



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Baker, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Subject: Advice Letter Report and Commission Review
Date: May 27, 2022

The following advice letters have been issued since the April 29, 2022, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the June 2022 Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Campaign

Kelly Lawler

[A-22-020](#)

The Act does not prohibit a committee from providing a vendor with its candidate's logo for use on merchandise or from receiving a commission on the sales of merchandise. However, due to the coordination between the committee and the vendor to create and sell the merchandise at no cost to the committee, the vendor is making a contribution to the committee. Because the committee has an agreement for the vendor to sell campaign merchandise to its benefit, the vendor is an agent or independent contractor of the committee and the committee must report expenditures of \$500 or more made by the vendor as specified by Section 84303. Additionally, the Act does not prohibit the committee from promoting the vendor on the committee's official website and social media and charging a fee. However, the vendor's payment for the space is a contribution unless the committee can establish that the vendor is paying a fair market value for the advertising space.

Russell Creighton

[I-22-030](#)

The actions of a local democratic club in endorsing candidates, distributing communications containing express advocacy, and conducting partisan get-out-the-vote efforts will qualify it as an independent expenditure or recipient committee subject to registration and reporting should it meet the requisite monetary thresholds as established by the Act.

Conflict of Interest

Richard D. Pio Roda

[A-22-028](#)

It is reasonably foreseeable that a decision on a waterfront redevelopment project, which is intended to revitalize 75 acres of city's shoreline and marina, would have a material financial

effect on a planning commissioner's real property interest within 1,000 feet of the project, and he may not take part in the decisions pertaining to the project.

Julian Miranda[A-22-029](#)

A city official has a prohibitive financial interest in decisions involving facility improvement projects where the official's residential property is located within 500 feet of the projects. The official also has a prohibitive financial interest in decisions involving a library and recreation center where the official's property is located between 500 and 1,000 feet of the project, but directly on the route encircling the library and recreation center, and the decision may substantially alter traffic levels, intensity of use, parking, noise in the neighborhood. However, the official does not have a prohibitive financial interest in the city's decision to purchase property located over 1,000 feet from the official's property. Additionally, a second city official is not prohibited from taking part in decisions involving the library and recreation center, as well as the city park, where the official's residential property is located between 500 and 1,000 feet of the projects but also separated by three blocks of existing residential and commercial properties.

Lain MacMillian[A-22-033](#)

A public official may not provide technical expertise in the form of analysis, conclusions, and recommendations relating to transportation for a portion of a city's specific plan where the official owns a home within 500 feet of the specific plan boundaries and the value of his property would likely be affected by the specific plan.

Michael Ng[A-22-035](#)

A public official may take part in governmental decisions involving a former client of his law firm where the decision would not have a reasonably foreseeable financial effect on the law firm, as the law firm did not represent the former client in the matter before the official and the firm no longer has a relationship with the former client.

Gary B. Bell[A-22-038](#)

The public generally exception applies to allow city councilmembers to take part in a decision to approve a development agreement and zoning change relating to a parcel of real property notwithstanding any financial effect on their respective interests. Based upon the facts provided, approximately 20 percent of the residential properties are located within a similar or closer distance than the officials' property and there is no indication that the decision will affect the officials' property uniquely in comparison to other residential properties.

Daniel S. Hentschke[A-22-039](#)

A designated project manager or consultant representative that is employed by an independent contractor and hired by a public agency to conduct a competitive procurement process for franchised waste hauling services is not a "consultant" under the Act. Even though the project manager or consultant representative may engage in tasks that would be the same or similar to those done by the agency's staff, it will only be for a single short-term project.

Kimberly Hood[A-22-042](#)

A county supervisor has a disqualifying financial interest in governmental decisions related to the approval of a residential development project consisting of 1,100 to 1,200 units, on approximately 234.29-acres of currently undeveloped agricultural land, because his residence is located less than 500 feet from the boundary of the project area. The public generally exception does not apply.

Brian Pierik[A-22-043](#)

A city's vice mayor may take part in decisions relating to the city's budget that includes funds to pay the county for law enforcement services provided to the city because there are no facts suggesting those funds are used to pay for medical services provided by her employer to inmates at the county jail.

Michael Ng[A-22-047](#)

The Act's "nexus test" prohibits an official from taking part in decisions relating to the development of a proposed baseball stadium, where: (1) his employer's general purposes and goals include promoting economic development in the bay area and generating revenue from and promoting the interests of dues-paying members; (2) the applicant is a dues-paying member of his employer organization; and (3) his employer has published three studies, commissioned by the applicant, detailing the local economic benefits of the proposed ballpark.

David E. Kendig[A-22-051](#)

Lacking clear and convincing evidence that governmental decisions involving the development of a specific plan area would have no measurable financial impact on two city councilmembers' respective residences located less than 500 feet from the specific plan area, the Act prohibits the officials from taking part in such decisions. However, per Regulation 18706, the city council—without the disqualified officials' participation—could segment their decisions to allow the disqualified officials' participation in the subsequent decisions that would not have a reasonably foreseeable, material financial effect on their economic interests.

Section 1090**Andrew Morris**[A-22-040](#)

Section 1090 does not prohibit a town council from contracting with an economics consulting firm after a firm employee took part—in a personal, voluntary capacity and not as a "public official" or "officer"—in an advisory committee that made recommendations that indirectly prompted the town council to seek out such a contract.