



CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3050 • Sacramento, CA 95811 • (916) 322-5660

December 8, 2025

Heidi von Tongeln
Interim City Attorney
City of Santa Monica
1685 Main Street, 3rd Floor
Santa Monica, CA 90401

Re: Your Request for Advice
Our File No. A-25-153

Dear Ms. Von Tongeln:

This letter responds to your request for advice regarding on behalf of City of Santa Monica (“City”) City Councilmember Jesse Zwick regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Section 1090.¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest. We also provide no advice regarding any restrictions on incompatible activities the City may impose.

Because we only advise as to future conduct, this letter should not be construed as assistance on any conduct that may have already taken place, including any prior involvement in the housing production decisions the official may have engaged in while negotiating prospective employment. (See Section 87407 and Regulations 18329(c)(4)(A) and 18747.) Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Los Angeles County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

QUESTIONS

1. Due to his employment with the Housing Action Coalition (“Coalition), does City Councilmember Zwick have a conflict of interest under the Act that would require him to resign his position as a City Councilmember?

2. Does Councilmember Zwick have a conflict of interest under the Act that would require him to recuse from the upcoming housing production decisions outlined below?

3. Regarding the City’s pending litigation related to its Emergency Interim Zoning Ordinance and extension, does Section 1090 prohibit the City from entering into a settlement agreement, if it is considered, due to a Councilmember’s employment with the Coalition?

4. Does City Councilmember Zwick have a conflict that would require him to recuse from decisions related to housing production or from all housing decisions?

CONCLUSIONS

1. No. Nothing in the Act or its conflict of interest rules prevents a public official from seeking or holding a particular employment position, whether public or private. Rather, the Act’s conflict of interest rules prohibit a public official from participating in a decision that will have a financial effect on the official’s financial interests. This prohibition is applied on a decision-by-decision basis.

2. Yes. There is a nexus between Councilmember Zwick’s duties as the Coalition’s paid Director of the Southern California region, and the City decisions that would achieve, further or hinder the Coalition’s goal of advocating for housing production as well as its goal of growing its membership and receipt of donations. It is reasonably foreseeable that each of the housing production decisions described below may have a financial effect on the Coalition, including its costs or reduced costs of future advocacy, as well as the prospect of increased or decreased membership and donations resulting from the Coalition’s perceived success in achieving its stated goals. Under the nexus test standards, this effect is deemed material, and Councilmember Zwick may not take part in the decisions identified.

3. No, Councilmember Zwick has only a remote interest in the decision as the employee of a nonprofit entity. So long as he recuses from the proceeding in accordance with Section 1091’s requirements, Section 1090 does not prohibit the City from making an agreement.

4. Generally, the analysis below provides the relevant standards to determine if Councilmember Zwick has a disqualifying financial interest in City decisions due to his source of income interest in the Coalition, and he will be disqualified to the extent there is a “nexus” between his duties as the Coalition’s paid Director of the Southern California region, and the

City decisions. However, we cannot specifically advise on decisions for which no facts were provided, and we recommend that he seek further advice as needed for a particular decision.

FACTS AS PRESENTED BY REQUESTER

As of September 8, 2025, City Councilmember Zwick began compensated employment as the Southern California Director of the Housing Action Coalition in his private capacity. The Housing Action Coalition (“Coalition”) is a member-supported 501(c)(3) and 501(c)(4) organization that advocates for housing production, particularly building more homes at all levels of affordability to help alleviate California’s housing shortage, displacement, and affordability crisis. The organization recently expanded to Southern California, with City Councilmember Zwick serving as the first Southern California Director. City Councilmember Zwick receives a fixed annual base salary, and his conditions of employment make clear that he shall not receive commissions, bonuses, or incentives based on his job performance.

The purpose of the Coalition is to set broad priorities with respect to housing, not to advocate for particular members. For instance, the Coalition has supported state-wide housing legislation, including, but not limited to, Senate Bills 9 and 1123 (discussed further below) related to ministerial review of small lot subdivisions and housing developments.

