



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

# Third 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

**Sarah J. Knecht**

[A-22-032](#)

Notwithstanding a potential conflict of interest resulting from their respective slip and live-aboard permits, Harbor Commissioners may take part in the decisions regarding the permit fees under the public generally exception so long as the decisions are considered separately and will not impact a decision regarding the slip transfer fee decision. The public generally exception applies because the slip permit and live-aboard permit fee proposals adjust the amounts of the fees for broadly provided public services in an amount that applies equally, proportionally, or by the same percentage to all slips. Commissioners are prohibited, however, from taking part in the slip transfer fee decision because it is reasonably foreseeable that the decisions will have a material effect on the Commissioners' interests in their personal finances. Moreover, the public generally exception does not apply to the proposed transfer fee decision because the proposed fees would apply disproportionately depending on the size of the slip.

**Jeffrey A. Walter**

[A-22-069](#)

Mayor may not take part in a City Council decision affecting a business's ability to offer normally prohibited check cashing services when the Mayor owns a rental property 260 feet from the proposed business location and there is no clear and convincing evidence the decision will not have a measurable impact on the mayor's rental property.

**Scott E. Porter**

[A-22-078](#)

Councilmember may take part in decisions relating to a proposed 42-unit residential development despite her spouse owning a periodontal practice located within 1,000 feet of the proposed site. Based on the facts provided, the spouse's month-to-month lease does not constitute a real property interest for purposes of the Act. Moreover, considering the small scope of the proposed development, the niche clientele of the periodontal practice, and that the practice relies mostly on referrals, it is not reasonably foreseeable the development will have a material effect on the Councilmember's interests in the practice.

**Kristopher J. Kokotaylo**

[A-22-070](#)

The Act prohibits a vice mayor from taking part in decisions regarding properties on a draft housing element where he owns a residence located within 158 feet of one of the properties and there is not clear and convincing evidence that decisions will not have a measurable impact on the residence. However, to the extent that the property 158 feet

from the official's residence is removed from the decisions or segmented under Regulation 18706, the official should seek additional advice regarding taking part in decisions involving the housing element.

**Jeffrey A. Walter**

[A-22-086](#)

A councilmember may take part in a city council decision interpreting the city zoning code, despite owning a rental property less than 100 feet from a commercial zoning district, where the official's property is located more than two miles from the specific property at issue and any potential broad impact on commercial zoning districts as a result of the decision would apply to all properties within the districts.

**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.

**Revolving Door**

**Danielle Borrelli**

[A-22-075](#)

The Act's revolving door provisions do not prohibit a state university employee from accepting a position with a private company that currently provides services to the university. However, we caution the ban on influencing prospective employment prohibits the employee from taking part in decisions that financially affect the company while negotiating employment and that the permanent ban may apply to any particular matters involving specific

parties the employee participated in as a state employee. However, because the employee's position was not designated in the university's conflict of interest code, the "one-year" ban does not apply.

## Section 1090

### **Taylor M. Anderson**

[A-22-066](#)

Under the Act and Section 1090, Councilmember may take part in City Council decisions affecting members of a union employed by the City, despite also being a member of and receiving health care benefits through that union, where the limited scope of the decisions would not have a reasonably foreseeable, material financial effect on the Councilmember's employer as a source of income or on his personal finances, nor would it implicate a financial interest in a contract.

### **Chelsea Straus**

[A-22-064](#)

Where two contractors provided preconstruction services on an extensive airport construction project but did so in their private capacities without engaging in or advising on the public contracts of the airport agency, the contractors are not subject to Section 1090 due to their previous services to the agency on the project. Additionally, to the extent that any employee of the contractors qualifies as a consultant for purposes of the Act, the employee is not prohibited from bidding for the subsequent contract as negotiating terms and conditions of an employment or consulting contract is not a type of decision subject to the conflict-of-interest prohibitions.

### **Warren Green**

[A-22-067](#)

Section 1090 does not prohibit a utility agency from entering a second contract with an independent contractor that has merely provided technical consulting services to the agency. However, the agency is prohibited from entering a second contract with independent contractors that have been hired to advise on or engage in public contracting on behalf of the agency.

