



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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Second 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

Jean B. Savaree

[A-23-049](#)

Councilmember is prohibited from taking part in general plan housing element decisions involving a parcel located within 500 feet of the official's residence because it is reasonably foreseeable that those decisions would have a material financial effect on his real property interest in his residence under Regulation 18702.2(a)(7). However, the decisions can potentially be segmented such that the official may take part in the remaining decisions that would not impact the parcel.

Nicole C. Wright

[A-23-055](#)

Under the Act, Councilmembers are not prohibited from taking part in a decision to update Housing Element and permit the development of an affordable housing development, potentially located within 1,000 feet of their residential real property, where the decision is preliminary and there are insufficient facts to indicate the development would impact the residences' development potential, income-producing potential, highest and best use, character, or market value. However, the Act prohibits the officials from taking part in decisions that would eliminate minimum parking requirements and zoning decisions impacting property located less than 500 feet from their residences.

Nicole C. Wright

[A-23-067](#)

Mayor and Councilmember have a disqualifying financial interest in their properties located within 500 feet of a downtown area specific plan, that is part of a larger vitality strategy. Further, the Limited Neighborhood Effect Exception does not apply to the decisions surrounding the downtown area specific plan because the decisions are not aimed at a nuisance or safety measure at a specific location and the decisions are beyond the scope of the exceptions. However, if portions of the decision making surrounding the vitality strategy can be properly segmented under Regulation 18706(a) then they may participate in only those segmented decisions.

Kevin G. Ennis

[A-23-073](#)

Mayor who owns rental property does not have a prohibitive financial interest in a decision to appoint members to a new rental housing board where (1) the official does not have a financial interest in the persons up for appointment, (2) there is no understanding between the official and the appointee as to how the appointee will vote, and (3) the appointee has not taken a position or otherwise expressed how the appointee would vote on particular issues. Similarly, the official does not have a prohibitive financial interest in a budget approval decision to provide initial, mandated funding to a new rental board entity where subsequent decision by the board will be independently made from the City Council and the above factors are met.

Jeff Ballinger

[I-23-045](#)

Notwithstanding preexisting contract between City and Councilmember's client to plan and host annual parade, the Act prohibits the Councilmember from contacting or appearing before any city official on behalf of the client to influence a decision relating to the parade because it is reasonably foreseeable that those decisions would have a material financial effect on his interest in his business and client, which are named parties in and the subjects of any decisions regarding the parade.

Marian L. Slocum

[A-23-068](#)

Planning Commissioner does not have a disqualifying conflict of interest with respect to a decision on a redevelopment project that would result in his spouse relocating to a new office space. Because the office space is rented on a month-to-month basis, the Commissioner does not have a property interest in the leased property. Additionally, the spouse's employer would not be financially affected by the decision under the materiality thresholds applicable to an interest in a business entity including a source of income.

Hazel Joanes

[A-23-079](#)

Planning Commissioner is prohibited from taking part in a decision involving a building permit for a residence adjacent to the Commissioner's real property unless there is clear and convincing evidence the decision would have no measurable impact on the Commissioner's real property.

Matthew T. Summers

[A-23-082](#)

Planning Commissioner does not have an interest in property resulting from his law firm's leased property because a month-to-month tenancy is not a "real property interest" subject to the conflict-of-interest rules under the Act. Moreover, because it is not reasonably foreseeable a proposed project will have a material effect on the Commissioner's law firm merely because the project is located near the law firm, the official is not disqualified from the project decisions.

Rick Hernandez

[A-23-090](#)

Planning Commissioner does not have a disqualifying conflict of interest in a decision to approve a two-unit residential infill project located over three-quarters of a mile from his residence, because the facts presented do not show clear and convincing evidence that the governmental decision would have a substantial effect on the official's property.

Brandon Criss

[A-23-048](#)

The Act does not prohibit County Supervisor from taking part in decisions concerning changes to the County's vacation rental laws where he owns a residence in the County and a bed and breakfast in an

incorporated city within the County because the facts do not indicate the proposed changes, including a cap on the total number of permits allowed in a separate area of the County, will have a reasonably foreseeable and material financial effect on his real property or business interests.

Randy J. Risner

[I-23-081](#)

Councilmember, who is also an employee of the School District, is not prohibited under the Act from taking part in decisions involving the District because it is a local governmental agency and salary from the District would not be considered “income.” Additionally, the Councilmember’s membership with non-profit organizations and a labor union would not generally result in a disqualifying financial interest in decisions affecting the organizations as he does not receive income or gifts from the organizations, and there is no indication the decision would affect the Councilmember’s personal finances.