As a member-supported nonprofit, members of the Coalition serve as donors, not as clients. Neither City Councilmember Zwick nor the Coalition performs direct paid advocacy on behalf of its members, and no member has the independent authority to direct the Coalition’s actions. The Coalition’s Board of Directors must vote to endorse a project or initiative. Neither the Coalition itself nor any particular employee receives an incentive or bonus when particular projects or legislation are approved. A decision that may benefit an individual member of the Coalition would not result in an increase or decrease in the Coalition’s annual gross receipts, assets, or liabilities, or cause them to incur or avoid expenses.

In his role as the Southern California Director, City Councilmember Zwick focuses on advancing pro-housing solutions across the region by building the organization’s membership base and advancing the organization’s political and legislative goals. In his role, City Councilmember Zwick makes recommendations to the Executive Director on supporting policies related to housing production and endorsing candidates that will support policies related to housing production. City Councilmember Zwick works under the direction and supervision of, and reports directly to, the Executive Director. He currently has no direct reports. He does not report directly to the board of either the 501(c)(3) or 501(c)(4), or make recommendations to either board.

City Councilmember Zwick made clear to the Coalition at the outset of his employment that he would perform no work in or related to the City. The Coalition agreed, as a condition of City Councilmember Zwick’s employment, to exclude the City from City Councilmember Zwick’s portfolio of work in Southern California. The Coalition has no goals in the City as of the date of City Councilmember Zwick’s employment, and the Coalition has confirmed that, as a condition of City Councilmember Zwick’s employment, the Coalition has ceased advocacy as an organization within the City. The Coalition and its employees have conducted no advocacy in the

City since August 12, 2025, approximately one month before City Councilmember Zwick's first day of employment.

City Decisions Related to Housing or Housing Production

The City defines decisions related to 'housing production' to mean long-range and short-range planning decisions, including decisions related to zoning and housing policy, that will increase or decrease capacity for housing units in the City, as well as decisions on distinct development projects that will either directly increase or decrease housing stock in the City. By contrast, decisions including those related to landlord or tenants' rights, rent control, or code enforcement regarding housing habitability would not qualify as 'housing production' decisions. It is anticipated that in the coming months, the City Council will consider the following issues related to housing production in the City:

Affordable Housing Production Program (AHPP): Pilot

On August 12, 2025, the City Council adopted a pilot program to supplement the decades-old AHPP. The pilot program was established to allow market-rate housing projects more flexibility in how they provide inclusionary affordable housing units off-site to incentivize housing production. Specifically, the program gives approved market-rate housing projects a local density bonus greater than the density afforded under the state density bonus law. This program resulted from a significant drop in the number of entitled market-rate projects that were proceeding to obtain building permits due to macro-economic conditions in the development market (higher interest rates, construction costs, etc.). The pilot program became effective upon adoption of an emergency ordinance on August 12, 2025, which expired by its own terms after applications were filed for 1,000 new market-rate housing units. Prior to his employment with the Coalition, Zwick voted in favor of the pilot program, along with five other City Council members.

Following a public meeting on September 30, 2025, the City Council voted to direct staff to return with an ordinance to expand the pilot program. If approved, the expansion will allow market-rate developers to satisfy inclusionary housing obligations and receive a local density bonus greater than afforded under the state density bonus law, by including the following options: (1) constructing the required number of off-site affordable units at an alternative site after the market rate project begins construction, along with payment of gap financing at \$160,000 per unit; (2) completing substantial rehabilitation on existing affordable units in a number equivalent to the required off-site affordable units; (3) allowing for the purchase of at-risk deed-restricted units; and (4) paying an in-lieu fee per offsite affordable housing unit into the Housing Trust Fund. Participating projects would also be eligible for a local density bonus (which is not currently an option for new applications that choose to build affordable housing off-site) in an effort to expedite housing production in Santa Monica. Zwick, along with four other City Council members, voted in favor of returning with the expansion.

