



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Baker, Gómez, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Subject: Advice Letter Report
Date: October 3, 2022

The following advice letters have been issued since the August 26, 2022, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the October 20, 2022, Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Conflict of Interest

Katherine Wisinski

[A-22-079](#)

Mayor, who is also employed as a pastor, is not prohibited under the Act from taking part in a decision regarding a development project where there are no facts indicating that it is reasonably foreseeable the project will have a material effect on the official's employer. While the official's employer provides services for its congregation within 350 feet of the project, space in the building to provide services is rented from a separate church on a month-to-month basis and there is no indication the project will have a financial impact on the employer merely because it provides services in the vicinity.

Rebecca L. Moon

[A-22-082](#)

The Act does not prohibit a vice mayor from taking part in decisions regarding an underpass project where construction would occur almost 1,000 feet away from her leased apartment in a large 158-unit complex, that already experiences significant noise, is buffered from the proposed construction sites by another building, and construction would not begin for at least five years.

Nancy Diamond

[A-22-087](#)

The Act prohibits a councilmember from taking part in decisions relating to an area plan because it is reasonably foreseeable that those decisions would have a disqualifying material effect on her multiple real properties located within 500 feet of the area boundary. The Act's public generally exception does not apply because the foreseeable effect on the councilmember's interests is unique, due to her multiple interests in rental properties, and not shared by the general public.

Trisha Ortiz

[A-22-096](#)

City councilmembers are not prohibited from taking part in decisions regarding proposed ordinance before the City Council to authorize limited commercial cannabis operations. Based

on the facts provided, it is not reasonably foreseeable the decisions will have a material financial effect on three councilmembers' residential real property interests because the residences are not within the zones but within 500 feet, the ordinance does not specify any particular location among the 522 commercial properties within the zone, and any future location would require a separate extensive review and permitting processes.

SEI

Michelle Watson

[A-22-088](#)

“Index-tracking, tax-loss harvesting strategy” account is not a mutual fund nor is it a bona fide investment fund that pools money from more than 100 investors meeting the limited exception from the definition of investments under the Act provided in Regulation 18237. Therefore, an appointed official's individual securities or stocks that otherwise meet the definition of an “investment” in Section 82034 will be disclosable under Sections 87200-87205 on the official's statement of economic interests.

Section 1090

Timothy J. Carmel

[A-22-071](#)

A council member does not have a financial relationship with her adult child, who has graduated from college, moved out of state, and does not receive financial support from her parents. Therefore, under Section 1090, the council Member does not have a financial interest in the decisions involving a City contract with a company that intends to employ her adult daughter.

James S. McNeill

[A-22-074](#)

The noninterest exception to Section 1090 for “public services generally provided” as set forth under Section 1090.5(a)(3) would apply so that councilmembers would be permitted to vote to extend retirement benefits to themselves, where those benefits have already been extended to approximately 4,000 other current City employees on comparable terms and conditions.

Marc Pfenninger

[A-22-092](#)

Under the Act, a member of an Architectural Advisory Committee, whose position is designated in the City's conflict of interest code, is prohibited from advising on or taking part in decisions regarding a development project his architectural firm initiated on behalf of the firm's former client, as such decisions would aid or hinder a firm goal he is paid to achieve. Additionally, Section 1090 would not be implicated so long as the official recuses himself from the decisions as required by the Act.

Paul M. Sampietro

[A-22-093](#)

An alternate ex-officio board member is not prohibited under Section 1090 from entering an employment contract with the Board because he was removed from his ex-officio duties prior to any discussion by the Board regarding the position and did not have any previous discussion of the position with the Board trustees.

Scott C. Nave[A-22-097](#)

Section 1090 does not prohibit Airport District from approving a sublease agreement for a general aviation hangar between the current tenant and a District Director. In consideration of the fact that the noninterest exception set forth in Section 1091.5(a)(3) would apply to allow Director to lease a hangar directly from the District, the rule of necessity would further allow the District to approve the sublease. However, while the Director may submit the information needed for the District to make its determination, he may not take part in the decision regarding the sublease in his public capacity.

Scott Haskell Campbell[A-22-098](#)

Section 1090 does not prohibit a public health care commission from contracting with the same vendor on two phases of a project—involving sequential contracts—if the vendor will neither have duties to engage in or advise on public contracting or engage in contracting on behalf of the health care commission.