



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 Cardenas, Hatch, and Wilson

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Advice Letter Report and Commission Review

Date: August 28, 2020

The following advice letters have been issued since the July 27, 2020, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the September 2020 Commission Meeting. Full copies of FPPC Advice Letters, including those listed below, are available at:

<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Campaign

Nick Warshaw

[I-20-079](#)

An agreement by a company to pay a candidate when an independent expenditure (IE) or Section 85310 communication is made by the candidate's opposition will meet the definition of a "contribution." The agreements and resulting payments are for the political purpose of influencing voters by seeking to discourage communications to voters that will trigger a payment at several times the cost of the opposition's communication to the candidate under the agreement. Additionally, the proposed agreements are exclusively available to candidates for elective office, and not to the public. The payments also meet the definition of expenditure under the Act.

Conflict of Interest

Beverly Roxas

[A-20-082](#)

The Deputy Director of a city agency has a disqualifying conflict of interest under the Act and is prohibited from taking part in decisions related to a municipal master plan because her husband's design firm has received the contract for the project.

Katherine Wisinski

[A-20-085](#)

Under the Act, a City Councilmember may not take part in governmental decisions pertaining to a city development project that would involve the construction of hundreds of new homes, among other significant developments, given that the project would change the market value, income producing potential, and air quality of her real property located less than 1000 feet from the project site, thereby having a reasonably foreseeable, material financial effect on the real property.

Mark Hensley [A-20-086](#)

Under the Act, a City Councilmember is prohibited from taking part in the development and issuance of requests for proposals pertaining to the development and revitalization of the City's Downtown Specific Plan area, as the project would foreseeably result in a change to the rental value of the Councilmember's leased property. If necessary for the purpose of convening a quorum, however, Regulation 18705 may permit an otherwise disqualified official, or officials, to take part in the aforementioned governmental decisions.

Alexander Abbe [A-20-091](#)

It is reasonably foreseeable the decisions concerning the development plan for a downtown focus area will have a material financial effect on the market value of a Planning Commissioner's residence, due to the proposed sizable changes in the density and type of use in the development area. However, the Act permits limited participation, including an appearance by the official as a member of the general public before an agency in its regular decision-making capacity, if the appearance is on matters related solely to the official's personal interests, and appearances before agencies not subject to the control of the Planning Commission.

Rebecca L. Moon [A-20-092](#)

A later development agreement decision that will reopen and alter a previous specific plan decision in which the official has a conflict of interest does not comply with the segmentation rules to allow participation in the development agreement under Regulation 18706, as the two decisions are inextricably interrelated.

Peter J. Nolan [I-20-098](#)

City Mayor may accept private employment but will have a disqualifying conflict of interest and will be required to recuse himself on any decisions which may have a reasonably foreseeable material financial effect on his employer.

Section 1090

Jeffrey A. Walter [A-20-034](#)

A City Councilmember who is a member of an homeowners' association has a prohibited financial interest under Section 1090 in a contract between the City and the association for the maintenance of perimeter walls. However, considering the longstanding failure to maintain the walls, deferred maintenance, and the settlement for damages caused by city maintained trees, the rule of necessity permits the City to enter into the contract as it is an essential party to the contract and no other entity is authorized to act in its place. However, due to her financial interest, the Councilmember must recuse herself from any decisions involving the contract.

Nicholaus Norvell [A-20-087](#)

The conflict of interest provisions under Section 1090 prohibit a Joint Powers Authority from entering an employment contract with a City employee to be its CEO where the employee participated in the making of the JPA agreement that contains a provision requiring a CEO. However, the JPA may enter into an employment agreement with the employee for other positions where no provision in the JPA agreement requires that the positions be created.

Daniel J. McHugh

A-20-095

Under the Act, a city's Chief of Police is not prohibited from preparing and executing a ballot measure argument. However, the Chief of Police may wish to seek additional advice regarding other areas of the law, such as his agency's conflict of interest code, that may prohibit such conduct.