The City Council will be asked to vote on an ordinance amendment turning the pilot program into a permanent program consistent with the direction received on September 30. That

vote is currently anticipated to be conducted on December 16, 2025. Corey Smith, the Coalition's Executive Director, spoke in favor of the pilot program at the August 12 meeting but has not advocated in favor of the pilot program since. It does not appear that any of the members of the Coalition are eligible participants in the AHPP pilot program.

SB 9/SB 450 and SB 1123

On January 28, 2025, the City Council, in conjunction with necessary updates arising out of Senate Bill (SB) 450,² and in order to facilitate diverse housing choices in the City's highest opportunity areas, voted unanimously to direct the City Manager and the City Attorney to return with an ordinance to amend the City's regulations governing ministerial approval for certain lot splits and duplexes on parcels zoned for single-unit residential by: (1) removing the owner-occupancy requirement for lot splits and duplexes and clarifying that vacant or demolished parcels, as well as lots with approved demolition permits, are eligible for lot splits and duplexes, (2) allowing one roof deck per unit, and (3) ensuring that no standard within the ordinance or the underlying zoning district would preclude the construction of 2 units, not including ADUs, of at least 1200 square feet each.

On May 13, 2025, the City Council introduced for first reading Ordinance Number 2814 which, in part, amended the City's Zoning Ordinance consistent with the January 28, 2025 direction. The ordinance passed with a vote of five to one. Zwick was one of the City Council members approving the vote. At that meeting, the City Council gave further direction to staff to return with an ordinance implementing certain provisions of SB 1123, which provides for ministerial approval of lot splits resulting in 10 or fewer parcels in locations zoned for single-unit residential. On May 27, 2025, the City Council adopted Ordinance Number 2814 on second reading.

On June 10, 2025, the City Council adopted Emergency Interim Zoning Ordinance Number 2816 to permit the establishment of Accessory Dwelling Units as part of projects utilizing SB 1123, which was to become effective as of July 1, 2025.³ Emergency Interim Zoning Ordinance 2816 passed with a vote of five to two. Zwick was one of the City Council members who approved the vote. At that meeting, the City Council provided further direction to staff to return with additional amendments when the Emergency Interim Zoning Ordinance was renewed, which would provide additional flexibility for projects utilizing SB 1123.

On July 29, 2025, the City Council adopted Emergency Interim Zoning Ordinance Number 2821 to extend the interim zoning regulations adopted on June 25 and to include the additional provisions noted at the June 10, 2025, meeting. Emergency Interim Zoning

² SB 9, c. 162 of 2021 established a streamlined statewide path for homeowners to create a duplex or subdivide an existing residential parcel. SB 450, c. 286 of 2024, maintains the goals of SB 9 by addressing explicit attempts by some local governments to either ignore the law in its entirety or impose local objective standards that seek to discourage the creation of new units and lot splits (See <https://cayimby.org/wp-content/uploads/2023/04/SB-450-Atkins-Factsheet.pdf>, accessed on 11/18/2025).

³ SB 1123, c. 294 of 2024 requires local agencies to ministerially approve the subdivision of vacant, single-family lots to allow for up to 10 units as specified and makes other changes to SB 684 (Caballero), Chapter 783, Statutes of 2023. (Senate Floor Analysis of SB 1123, August 28, 2024.)

Ordinance Number 2821 passed with a vote of five to two. Zwick was one of the City Council members approving the vote.

On August 12, 2025, the City Council adopted Resolution Number 11695 (CCS), directing the Planning Commission to initiate the process of formally amending the Zoning Ordinance to make further changes to SB 9/450 and make the 1123 interim zoning regulations permanent. It is expected that the ordinance will be presented to the City Council in early 2026. The Resolution passed with a vote of six to one. Zwick was one of the City Council members approving the vote. It is anticipated that the amendments to the Zoning Ordinance contemplated by Resolution 11695 (CCS) will return to the City Council for a vote in January 2026.