### **Jeffrey Scott**

[A-22-080](#)

Under Section 1090, a healthcare district CEO who is not a member of the district's board of directors is prohibited from taking part in the district's awarding of a grant to a nonprofit organization that employs the CEO's spouse. However, the district is not prohibited from awarding the grant so long as the CEO properly recuses himself from the process.

### **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.

## 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](#).

### Conflict of Interests

**In the Matter of Andrew Do; FPPC Nos. 16/510 and 18/648.** Staff: Christopher B. Burton, Assistant Chief of Enforcement; Ann Flaherty, Special Investigator; and Paul Rasey, Special Investigator. The respondent is represented by Nicholas Sanders. Andrew Do is a member of the Orange County Board of Supervisors and the CalOptima Board of Directors. Do violated the pay-to-play restrictions of the Act in 2016 and 2017 when they made, participated in making, and attempted to use their official position to influence governmental contracting decisions involving a participant who contributed to their campaign, and had reason to know the respective contributors contributed to their campaign for county supervisor, in violation of Government Code Section 84308, subdivision (c) (2 counts). In 2015 and 2016, Do also failed to timely file behested payment reports disclosing eight payments totaling approximately \$110,440, in violation of Government Code Section 82015, subdivision (b)(2)(B)(iii) (4 counts). **Fine: \$12,000.**

**In the Matter of Steve Dallas; FPPC No. 18/804.** Staff: Theresa Gilbertson, Senior Commission Counsel and Roone Petersen, Special Investigator. Steve Dallas is represented by Kathryn Meola at Atkinson, Andelson, Loya, Ruud & Romo. In their capacity as Mayor for Carmel-by-the-Sea from 2016 through 2018, failed to timely disclose gifts on a Statement of Economic Interest, in violation of Government Code Section 87207 (1 count). Dallas accepted gifts over the limit, in violation of Government Code Section 89503 and Regulation 18940.2 (1 count). Dallas had a prohibited conflict of interest when voting on and participating in a vote regarding a source of gift to Dallas, in violation of Government Code Section 87100 (1 count). **Fine: \$9,500.**

**In the Matter of Claire Crandall; FPPC No. 16/741.** Staff: Theresa Gilbertson, Senior Commission Counsel and George Aradi, Special Investigator. The respondent is represented by Gary Winuk of the Kaufman Legal Group. Crandall is a former employee with the San Diego County Office of Education. In their capacity as a public official, Crandall influenced a governmental decision of an agency in another county in favor of entering into a contract with a company owned by Crandall's spouse, in violation of Government Code Section 87100 (1 count). **Fine: \$5,000.**

### **Default Proceedings**

**In the Matter of Laura Franco-Perez; FPPC No. 18/083.** Staff: Alex Rose, Commission Counsel. Laura Franco-Perez, Planning Commissioner of the City of Sanger, failed to timely file an Assuming Office, 2017 Annual, and Leaving Office Statement of Economic Interests, in violation of Government Code Sections 87202, 87203, and 87204 (3 counts). **Fine: \$12,000.**

## Legislation

**SB 1439 (Glazer)** – Contributions to local government agency officers: disqualification.  
Coauthor: Senators Gonzalez, Portantino, and Wilk  
Status: Approved by the Governor and chaptered on 9/29/22.

### Summary:

Existing law under the Act prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, participant, or a party or participant's agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 3 months following the date a final decision is rendered in the proceeding, if the officer knows or has reasons to know that the participant has financial interest, as defined. The Act also prohibits a party, participant, or participant's agent from making a contribution of more than \$250 to an officer of the agency during the proceeding and 3 months following the date of the final decision. The Act exempts certain entities from these requirements, including local government agencies whose members are directly elected by the voters.

SB 1439 removes that exception for local government agencies, thereby subjecting them to the prohibition described above.

The bill additionally:

- Extends the prohibition on contributions from 3 to 12 months following the date a final decision is rendered in the proceeding.
- Allows an officer to cure a violation for an improper contribution accepted after the proceeding by returning the contribution within 14 days, if the acceptance was not knowing and willful.

FPPC Cost: \$465,681 (first year); \$444,681 (ongoing annually)

- 2 Commission Counsels (Legal and Enforcement), and 1 Political Reform Consultant (Enforcement)

FPPC Position: Support