a prohibitive interest when it is legally necessary in order to form a quorum for these decisions.

Alex J. Lorca

[A-21-115](#)

Councilmember who has no ownership interest in residence owned by adult son does not have a financial interest that would preclude participation in decisions relating to a proposed trail project. Other councilmembers with residences located less than 500 feet from the proposed trail location are subject to a standard that requires clear and convincing evidence that the proposed project would have no measurable effect on their residential real property. Because clear and convincing evidence the project would not have a measurable effect on the properties has not been provided, these councilmembers have disqualifying conflicts of interests under the Act. However, decisions concerning the project do not appear to affect the value of the residences that are more than 500 feet from the project, and these officials may take part in the decisions.

Frank A. Splendorio

[A-21-103](#)

Where each official's residential property is located less than 400 feet from the Project and the access road to their residences will be extended to provide access to the new subdivision, it is reasonably foreseeable that the Project decisions, including the preliminary environmental consultant decisions, will have a material financial effect on each official's real property interest. However, where a significant segment of the residential properties is within 800 feet of the Project and the facts do not indicate that the officials will experience a disproportionate financial effect on their residences in comparison to the significant segment, the officials may participate in the decision under the public generally exception.

Linda Schiltgen

[A-21-108](#)

County Planning Commissioner with interest in wife's employer, a nonprofit trade association supporting local vintners, is disqualified from decisions related to an ordinance affecting local wineries because of the nexus between the decisions and the income received from the organization. The Commissioner may not make, participate in making, or influence decisions regarding the ordinance.

Paul Resnikoff

[A-21-117](#)

Vice Mayor may not take part in decisions involving the construction of a new, \$20+ million, 24,800 square-foot police building located less than 500 feet from his home as the magnitude and cost of the project, as well as resulting noise, fails to establish clear and convincing evidence that the project will have no measurable effect on the official's property. Accordingly, it is reasonably foreseeable that the project would have material effect on the property.

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.

Christopher J. Diaz

[A-21-071](#)

Neither the Act nor Section 1090 prohibit Councilmember from taking part in a decision to amend a town's one-year prohibition against former officials, including councilmembers, from applying for tenancy in a senior housing complex merely because the Councilmember may be contemplating applying for tenancy in the complex within one year after leaving office. Under the Act, the decision will not have a foreseeable material financial effect provided the qualifications requirements for leasing a unit in the complex are not modified. Additionally, the Councilmember is not disqualified from the decision under Section 1090 because any interest in the decision falls within the noninterest exception for public services generally provided. Regarding an annual rent adjustment, a Councilmember is not disqualified from a decision merely because an adult in-law is a current tenant of the complex.

Gregory M. Murphy

[A-21-106](#)

Under the Act and Section 1090, a City Manager is prohibited from taking part in lease negotiations between the City and a non-profit where the non-profit employs the City Manager's spouse and constitutes a source of income. However, so long as the City Manager recuses himself, the City may still contract with the non-profit.

Jonathan V. Holtzman

[A-21-098](#)

Section 1090 does not prohibit a fire protection district board member, who is also employed as a firefighter by a different fire protection district, from making or participating in making a labor agreement between the district for which he serves as a board member and the firefighters union, of which he is a member as a firefighter, because the noninterest exceptions of Section 1091.5(a)(7) and (9) apply. The Act would not prohibit the board member from taking part in governmental decisions

relating to the labor agreement because it is not reasonably foreseeable that those decisions would have a material effect on the official's personal finances.

Brad Wiblin

[A-21-097](#)

Section 1090 does not apply to rezoning recommendations from the Planning Commission to the City Council, despite connection with a subsequent request for proposal by another agency for a proposed transit-oriented project, because the rezoning recommendation is regulatory in nature. However, because it is reasonably foreseeable under the Act that the financial effect of the rezoning recommendations will have a material effect on the Planning Commissioner's employer, who would like to pursue the contract with the other agency and has expertise in the field and an established relationship with the other agency, the Planning Commissioner may not take part in the recommendations.

**Kevin G. Ennis and
Michael Mc Entee**

[A-21-112/113](#)

Under the Act and Section 1090, a City's Mayor is prohibited from taking part in her official capacity in a contract between the City and Mayor for the acquisition of land owned by the Mayor and necessary for the completion of a long-planned City roadway extension project. However, under the Act, an official with a disqualifying interest in real property may still appear before the official's own agency in the course of its prescribed function as a member of the public for matters related solely to real property owned only by the official and the official's immediate family. Additionally, although Section 1090 would ordinarily prohibit the contract altogether, the rule of necessity permits the contracting process under these circumstances.

Claire Hervey Collins

[A-21-118](#)

Section 1090 prohibits board member from participating in a Cooperative Agreement with a Joint Powers Authority to reimburse the JPA for its share of the costs of consulting services provided by board member's former employer because he has a prohibitory financial interest in the agreement resulting from his current equity stake the former employer. However, the "rule of necessity" applies to allow the water district to nonetheless enter into the contract so long as the board member abstains from any participation in his official capacity.

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

None