



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

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: April 30, 2021

The following advice letters have been issued since the March 26, 2021, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the May 2021 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Conflict of Interest

[Amy R. Webber \(A-21-035\)](#)

The Act prohibits City Councilmember from taking part in decisions regarding the renovation/development of property located less than 500 feet from her real property where there is no clear and convincing evidence the decisions would have no measurable impact on the councilmember's property.

[Brittany E. Roberto \(A-21-043\)](#)

Interim City Manager is prohibited under the Act from taking part in governmental decisions relating to a proposed 130-unit residential development project located on 16 acres of vacant land about 600 feet from her residence because it is reasonably foreseeable that the project will have a material financial effect on her residence based on its potential to protect or increase the market value of neighboring property.

[Jeffrey Ballinger \(I-21-044\)](#)

The Act generally prohibits City Councilmember from taking part in decisions related to the adoption of a Master Plan, renovations and general operations of a city-owned golf course located within 500 feet of her residence. However, she may be able to participate in decisions relating to specific renovations or the general operations of the golf course so long as they are not inextricably interrelated to decisions that relate to the course as a whole.

[Kimberly Hood \(A-21-046\)](#)

Under the Act, City Councilmember may take part in decisions regarding a "Corridor Plan" that would potentially involve construction on a street located between 500 and 1000 feet from the

Councilmember's residence, where the project's minor impacts and physical barriers between the parcels indicate the Corridor Plan would have no substantial effect on the Councilmember's property. However, councilmembers with real property less than 500 feet from the project site are prohibited from taking part in such decisions where the facts indicate the project would likely reduce noise and "calm traffic" and no clear and convincing evidence indicates the project would have no measurable effect on their property.

Manu Koenig (A-21-031)

The Act prohibits County Supervisor from taking part in governmental decisions related to a development project that would introduce 150 new residential units and a grocery store (among other changes) because it is reasonably foreseeable that the decisions will affect the income-producing potential and market value of the Supervisor's real property located between 500 and 1000 feet from the project site.

Nira Doherty (A-21-045)

Mayor whose employer owns real property that is subject to decisions changing the standards for obtaining "Bonus Level Development" has a conflict and may not participate in these decisions because the modification of development criteria would have a reasonably foreseeable financial effect on real property owned by his employer and source of income.

Statement of Economic Interest

Kelly Jenkins (A-21-032)

The relevant personnel of contractor that serves as the manager of an investment portfolio for a county employee retirement association must file a Form 700 as a consultant subject to full disclosure.

Section 1090

Jeffrey Walter (A-21-055)

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

Gregory P. Wayland (A-21-030)

Under the local one-year ban, a former official may not appear for compensation as a representative for any person before their former agency to influence a proceeding, including a contract. (Section 87406.3.) Under Section 1090, the former official may not participate in the formation of the legal services contract and then benefit from that contract as an employee in his private capacity. However, if the City Council engages in negotiations to alter the contract terms at the end of its annual period, and so long as the former official is not involved in, identified, or influences these negotiations in any manner, the resulting contract would be sufficiently distinct

from the official's past participation and influence such that it would not fall under the Section 1090 prohibitions.

Mark D. Hensley (A-20-159)

Section 1090 prohibits City Councilmember from amending or terminating an agreement that the city entered with the Councilmember before he became a member of the City Council. An amendment to or termination of the agreement would constitute the making of a contract that would violate Section 1090. Under the rule of necessity, the City Council may determine the enforceability of the agreement, but the Councilmember has a conflict of interest and must abstain from participating in this determination.

Nicholaus Norvell (A-20-150)

Although Director of a joint powers authority has a financial interest under Section 1090 in a contract to install water services, the Authority may enter the contract pursuant to the public services generally provided exception under Section 1091.5(a)(3). In addition, although the Director has a prohibitory financial interest under Section 1090 in the potential quitclaim of the Authority's easement on his property, the Authority may nonetheless quitclaim the easement pursuant to the limited rule of necessity. However, because the financial effect of any decisions concerning the contracts for water service and the easement quitclaim on his interest is both foreseeable and material under the Act, the Director may not make, participate in making, or use his position to influence those decisions. Lastly, the Act prohibits the Director from taking part in decisions whether to amend the Authority's rules to delay payment of capacity fees concerning the installation of water services.

Patrick T. Donegan (A-20-131)

So long as Planning Commissioner with a financial interest abstains from any type of participation, including giving advice, related to the decision, Section 1090 does not prohibit the Planning Commission from making recommendations on, or the City Council from voting to approve, development agreements in which the Planning Commissioner has an interest.

Randy J. Risner (A-21-011)

City Attorney is not precluded by the Act or Section 1090 from engaging with an outside law firm for legal services given that a former employer may become a shareholder of the outside law firm, as the City Attorney has no financial interest in the contracts.

Ryan T. Plotz (A-21-050)

Under the Act, a public official does not have a potentially disqualifying source of income interest in a city that employs the official, because government salary and benefits are not considered "income" under the Act. However, where that official also serves as a director of a community services district and the District may amend or create a new contract with the City, the official's employment with the City constitutes a "remote interest" for Section 1090 purposes. Accordingly, the Director may not participate in the contract decisions, but the District may amend or create a new contract with the City as long as the Director discloses his interests in the contract to the District, the interest is noted in the District's official records, and the Director abstains from any participation in making or approving a contract-related decision.