



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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Fourth 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](#).

Adoption

[Regulation 18104](#) – Secure Electronic Signatures.

[Regulation 18757](#) – Statements of Economic Interests; Filing an Original Statement of Economic Interest in Electronic Format Without a Certified Electronic Filing System.

Amendment

[Regulation 18115](#) – Duties of Filing Officers and Filing Officials – Statements of Economic Interests.

[Regulation 18115.2](#) – Duties of Filing Officers and Filing Officials – Electronic Format Statements of Economic Interests.

[Regulation 18723.1](#) – Statements of Economic Interests: Public Officials with Multiple Positions.

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

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.

Heather L. Stroud

[I-21-140](#)

Officials with real property within 500 feet of an Area Plan site are generally prohibited from taking part in decisions related to the Area Plan in the absence of sufficient details to demonstrate either (1) clear and convincing evidence of no measurable financial impact on the officials' economic interests or (2) the effect would be indistinguishable from the effect on the public generally.

Jeffrey Ballinger

[A-21-141](#)

Where an official's residential real property is located within 500 feet of an undeveloped parcel owned by the city, the official may not participate in city decisions to sell, rezone, or establish a restrictive open space covenant over the property absent facts that establish there will not be a material impact on the official's property. Where an official's residential real property is located within 1,000 feet of an additional undeveloped parcel owned by the city with a potential for 45 single family homes, the official may not participate in city decisions to sell, rezone or establish a restrictive open space covenant over that property where the decisions would change the character (in terms of increased traffic, noise and intensity of use) and market value of the official's property.

Richard F. Anthony

[A-21-142](#)

The Act prohibits City Councilmember from taking part in decisions involving the potential sixmillion-dollar renovation of the City's Convention Center because it is reasonably foreseeable the decisions will have a material effect on the Councilmember's real property interests located less than 500 feet from the Convention Center.

Yolanda M. Summerhill

[A-21-125](#)

A Planning Commissioner may not generally take part in actions regarding building permit applications submitted by his employer, including interacting with City Staff. The Planning Commissioner also may not take part in recommending a proposed Housing Element to the City Council where there is a nexus between the Housing Element, which would establish proposed residential zoning sites creating potential for future projects for his employer, and the official's role with his company, including a bonus pay structure based on company performance.

Alexander Abbe

[A-21-157](#)

The Act does not prohibit City Councilmember from taking part in decisions regarding the construction of a five-story affordable housing development 925 feet from his residence where a 130-unit private townhouse development is located between the project site and his residence, and there is no indication the project would change the development potential, income producing potential, highest and best use, character, or market value of his residence. For the same reasons, the Act would not prohibit the Councilmember from taking part in decisions whether to acquire the same property to convert into a public park.

Brandon A. Criss

[A-21-121](#)

District board member does not have a conflict of interest in a decision to approve a Groundwater Sustainability Plan because it is not reasonably foreseeable the decisions will have a material effect on his financial interests including an interest in an LLC which owns property, and a business raising sheep, in the area covered by the Plan. Based on the facts provided, there is no indication that the adoption of the plan will result in a change in the entities' annual gross revenues, nor the value of the entities' assets or liabilities. Similarly, property held is by the entities is not the subject of the decision and there is no clear evidence of a financial effect on the property.

Benjamin L. Stock

[A-21-150](#)

Two City Councilmembers, who own businesses within the City, are not prohibited by the Act from voting on a proposed minimum wage ordinance because the “public generally” exception applies notwithstanding any financial effect that the decisions may have on their respective financial interests.

Colin Burns

[A-21-146](#)

City Councilmember is not prohibited from taking part in decisions regarding the development of 5-story mixed building 562 feet from the Councilmember’s residence. Under Regulation 18702.2(a)(8), the facts indicate the Project is not likely to change the development potential, income producing potential, highest and best use, character, or market value of the Councilmember’s condominium because the Project is in a developed urban area, that has existing multi-storied buildings and parking in use; the condominium is in a gated community separated by a four-lane street; and the City Police Station buffers the view of the Project. Based on the facts provided, it is not reasonably foreseeable that the decisions will have a material effect on the Councilmember’s residence, and he may participate.

Daniel G. Sodergren

[A-21-160](#)

A Housing Commission official may not take part in the consideration of a Sites Inventory, related general housing policy decisions, or review of the draft Housing Element Update that would allow commentary on the Site Inventory and housing densities, because it is reasonably foreseeable the decisions will have a material effect on her interest in a business entity that owns five parcels identified as part of a site listed in the preliminary Sites Inventory for potential rezoning. (Regulations 18701(a) and 18702.1(a)(4)(A).)

Lauren D. Layne

[I-21-144](#)

The Act does not prohibit Water District board members from taking part in decisions before the District involving a district landowner who has loaned money to the district if the board members do not have a financial interest in the decisions and the board members would derive no personal financial benefit from a loan to the district. Unless there are other factors that form the basis of a board member’s economic interest in the landowner, the Act’s conflict of interest provisions would not be implicated.