Julian Miranda

[A-23-083](#)

City Manager and two city councilmembers are not prohibited from taking part in governmental decisions related to proposed improvement of the City’s Veterans Memorial, despite each official owning real property under 500 or 1,000 feet away from the Memorial, because the proposed improvements are minimal in scope and it is not reasonably foreseeable the project would have a material financial effect on any of the properties.

Karl H. Berger

[A-23-087](#)

Mayor Pro Tem is not disqualified from decisions regarding the rezoning of an applicant’s project notwithstanding an interest in a business entity, which is a source of income to the official, that owns real property adjacent to a project. Based on the facts provided, it is not foreseeable the project will have a material financial effect on the official’s interest in the business under the financial thresholds of Regulation 18702.1, there is no clear and convincing evidence the decision would have a substantial effect on the business’s real property, and there is no nexus between the governmental decision and the purpose for which the official receives income under Regulation 18702.3.

Jason R. Alcalá

[A-23-092](#)

Councilmember may not take part in decisions surrounding a 44-property housing development and the initial development of a 31-acre site because he has a disqualifying financial interest in his real property located 700 feet from the project. Based on the facts provided, it is reasonably foreseeable the project may change the income producing potential, character of, or market value of the Councilmember’s property.

Madeleine Salah

[A-23-094](#)

Planning Commissioner with condominium is not prohibited from taking part in decisions regarding the redevelopment of 14.65 acres located between 500 and 1,000 feet from the condominium. It is not reasonably foreseeable the project will have a material effect on the condominium because the properties are separated by several blocks of existing residential and commercial development and a major expressway. The project site is also currently developed and has long included various and similar commercial, office, and retail uses.

Lauren Langer

[A-23-096](#)

Planning Commissioner is prohibited from taking part in decisions concerning a 15-story mixed-use hotel and residential building less than 200 feet from the apartment he leases because the efforts to revitalize the block may impact the potential rental value of the apartment and may impact the Commissioner's use and enjoyment of the property. Thus, it is reasonably foreseeable the decisions will have a material financial effect on the Commissioner's leasehold interest in the apartment.

Joe Ellinwood

[I-23-101](#)

Officials are not generally disqualified from decisions limited solely to repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities. Based on the facts provided, it appears that this exception would generally apply to decisions anticipated to come before the Flood Control District Board that are limited to levee repairs and debris removal necessitated by recent storm damage. However, to the extent the officials need assistance determining whether any particular decision is limited to repairs, replacement, or maintenance, they should seek additional advice identifying the decision. Additionally, the conflict-of-interest provisions do not generally apply to members of a committee that is solely advisory.

Revolving Door

Evann Whitelam

[A-23-006](#)

The permanent ban does not prohibit former Agency Director from advising healthcare plans regarding procurements before the Agency, because the Director's involvement in the procurement proceeding was limited to the high-level and general determination to initiate the process, she did not directly supervise the staff who developed and oversaw the proceedings, and she left the agency prior to the start of proceedings involving specific parties.

Jessica Sicard

[I-23-016](#)

The one-year ban does not prohibit former state employee from providing consulting services to a federal agency, as a subject matter expert on earthquake early warning alert technology, because this would not involve appearing before or communicating with the former state agency so long as the decision is before the federal agency. However, the former state employee may not use the proceeding to otherwise make prohibited appearances before or communications with her former state employer. Moreover, the permanent ban does not prohibit the former state employee from providing the consulting services to the federal agency related to the new proceeding.

Amilia Glikman

[I-23-029](#)

Under the one-year ban the Office of Legislative Counsel is a state administrative agency and the ban is potentially applicable to former Deputy Legislative Counsel if appearing before or communicating with the office. However, the one-year ban does not apply to appearances before or communications with the Legislature or other state agencies that have an attorney-client relationship with the Office of Legislative Counsel. Additionally, general guidance on laws and policies while working at the Department of Toxic Substances Control, would not be considered a "judicial, quasi-judicial, or other proceeding" subject to the permanent ban.

Russ Nichols

[I-23-058](#)

Former agency manager is prohibited under the one-year ban from making appearances or communications in certain proceedings before his former agency as a consultant. However, the one-

year ban does not apply to the former manager's appearances before state agencies that are not under the direction and control of the former agency. The Act's permanent ban prohibits the former manager from participating in certain proceedings involving specific parties, or even assisting others in the proceedings, if the former manager previously participated in the proceedings while employed by the state agency regardless of whether the proceeding is before the former manager's prior agency.

Diana C. Messina, P.E.

[I-23-097](#)

Former State Engineer is prohibited from appearing before or communicating with her former agency, for compensation, for the purpose of influencing the agency in certain proceedings for one-year from the last date on which she performed her duties of office. The one-year ban does not however prohibit the former employee's future employment or consultant work to the extent the former employee does not appear before or communicate with her former agency. Additionally, the former employee is not prohibited under the permanent ban from future employment related to the regulatory update where her past participation related to the making of the rules and policies of general applicability.

Section 1090

Shiri Hoffman

[A-22-130\(a\)](#)

Notwithstanding the exception for contracts with a Workforce Development Board in Section 1091.2, County may not enter a contract with an organization that serves as both a nonprofit and Workforce Development Board for services to implement the behavioral health workforce initiatives that the organization recommended. Based on the facts provided, the organization would not be acting as a Workforce Development Board within the definition of Section 1091.2, but would rather be acting in its nonprofit capacity, so the exemption would not apply. Further, because the organization took on the role of an advisor in the initial contract, which required that the organization design strategies for the County to assist with recruiting and retaining its public behavioral health services staff, the organization and County cannot enter a subsequent contract to implement the initiatives recommended by the organization under its initial contract.

Veronica Ramirez

[A-23-034](#)

The Act does not prohibit Councilmember from taking part in the decisions related to planning approvals for general and precise plan amendments, and development agreements concerning six projects, as there are no facts indicating that the decisions will have a material financial effect on her nonprofit employer as a source of income merely because the nonprofit operates a museum near one of the projects. Likewise, Section 1090 does not apply, because the official does not have an interest in the contract merely because the official's nonprofit employer operates a museum near one of the projects.

Kevin G. Ennis

[A-23-051](#)

Section 1090 prohibits Councilmember from taking part in a proposed amendment to an existing agreement between the City and an association based on his employment with the law firm representing the association. However, because the firm has provided services to the contractor for

more than five years, the Councilmember has only a remote interest in the agreement under Section 1091(b)(8). Thus, the City may enter into the agreement with the association so long as the Councilmember abstains from any participation in the making of the agreement and leaves the room during the consideration of any amendment to the agreement.

Scott C. Nave

[A-23-053](#)

The noninterest exception for “public services generally provided” is applicable to an Airport District’s decision to approve a lease assignment to Board Member so long as the District’s assignment is within a leasing scheme that is applicable to all potential tenants; available on a first-come, first serve basis; establishes rental fees based upon a set criteria; does not provide priority or preferential rates for the Board Member; and does not allow for “special tailoring” of the Board Member’s lease to advantage him over other potential tenants. However, the Board Member may not participate in the decision under the Act because it is reasonably foreseeable that the decision will have a material financial impact on his financial interest.

William H. Ihrke

[A-23-057](#)

Under the Act and Section 1090, Councilmember’s employment with the County Sheriff’s Department does not prohibit the Councilmember from generally participating in the final budget decision process where the City contracts with the County Sheriff’s Department for law enforcement services. However, under Section 1090 the Councilmember would be prohibited from taking part in any discussions of whether to continue to allocate budgetary funds to the Sheriff’s Department because of her interest in the contract between the City and the Sheriff’s Office and must recuse herself from such discussions if they arise.

Ghassan ALQaser PhD.

[A-23-061](#)

The former agency manager is not prohibited under Section 1090 from acting as a consultant under a contract where there are no facts indicating the officer had influence over the contract to promote the officer’s personal interests. Under the Act, the one-year ban does not prohibit the former manager from appearances or communications before former agency as a subcontractor to a consultant as a part of services performed to administer, implement or fulfill the requirements of the existing contract, and the permanent ban does not apply where the contract implementation proceeding commenced after the official’s date of permanent separation and the official did not participate in the proceeding.

Anne E. Branham

[A-23-066](#)

Section 1090 does not prohibit District from contracting with an independent contractor to help write the technical portions of grant applications in exchange for subsequently being hired to perform work under the grant so long as there is an agreement under the initial contract to enter a subsequent contract with the same independent contractor to perform the work under the grant.

Veronica Ramirez

[A-23-070](#)

The Act does not prohibit Councilmember from taking part in the decisions related to planning approvals for general and precise plan amendments, as there are no facts indicating that the decisions will have a material financial effect on his leased residence. The Councilmember has a potentially disqualifying financial interest in decisions involving land use entitlements for a redevelopment project on a site located less than 1,000 feet from his leased residence. However, based upon the number of residences near the project that will be affected similarly, the public generally exception

applies, and he may take part in these decisions. Likewise, Section 1090 does not apply, because the official does not have an interest in the contract merely because the official has an interest in his leased residence near one of the projects

Mary Horst

[A-23-019](#)

Where a state agency's former employee previously worked as a program manager and was responsible for and participated in the development of the grant proposal at issue, Section 1090 prohibits the state agency from approving a grant application from an applicant that employs the former employee and has designated the former employee as its contact person and project lead on the grant application.

Barbara Thompson

[A-23-004](#)

Neither the Act nor Section 1090 prohibit County Supervisor from participating in decision to lend money to another government entity where her spouse is employed. Under the Act, the spouse's salary from a governmental entity is not considered income. Thus, the Supervisor is not disqualified from decisions involving the governmental entity barring any other economic interest in the decision. Similarly, under Section 1090, the Supervisor's interest in her spouse's employment with a public agency is a noninterest under Section 1091.5(a).

William Roetzheim

[A-23-050](#)

An independent contractor with a duty to advise the agency on a vendor's work order authorizations, as well as costs and contract amendment negotiations, is subject to Section 1090. The contractor may not participate in the making of a contract in which the contractor has a financial interest. Moreover, if the contractor's business sells or gives a license to the vendor to use software provided by the contractor's business, the contractor will have a prohibited financial interest in the agency's contract with the vendor, and the contractor may not continue to advise the agency on the specifications for the contracts pursuant to Section 1090.

Derek P. Cole

[A-23-059](#)

Neither the Act nor Section 1090 prohibit officials from taking part in decisions by the City Council regarding the City's request for proposals for a vendor to serve as concessionaire at City events for the next year, merely because each of these officials is an uncompensated officer of a bidding nonprofit organization. The officials are not compensated by their respective nonprofit organizations and thus have no interest in them under the Act. Similarly, the officials have a noninterest in any contract under Section 1091.5(a)(8) because they are not compensated, and a primary purpose the respective nonprofit organizations supports the functions of the City Council.

Daniel S. Hentschke

[A-23-062](#)

Section 1090 prohibits City from canceling a request for proposals and entering a second contract with a contractor where the contractor's duties under its initial contract included engaging in and advising on public contracting on behalf of the City, including the specific task of drafting the request for proposal for the second contract.

Jason Zaragoza

[A-23-071](#)

Section 1090 prohibits Councilmember from taking part in contract decisions involving school districts where he is a paid consultant. However, the remote interest exception under Section

1091(b)(13) pertaining to government salary applies to allow the City to enter such contracts so long as the Councilmember abstains from any participation in the making of the contracts.

Jamie Azpeitia-Sachs

[A-23-076](#)

Section 1090 prohibits a board member from taking part in contract decisions involving a charter school where her company provides dance instruction to the school. However, the remote interest exception under Section 1091(b)(8) applies to allow the board to enter such contracts because the board member has provided those services to the charter school for more than seven years.

Charles Nesbit

[A-23-085](#)

Section 1090 does not prohibit the City from contracting with the same firm to design and build the sign where the City previously hired the design firm to provide an initial concept design or rendering for the sign. Under these facts, the design firm was not entrusted with transacting on behalf of the government when it contracted with the City to provide the initial concept design and Section 1090 would not apply.

Joan L. Cassman

[A-23-086](#)

City may not enter a contract with a consulting agency for project management services to implement a master plan because the consulting agency took on the role of an advisor to the City in the initial contract with the City by recommending the hiring of a project manager, contracting methods, and related services the City should procure in subsequent contracts. Accordingly, the consulting agency is prohibited from entering a subsequent contract to provide the services the consulting agency identified and recommended under its initial contract.

Jessica Spaid & George Sziraki

[A-23-099](#)

School District Board Member has a noninterest in a contract between the District and her spouse to be a head wrestling coach under the noninterest exception in Section 1091.5(a)(6). Under this exception, the Board Member may participate in making the contract because her spouse has been seasonally employed in the same position by the district for more than one year prior to the Board Member's appointment and the terms of the spouse's employment for the upcoming contract will remain the same.

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

- **AB 334 (Rubio) – Section 1090 and independent contractors**

Status: Referred to the Assembly Elections Committee

Short Summary: AB 334 clarifies the circumstances under which an independent contractor is not an “officer” for purposes of Section 1090.

Detailed Summary:

Existing law: Section 1090 prohibits a member of the Legislature or an officer or employee of the state or a county, district, judicial district, or city from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Circumstance the bill applies to: AB 334 would apply when a public entity that has entered a contract with an independent contractor to perform one phase of a project seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project.

Clarifies when an independent contractor is not an “officer”: AB 334 would provide that, in the circumstance described above, the independent contractor is not an “officer” of the public entity, for purposes of Section 1090, if the independent contractor either (1) did not have responsibilities for public contracting on behalf of the public entity under the initial contract, or (2) did not participate in making the subsequent contract through its performance of the initial contract. The bill further clarifies what circumstances must be present in order for an independent contractor to not “have responsibilities for public contracting” and to not “participate in the making of the subsequent contract.”