In addition, the City was recently served with a lawsuit challenging the adoption of Emergency Interim Zoning Ordinance Number 2816 as extended by Emergency Interim Zoning Ordinance Number 2821, both of which were adopted prior to Zwick's appointment to the Coalition. The City Council may consider this pending litigation in Closed Session during a future City Council meeting.

Airport Conversion

In November 2014, Measure LC was passed by Santa Monica Voters, amending the City Charter to prohibit new development on airport land, except for parks, public open spaces, and public recreational facilities, until the voters approve limits on the uses and development that may occur on the land.

In 2017, the City entered a Consent Decree with the Federal Aviation Administration under which the City is obligated to operate the airport through December 31, 2028, after which date the City may close the airport. After December 31, 2028, the City Council's authority over the airport land will be limited by Measure LC, such that (1) the City Council may approve the development of parks, public open spaces, and public recreational facilities on the land; (2) the City Council may approve the maintenance and replacement of any cultural, arts, and education uses in existence at the time of the closure of the land; and (3) the City Council may not approve any other new development of the land until the voters have approved limits on the uses and development that may occur on the land.

The most recent past action regarding the airport conversion was a study session on July 8, 2025, at which time the staff presented a review of the possible preferred scenarios. Coalition board member Jeremy Bamberger submitted both oral and written comment, identifying himself as a board member, but not speaking on behalf of the Coalition. The City intends to adopt a preferred planning scenario for the airport in the first quarter of 2026, and has been actively undertaking community engagement. Placing housing on the site is one of the potential future uses, understanding it will require a ballot measure and vote of the Santa Monica electorate consistent with Measure LC.

Prior to his employment with the Coalition, Zwick advocated for housing at the site, and advocated for housing at the site during the July 8, 2025, discussion.

Surface Parking Lot Upzoning

On July 29, 2025, Zwick, along with two other City Council members, sponsored a City Councilmember discussion item directing staff to return to the City Council with options to incentivize housing projects on surface parking lots associated with commercial corridors. The City Council voted to advance this item by a vote of 6-1, with Zwick voting in the majority. Staff is currently in the process of developing options consistent with the City Council's direction and will return for further direction in the first half of 2026.

ANALYSIS

The Act

The Act's conflict of interest provisions prohibit a public official at any level of state or local government from making, participating in making, or in any way attempting to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. (Section 87100.) A public official has a financial interest in the decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests, distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.)

Regulation 18704 defines "making, participating and influencing" a governmental decision as any of the following activities:

- *Making a Governmental Decision:* A public official "makes a governmental decision" when the official "authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency."
- *Participating in Making a Governmental Decision:* A public official "participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review."
- *Influencing a Governmental Decision:* A public official "'uses an official position to influence a governmental decision' if the official contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision.' A public official also 'uses an official position to influence a governmental decision' if the official contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact."

The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include relevant to these facts:

- An interest in a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in a source of income to the official or promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

Regarding City Councilmember Zwick's position as the Coalition's Southern California Director, under the Act, a "business entity" does not include a nonprofit organization. (Section 82005.) City Councilmember Zwick has a source of income interest in the Coalition due to his salaried position to the extent that he has earned income of \$500 or more within the twelve months prior to a decision. He started this position in September 2025.

Foreseeability and Materiality

At issue is whether it is reasonably foreseeable that the future housing production decisions described above will have a material financial effect on his source of income interest. Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states:

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

There is no indication that the Coalition owns real property that would be impacted by these decisions or is a named party or subject of these decisions. For financial interests not explicitly involved in a decision, if the financial effect can be recognized as a realistic possibility and is more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. (Regulation 18701(b).)