Todd R. Leishman

[A-21-154](#)

City Councilmember does not have a conflict of interest in a decision to amend an existing easement agreement, which would modify the use of a small portion of a golf course located within 1,000 feet of her residence but more than 500 feet, because it is not reasonably foreseeable that the decision would have a material financial effect on the Councilmember’s real property interest in her residence. However, because the official’s real property is located within 500 feet of the golf resort, it is reasonably foreseeable that a governmental decision to approve the resort master plan will have material effect on the interest, and the official may not take part in the master plan decisions.

Rebecca L. Moon

[A-21-148](#)

It is not reasonably foreseeable that decisions related to the permanent closure of a historic downtown avenue, that has been temporarily closed to vehicle traffic due to COVID-19 since the summer of 2020, will have a material financial effect on Councilmember’s interest in the lease on her residential apartment located near the avenue. Thus, the Councilmember may take part in the decisions as the facts presented do not indicate that the decisions will change the termination date of the councilmember’s lease, increase or decrease the potential rental value of her property, change the

councilmember’s actual or legally allowable use of the property, or impact her use and enjoyment of the property.

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.

Greg Gillott

[A-21-139](#)

Section 1090 does not prohibit County from entering into a contract with a nonprofit corporation concerning federal COVID-19 relief funding where a Supervisor is a member who receives services from the nonprofit and currently serves as a board member of the nonprofit for which he receives an annual monetary benefit of \$650. Although the Supervisor has a prohibitory financial interest in any contracts between the County and the nonprofit corporation, two separate remote interest exceptions under Section 1091(b)(1) and Section 1091(b)(7) apply to allow the County to enter such contracts as long as his interest is disclosed to the board of supervisors, noted in its official records, and he does not take part in the contracting process.

Karl H. Berger

[A-21-127](#)

Section 1090 does not prohibit Councilmember from taking part in City contracts involving donors of the Councilmember's nonprofit employer that he solicits where the donors have not conditioned contributions on approval of the contract. Under the Act, the Councilmember may take part in decisions related to donors to the nonprofit, including those who made previous donations of \$500 or less, to the extent his employment position and income would be unaffected by the donation because they would not have a reasonably foreseeable, material financial effect on his personal finances. However, the Councilmember should seek additional advice where the contributions to the nonprofit are larger or when there is a pending solicitation for a contribution at the same time as the proceeding. The Councilmember also has a prohibitory financial interest under Section 1090 in decisions involving contracts between the City and his nonprofit employer. However, his interest in any contracts is deemed "remote" under Section 1091(b)(1) and the City may enter into such contracts as long as he properly recuses himself.

Matthew Zucca

[A-21-107](#)

Section 1090 would prohibit City Officer from making any contract between the City and his former employer where he holds a promissory note as part of a stock repurchase agreement and Advice Letter Report Page 3 has a stock ownership in the former employer. However, as long as the City Officer disqualifies himself from all participation and plays no role whatsoever in the contracting process, the City may contract with the former employer.

Randy J. Risner

[A-21-092](#)

Section 1090 does not prohibit City from entering into a grant agreement with a nonprofit organization, or Councilmember and Mayor from taking part in decisions involving the agreement, despite the Councilmember and the Mayor's spouse being members of the organization because the noninterest exception of Section 1091.5(a)(7) applies. The Act does not prohibit the Councilmember or Mayor from taking part in decisions relating to the grant agreement because neither has a financial interest in those decision

Scott Adair

[A-21-137](#)

Where an independent contractor was hired to advise, and did advise, the county on its public contracting request for proposals, Section 1090 is applicable to the independent contractor and the County may not enter into contract under the RFP with an organization that shares an expectation of mutual benefit with, and is inter-related to, the independent contractor.

Robert N. Black

[A-21-158](#)

Under the Act, City Councilmember may only submit an encroachment permit application and any information necessary for processing the application. The Councilmember is prohibited from taking part in the decision, including any attempts to influence City employers regarding the decision, because it is reasonably foreseeable the decision would have a material financial effect on the official's real property by affecting its land use entitlements. However, such a permit does not constitute a contract for Section 1090 purposes.

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](#).

Conflict of Interest

[In the Matter of Charles Grace; FPPC No. 20/416](#). Staff: Theresa Gilbertson, Senior Commission Counsel and Paul Rasey, Special Investigator. The respondent was represented by Amber Maltbie of Nossaman LLP. Charles Grace is a public official for purposes of Government Code Section 1090. Grace participated in making a contract between the San Simeon Community Services District and Grace Environmental Services, a limited liability corporation in which Grace is the sole manager, in violation of Government Code Section 1090 (1 count). Fine: \$4,500.

Legislation

None.