



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: December 30, 2021

The following advice letters have been issued since the November 24, 2021, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the January 2022 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Section 84308

Wendy Root Askew

[A-21-155](#)

An appointed official is not prohibited from taking part in a decision concerning an application where the official received contributions that do not meet the threshold requirements for disqualification under Section 84308 including a contribution made more than 12 months prior to the decision and a contribution of \$250 or less.

Behested Payments

Colin Burns

[A-21-152](#)

A payment for communications made by a third party, which include the official's name, designation, email, and photograph and that conveys information relating to upcoming events by the City Council and Planning Commission, are not considered contributions to the official under Regulation 18215 if they do not contain express advocacy; do not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and do not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent. However, any payments for the communications made at the behest of the official equaling or exceeding \$5,000 are reportable behested payments.

Conflict of Interest

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.

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.

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.

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.

Gifts**Patrick Ford**[I-21-123](#)

A transfer of tickets between departments is not relevant to the Form 802 reporting requirements. The Form 802 reporting requirement is triggered by the official using the ticket, at which point the ticket must be reported pursuant to the ticket policy in place, whether city wide or departmental. If the tickets used by an official are provided by an outside source to the City or a department within the City, the outside source should be identified as the source in Part 2 of the Form 802. If an official who files a Form 700 uses a ticket received by the City, including any department, from an outside source and the official is not subject to a ticket policy, the ticket must be reported on the official's Form 700 as a gift from the outside source. If it is a ticket owned by the City, it can be reported as either a gift or income, but it is the official's burden to show that it is income.

Section 1090**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.