To determine the material effect of the decisions on a source of income in a nonprofit organization, we look to the standard set forth in Regulation 18702.3(a)(3) applicable to a nonprofit organization as a source of income. This standard states that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in the nonprofit organization is material if any of the following criteria are met:

- The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, by \$1,000,000 or more; or five percent of the organization's annual gross receipts, and the increase or decrease is \$10,000 or more. (Regulation 18702.3(a)(3)(A).)

- The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses by \$250,000 or more; or one percent of the organization's annual gross receipts and the change in expenses is \$2,500 or more. (Regulation 18702.3(a)(3)(B).)
- The official knows or has reason to know that the organization has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)

However, in addition to the materiality standards described above, a separate materiality standard applies in cases where there is a "nexus" between the duties owed to the source of income and the official's public agency. Under the nexus test, *any* reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b), emphasis added.)

The rationale for the nexus test is that "when an employee earns a salary that is advanced by what [they do] as a public official, we presume that the employer is benefiting from the situation." (*Yarnell* Advice Letter, No. A-00-161.) One factor that may be considered in determining if there is a nexus between the official's source of income and the governmental decisions is whether the official has a role in their employer's policy decisions. (*Mauer* Advice Letter, No I-23-008.)

Here, Councilmember Zwick is employed by the Coalition as the Director of the Southern California region, and he makes recommendations on Coalition policy issues. His duties include advancing the Coalition's pro-housing solutions across the region by building the organization's membership base and advancing the organization's political and legislative goals, particularly building more homes at all levels of affordability. Each of the City's decisions at issue would achieve, further or hinder the Coalition's goals of advocating for housing production and growing its donor base in the region. As a result, should Councilmember Zwick take part in these decision, both the Coalition and Councilmember Zwick may benefit in the advancement of the Coalition's goals and in furtherance of Councilmember Zwick's objectives as the Coalition's Director of the Southern California region. These benefits include the costs or reduced costs of future advocacy as well as the prospect of increased or decreased membership and donations resulting from the Coalition's perceived success in achieving its stated goals. Due to this financial effect and the nexus between the decisions identified and Councilmember Zwick's employment with the Coalition, it is reasonably foreseeable that each of the housing production decisions described above will have a financial effect on the Coalition, and under Regulation 18702.3(b), the financial effect will be material. Therefore, Councilmember Zwick has a disqualifying interest and may not take part in these decisions. As stated above, we do not advise on any past participation by the official, as we do not provide advice on conduct that has already occurred. (Regulation 18329(c)(4)(A).)

Regulation 18707 sets forth the disqualification requirements, which generally require that prior to the agenda item's consideration, Councilmember Zwick publicly identify his source of income interest in the Coalition, orally and as a part of the Council's record, and then leave the room. For a closed session item, the identification must be made before the body goes into closed session and the official may not be present during the closed session.

Section 1090

Section 1090⁴ generally prohibits public officers or employees, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is "concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of" their respective agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the contract terms are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 239, citing *Stigall, supra*, at p. 569.) Importantly, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is typically precluded from entering into the contract. (*Id.*, see also *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) Although Section 1090 does not specifically define the term financial interest, case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerger* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Section 1091 enumerates limited circumstances in which a public official's financial interest is considered "remote," such that the governmental body or board may still enter into the contract at issue, as long as the disqualified official's interest is disclosed to the body or board and noted in its official records, and the disqualified official does not take part in the contracting process. (Section 1091(a).) Applicable to these facts, an official has only a "remote interest" in a

⁴ Section 1090 is a separate body of law regarding decisions involving a contract and requires a separate analysis.

contract decision where the official is an officer or employee of a Section 501(c)(3) nonprofit entity. (Section 1091(b(1)).)

The Coalition is a 501(c)(3) organization that employs Councilmember Zwick. Therefore, due to his remote interest, the City may make a settlement agreement in the Emergency Interim Zoning Ordinance and its extension matter so long as Councilmember Zwick does not take part in the discussions or decisions and complies with the Act's disqualification requirements, which will satisfy the requirements in Section 1091.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. K a r e n H a r r i s o n

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja