

ITEM 4.6

CITY MANAGER'S REPORT SEPTEMBER 9, 2024 CITY COUNCIL REGULAR MEETING

ITEM: 2024 CONFLICT OF INTEREST CODE BIENNIAL AMENDMENT

RECOMMENDATION: Adopt Resolution Adopting an Amended Conflict of Interest Code

SUMMARY:

The City of Lathrop has adopted a local Conflict of Interest Code as mandated by the Political Reform Act of 1974. In addition, the Act requires the City to review the Code biennially on even-numbered years. A Conflict of Interest Code is the legal instrument requiring those individuals holding designated positions to disclose their financial interests to help avoid conflicts of interest.

Under the Political Reform Act, a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on their personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

From the last update in September 2022, the City made several changes to existing positions and added new classifications. In reviewing the existing Conflict of Interest Code and newly added positions, it was determined that an amendment is necessary to reflect the current organizational structure, position classifications and duties.

BACKGROUND:

The Political Reform Act of 1974 requires that cities and other local government agencies adopt local Conflict of Interest Codes. Lathrop's code requires disclosure of financial interests of certain employees, consultants and members of boards and commissions if these persons are likely to be involved in decision-making that could affect their own financial interests.

All public employees must comply with the State's general conflict of interest laws by abstaining from influencing or making decisions that would affect their own financial interests. Additionally, employees who hold positions designated in the City's Conflict of Interest Code must disclose specified types of financial interests on annual financial disclosure statements that are filed with the Government Services Director / City Clerk.

The Political Reform Act also requires every local government agency to review its Conflict of Interest Code biennially to determine its accuracy no later than October 1 of even-numbered years, or the first business day in October.

Updates do not change the basic conflict of interest abstention rules, which reflect state law. However, changes in City staff titles, organization structure and responsibilities require that the designated position list and disclosure categories be updated as indicated below.

How a Conflict of Interest Code Works:

- Public official/employee holds a position that involves making or participating in making governmental decisions.
- Position is designated in the Conflict of Interest Code:
 - Disclosure is based on a position's level of decision-making.
- Official/employee files Statements of Economic Interests (Form 700):
 - Serves as a reminder to official/employee of potential conflicts of interest.
 - The Form 700 is a public document.

Types of Form 700 Filers:

Code Filers

A designated position in a conflict of interest code is often referred to as a "code filer" because the position files a Form 700 based on its designation in the conflict of interest code. An overview of conflicts of interests under the Political Reform Act is as Attachment B to the staff report.

87200 Filers

Positions specifically listed in Section 87200 or meets the criteria in Regulation 18700.3 as a public investment manager is an 87200 filer, such as: Mayor, Council Members, Planning Commissioners, City Manager, City Attorney, Treasurer, Finance Director, or any Public Official and or employee who directly manages the City's public investments. Does not include individuals who work under the supervision of a Financial Manager or Director.

What Does It Mean to Make or Participate in a Decision?

When reviewing the City's Conflict of Interest Code, it is important in understand which positions are authorized in making decisions or participating in the decision-making process. In terms of the Political Reform Act, making a decision means voting on a matter, approving the budget, adopting policy, making purchasing decision, and entering into contracts. To participate in a decision means negotiating the terms of a contract, writing the specifications of a bid, and advising or making recommendations to the decision-maker or governing body without significant intervening substantive review.

Disqualifying Financial Interest

If a decision may have a financial impact or effect on any of the foregoing interests, an official is disqualified from governmental decision if the following two conditions are met:

1. The financial impact or effect is foreseeable, and
2. The financial impact or effect is significant enough to be considered material.

Generally, a financial impact or effect is presumed to be both foreseeable and material if the financial interest is "explicitly" or directly involved in the decision. A financial interest is explicitly involved in the decision whenever the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency.

If the interest is "not explicitly involved" in the decision, a financial impact or effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to occur to be considered reasonably foreseeable.

However, for interests "not explicitly involved" in the decision, different standards apply to determine whether a foreseeable effect on an interest will be material depending on the nature of the interest. The Fair Political Practices Commission (FPPC) has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kind of financial impacts resulting from governmental decisions are considered material or important.

There are too many materiality standards to adequately describe them in totality. To determine the applicable materiality standard, or to obtain more detailed information on conflicts, an official may seek assistance from agency counsel or the FPPC anytime the official has reason to believe a decision may have a financial impact or effect on his or her personal finances or other financial interests.

The Fair Political Practices Commission allows five (5) types of interests that may result in disqualification, which are broadened into seven (7) detailed Disclosure Categories listed below for the City of Lathrop in Exhibit B. These are the disqualifications applicable in 2024 Biennial Review:

- **Business Entity.** A business entity in which the official has an investment of \$2,000 or more in which he or she is a director, officer, partner, trustee, employee, or manager.
- **Real Property.** Real property in which the official has an interest of \$2,000 or more including leaseholds. (However, month-to-month leases are not considered real property interests.)

- **Income.** An individual or an entity from whom the official has received income or promised income aggregating to \$500 or more in the previous 12 months, including the official's community property interest in the income of his or her spouse or registered domestic partner.
- **Gifts.** An individual or an entity from whom the official has received gifts aggregating to \$590 or more in the previous 12 months.
- **Personal Finances.** The official's personal finances including his or her expenses, income, assets, or liabilities, as well as those of his or her immediate family.

Exceptions

Not all conflicts of interest prevent a public official from lawfully taking part in the government decision. There are two (2) limited exceptions to the conflict of interest rules:

1. **The Public Generally Exception.** A public official is not disqualified from a decision if the effect on the official's interests is indistinguishable from the effect on the public.
2. **Legally Required to Participate.** In certain rare circumstances, a public official may be randomly selected to take part in a decision if a quorum cannot be reached because too many officials are disqualified under the Act.

Exceptions must be considered with caution. A public official should contact the City Attorney or the FPPC to determine if an exception applies.

Recusal Requirements

An official with a disqualifying conflict of interest may not make, participate in making, or use his or her position to influence a governmental decision. When appearing before his or her own agency or an agency subject to the authority or budgetary control of his or her agency, an official is making, participating in making, or using his or her position to influence a decision any time the official takes any action to influence the decision including directing a decision, voting, providing information or a recommendation, or contacting or appearing before any other agency official. When appearing before any other agency, the official must not act or purport to act in his or her official capacity or on behalf of his or her agency.

Certain officials (including City Council Members and Planning Commissioners) have a mandated manner in which they must disqualify from decisions made at a public meeting (including closed session decisions) and must publicly identify a conflict of interest and leave the room before the item is discussed.

While there are limited exceptions that allow a public official to participate as a member of the public and speak to the press, the exceptions are interpreted narrowly and may require advice from the agency’s counsel or the FPPC.

List of Designated Positions:

The list of designated positions is part of the City’s Code specifying which employees must file annual financial disclosure statements. For each designated position, the list establishes the categories of financial interests for which disclosure must be made. Requirements for disclosure differ from job to job in accordance with the types of financial interests, which might be affected by an officer or employee’s decision-making.

The following summarized list of designated positions is proposed to be amended to reflect the City’s current position classifications and duties. The categories of required disclosure have been modified for some positions to reflect the financial interests that may currently be affected by an employee’s governmental decisions. A copy of the updated proposed list of designated positions is attached to the Resolution as Exhibit A.

At this time, the majority of the positions listed in Exhibit A are filled; very few remain vacant, and or were recently unfunded. Vacant or recently unfunded positions will remain on the Conflict of Interest Code Amendment list until positions are removed by Council Resolution from the City’s Grade Step table.

Summary of Changes

Existing positions recently evaluated, and newly added positions recommended to be added to the Conflict of Interest Code (COI Code):

Action	Department	Position/Title	Reason(s)
Add	Finance	• Senior Account	Existing title; position evaluated and recommended to add to COI Code. Position funded by Reso 22-5038. Incumbent currently FORM 700 Filer.
Add	Public Works	• Associate Engineer	Existing title; position evaluated and recommended to add to COI Code. Position funded by Reso 22-5134. Incumbent(s) currently FORM 700 Filer(s).

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Add	Police	<ul style="list-style-type: none"> Police Lieutenant 	New title; position evaluated and recommended to add to COI Code. Position created by Reso 23-5242. Incumbent(s) currently FORM 700 Filer(s).
Add	Community Development	<ul style="list-style-type: none"> Associate Planner 	Existing title; position evaluated and recommended to add to COI Code. Position funded by Reso 23-5322. Incumbent currently FORM 700 Filer.
Add	Public Works	<ul style="list-style-type: none"> Compliance Engineer 	New title; position evaluated and recommended to add to COI Code. Position created by Reso 23-5322. Incumbent currently FORM 700 Filer.
Add	City Manager's Office	<ul style="list-style-type: none"> Deputy City Manager 	New title; position evaluated and recommended to add to COI Code. Position created by Reso 23-5324. Incumbent currently FORM 700 Filer.
Add	Police	<ul style="list-style-type: none"> Animal Center Manager 	New title; position evaluated and recommended to add to COI Code. Position created by Reso 23-5429. Incumbent currently FORM 700 Filer.
Add	Parks & Recreation	<ul style="list-style-type: none"> Parks & Recreation Manager 	Title reclassification; position evaluated and recommended to add to COI Code. Position created by Reso 24-5483. Incumbent currently FORM 700 Filer.
Add	Police Department	<ul style="list-style-type: none"> Property & Evidence Manager 	New title; position evaluated and recommended to add to COI Code. Position created by Reso 24-5483. Incumbent currently FORM 700 Filer.
Add	Police Department	<ul style="list-style-type: none"> Police Captain <i>(previously Police Commander)</i> 	Title reclassification; former title/position was included in current COI Code. Title updated by Reso 24-5483. Incumbent(s) currently FORM 700 Filer(s).
Change	Building Department	<ul style="list-style-type: none"> Management Analyst I/II 	Existing title; adding position to the Building Department. Position exists in various departments in the current COI Code. Incumbent currently FORM 700 Filer.

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Change	Parks & Recreation	<ul style="list-style-type: none"> • Management Analyst I/II 	Existing title; adding position to the Parks & Recreation Department. Classification/position exists in various departments in the current COI Code. Incumbent currently FORM 700 Filer.
Change	Public Works	<ul style="list-style-type: none"> • Streets and Maintenance Manager 	Existing title; adding position transfer to Public Works with greater responsibilities; removing from Parks & Rec. Classification exists in the current COI Code.
Update	Parks & Recreation	<ul style="list-style-type: none"> • Department Name 	Removal of "Maintenance Services"; due to maintenance division transfer to Public Works.

Summary of Changes

Positions deleted by Council Resolution and the City’s Grade Step Table; to be removed from the Conflict of Interest Code (COI Code):

Action	Department	Position/Title	Reason
Delete	Police Department	<ul style="list-style-type: none"> • Police Commander 	Title to be removed from COI Code by Resolution 24-5483; <i>position(s) reclassified to Police Captain</i>
Delete	Parks & Recreation	<ul style="list-style-type: none"> • Recreation Manager 	Title to be removed from COI Code by Resolution 24-5483; position reclassified to Parks & Recreation Manager with greater responsibilities; and eliminated <i>from Grade Step Table.</i>
Delete	Parks & Recreation	<ul style="list-style-type: none"> • Parks and Facilities Manager 	Title to be removed from COI Code by Resolution 24-5483; <i>position eliminated from Grade Step Table.</i>

Disclosure Categories:

The disclosure categories establish the types of financial disclosure that must be made by each designated employee. A copy of the list of disclosure categories is attached to the Resolution as Exhibit B.

REASON FOR RECOMMENDATION:

The Political Reform Act requires every local government agency to review its Conflict of Interest Code biennially to determine its accuracy no later than October 1 of even-numbered years, or the first business day in October.

This year, the biennial review of the City's Conflict of Interest Code is due by October 1, 2024. Organizational changes have resulted in a need to amend the Code.

FISCAL IMPACT:


None.

ATTACHMENTS:

- A. Resolution adopting an amended Conflict of Interest Code
 - a. Exhibit A – Designated Positions
 - b. Exhibit B – Disclosure Categories
- B. Informational Pamphlet: Overview of Conflicts of Interest under the Political Reform Act, published May 2022

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APPROVALS:



Teresa Vargas
Government Services Director
City Clerk

9/3/24

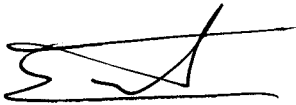
Date



Thomas Hedegard
Deputy City Manager

9/4/2024

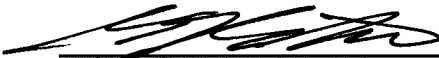
Date



Salvador Navarrete
City Attorney

9.4.2024

Date



Stephen J. Salvatore
City Manager

9.4.24

Date

RESOLUTION NO. 24-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP ADOPTING AN AMENDED CONFLICT OF INTEREST CODE

WHEREAS, the City of Lathrop adopted and promulgated a Conflict of Interest Code pursuant to the terms of Title 2, Division 6 of the California Code of Regulations, Section 18730, and within the meaning of the Political Reform Act of 1974, Government Code Section 87300, et seq.; and

WHEREAS, under the Political Reform Act, Government Code Section 87306 permits the amendment of the City’s Conflict of Interest Code; and

WHEREAS, the City Council previously adopted Resolutions 22-5133 adopting an amended Conflict of Interest Code; and

WHEREAS, the Political Reform Act, Government Code section 87306.5, requires every local government agency every even-numbered year, to review its Conflict of Interest Code biennially to determine if it is accurate, no later than October 1 of the same year; and

WHEREAS, in the biennial review of designated positions, it was determined the list of designated positions needed to be amended to reflect current staffing and organizational structure.

NOW, THEREFORE, BE IT RESOLVED that the amended Conflict of Interest Code, including the revised list of Designated Positions (Exhibit A) and the Disclosure Category explanations (Exhibit B), is hereby approved; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that Resolution No. 22-5133 be repealed and replaced by the adoption of this resolution

PASSED AND ADOPTED this 9th day of September 2024, by the following vote:

AYES:

NOES:

ABSENT:

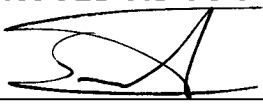
ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

EXHIBIT A

CITY OF LATHROP CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Section 18730) which contains the terms of a standard Conflict of Interest Code, which may be incorporated by reference in an agency's code. After public notice and hearing, it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation designating officials and employees and establishing disclosure categories shall constitute the Conflict of Interest Code of the City of Lathrop.

DESIGNATED POSITIONS

Individuals holding designated positions shall file Statements of Economic Interest with the City Clerk who will make the statements available for public inspection and reproduction (Government Code Section 82008).

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18701 (b), are NOT subject to the City's code, but are subject to the disclosure requirements of the Act (Government Code Section 87200 et seq.). [Regs. §18730(b)(3)]. These positions are listed here for informational purposes only. It has been determined that the positions listed below are City of Lathrop officials who manage public investments:

City Manager / Treasurer

Mayor

City Attorney

City Councilmembers

Finance Director

Planning Commission Members

Upon receipt of the statements, the City Clerk shall make and retain copies and forward the originals to the Fair Political Practices Commission.

The disclosure categories and requirements for these positions are set forth in Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 87200 et seq. They generally require the disclosure of interests in real property in the agency's jurisdiction, as well as investments, business positions and sources of income (including gifts, loans, and travel payments).

DESIGNATED POSITIONS

DEPARTMENTS/Positions

Disclosure Categories

BUILDING

Chief Building Official	1, 2, 3, 5, 7
Assistant Chief Building Official	1, 2, 3, 5, 7
Permit and Plan Check Supervisor	1, 2, 3, 5, 7
Building Inspector I/II/III	1, 2, 3, 5, 7
Management Analyst I/II – Confidential	1, 3, 4, 5, 7

CITY ATTORNEY

City Attorney	*
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CITY CLERK

City Clerk / Government Services Director	1, 2, 3, 5
Deputy City Clerk	1, 2, 6

CITY MANAGER

City Manager / Treasurer	*
Assistant City Manager	1, 2, 3, 4, 5, 7
Deputy City Manager	1, 2, 3, 4, 5, 7
Economic Development Administrator	1, 2, 3, 5

COMMUNITY DEVELOPMENT

Community Development Director	1, 2, 3, 5, 7
Assistant Community Development Director	1, 2, 3, 5, 7
Principal Planner	1, 2, 3, 5, 7
Senior Planner	1, 2, 3, 5, 7
Associate Planner	1, 2, 3, 5, 7
Assistant Planner	1, 2, 3, 5, 7

FINANCE

Finance Director	*
Deputy Finance Director	1, 2, 3, 4, 5, 7
Accounting Manager	1, 2, 3, 4, 5, 7
Finance Manager	1, 2, 3, 4, 5, 7
Budget Manager	1, 2, 3, 4, 5, 7
Senior Management Analyst	1, 2, 3, 4, 5, 7
Senior Accountant	1, 2, 3, 4, 5, 7
Management Analyst I/II – Confidential	1, 3, 4, 5, 7
Accountant	1, 3, 4, 5, 7
Customer Service Supervisor	1, 3, 4, 5, 7

HUMAN RESOURCES

Human Resources Director	1, 2, 3, 5
Human Resource Manager	1, 2, 6
Human Resources Analyst I/II – Confidential	1, 2, 6

INFORMATION SYSTEMS / TECHNOLOGY	
Information Systems Director	1, 2, 3, 5, 7
Information Technology Engineer I/II/III	1, 3, 5, 7
Management Analyst I/II – Confidential	1, 3, 5, 7
PARKS & RECREATION	
Parks & Recreation Director	1, 2, 3, 5, 7
Parks & Recreation Deputy Director	1, 2, 3, 5, 7
Parks and Recreation Superintendent	1, 3, 5, 7
Parks & Recreation Manager	1, 3, 5, 7
Recreation Supervisor	1, 3, 5, 7
Management Analyst I/II – Confidential	1, 3, 4, 5, 7
POLICE	
Chief of Police	1, 2, 3, 5, 7
Police Captain	1, 2, 3, 5, 7
Police Lieutenant	1, 2, 3, 5, 7
Police Sergeant	1, 2, 3, 6, 7
Police Services Manager	1, 2, 3, 6, 7
Animal Center Manager	1, 2, 3, 6, 7
Property & Evidence Manager	1, 2, 3, 6, 7
Police Records Supervisor	1, 2, 3, 6, 7
Community Services Supervisor	1, 2, 3, 6, 7
Management Analyst I/II – Confidential	1, 2, 3, 6, 7
PUBLIC WORKS	
Public Works Director	1, 2, 3, 5, 7
City Engineer	1, 2, 3, 5, 7
Assistant Public Works Director	1, 2, 3, 5, 7
Land Development Manager	1, 2, 3, 5, 7
Project Manager	1, 2, 3, 5, 7
Principal Engineer	1, 2, 3, 5, 7
Senior Civil Engineer	1, 2, 3, 6, 7
Compliance Engineer	1, 2, 3, 6, 7
Associate Engineer	1, 2, 3, 6, 7
Assistant Engineer	1, 2, 3, 6, 7
Senior Construction Manager	1, 2, 3, 5, 7
Streets and Maintenance Manager	1, 2, 3, 5, 7
Construction Superintendent	1, 2, 3, 5, 7
Senior Construction Inspector	1, 2, 3, 5, 7
Construction Inspector I/II/III	1, 2, 3, 5, 7
Utility Operations Superintendent	1, 2, 3, 5, 7
Utility Plant Supervisor	1, 2, 3, 6, 7
Senior Management Analyst	1, 2, 3, 6, 7
Management Analyst I/II – Confidential	1, 2, 3, 6, 7
MAYOR AND CITY COUNCILMEMBERS	*
PLANNING COMMISSION MEMBERS	*
PARKS AND RECREATION COMMISSION MEMBERS	1, 2, 3

CITY CONSULTANTS

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category (1, 2, 3, 7) in the code subject to the following limitation:

The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as others under this code.

* NOTE: Members of the City Council, Planning Commission, the City Manager, City Attorney, and Treasurer have filing requirements imposed by State Law rather than by local enactment.

EXHIBIT B

SUMMARY

The Fair Political Practices Commission allows five (5) general types of interests that may result in disqualification, which are broadened into seven (7) detailed Disclosure Categories listed below for the City of Lathrop. These are the disqualifications applicable in 2024 Biennial Review:

- **Business Entity.** A business entity in which the official has an investment of \$2,000 or more in which he or she is a director, officer, partner, trustee, employee, or manager.
- **Real Property.** Real property in which the official has an interest of \$2,000 or more including leaseholds. (However, month-to-month leases are not considered real property interests.)
- **Income.** An individual or an entity from whom the official has received income or promised income aggregating to \$500 or more in the previous 12 months, including the official's community property interest in the income of his or her spouse or registered domestic partner.
- **Gifts.** An individual or an entity from whom the official has received gifts aggregating to \$590 or more in the previous 12 months.
- **Personal Finances.** The official's personal finances including his or her expenses, income, assets, or liabilities, as well as those of his or her immediate family.

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of investments, business entities, sources of income, or real property, that the Designated Employee must disclose for each disclosure category to which he/she is assigned.

Category 1: All investments and business positions in, and sources of income from, business entities that do business or own real property within jurisdiction of the City, plan to do business or own real property within the jurisdiction of the City within the next year, or have done business or owned real property within the jurisdiction of the City within the past two years.

Category 2: All interests in real property, which is located in whole or in part within, or not more than two miles outside, the jurisdiction of the City.

EXHIBIT B

Category 3: All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction, or the acquisition or sale of real property within the jurisdiction of the City, plan to engage in such activities within the jurisdiction of the City within the next year, or have engaged in such activities within the jurisdiction of the City within the past two years.

Category 4: All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions.

Category 5: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the City.

Category 6: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's Department.

Category 7: All investments and business positions in, and sources of income from, business entities subject to the regulatory, permit, or licensing authority of the Designated Employee's Department, will be subject to such authority within the next year, or have been subject to such authority within the past two years.



An Overview of Conflicts of Interest Under the Political Reform Act

May 2022

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I. The Basic Prohibition

Government Code Section 87100 of the Political Reform Act (the “Act”)¹ prohibits a public official at any level of state or local government from making, participating in making, or attempting to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. Government Code Section 87103 provides that an official has a “financial interest” within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official’s interests as identified and distinguishable from the decision’s effect on the public generally.

Taken together, these provisions of the Act prohibit an official from taking part in a decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests identified in Section 87103 distinguishable from the decision’s effect on the public generally.

II. Making, Participating in Making, or Attempting to Influence a Decision

Regulation 18704 defines “making a decision,” “participating in a decision,” and “using official position to attempt to influence a decision” for purposes of the Act’s conflict of interest provisions. If an official has a disqualifying conflict of interest under Section 87100, the official is prohibited from making, participating in making, or attempting in any way to use the official’s official position to influence the decision.

A. General Definitions

Making a Decision: An official makes a decision if 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 agency. (Regulation 18704(a).)

Participating in a Decision: An official participates in a decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).)

Using Official Position to Attempt to Influence a Decision: An official uses an official position to influence a decision if the official contacts or appears before: (1) 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; or (2) any official in any other government agency for the purpose of affecting a decision, and the official purports to act within the official’s authority or on behalf of the official’s agency in making the contact. (Regulation 18704(c).)

B. Exceptions

Regulation 18704(d) provides that “making, participating in, or using official position to influence a decision” do not include any of the following:

Ministerial: Actions that are solely ministerial, secretarial, or clerical. (Regulation 18704(d)(1).)

Appearances as a Member of the General Public: An appearance by an official as a member of the general public before an agency in the course of its prescribed governmental function if the official is appearing on matters related solely to the official’s personal interests, including interests in:

- Real property owned entirely by the official, members of the official’s immediate family, or the official and members of the official’s immediate family;
- A business owned entirely by the official, members of the official’s immediate family, or the official and members of the official’s immediate family; or
- A business over which the official, members of the official’s immediate family, or the official and members of the official’s immediate family solely or jointly exercise full direction and control. (Regulation 18704(d)(2).)

Terms of Employment: Actions by an official relating to the official’s compensation or the terms or conditions of the official’s employment or consulting contract. However, an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or the official’s immediate family, or set a salary for the official or the official’s immediate family different from salaries paid to other employees of the agency in the same job classification or position. (Regulation 18704(d)(3).)

Public Speaking: Communications by an official to the general public or media. (Regulation 18704(d)(4).)

Academic Decisions: Teaching decisions, including an instructor’s selection of books or other educational materials at the official’s own school or institution, or other similar decisions incidental to teaching; or decisions by an official who has teaching or research responsibilities at an institution of higher education relating to the official’s professional responsibilities, including applying for funds, allocating resources, and all decisions relating to the manner or methodology with which the official’s academic study or research will be conducted. (Regulation 18704(d)(5).) However, this exception does not apply to an official who has institution-wide administrative responsibilities as to the approval or review of academic study or research at the institution unrelated to the official’s own work. (*Ibid.*)

Architectural and Engineering Documents: Drawings or submissions of an architectural, engineering, or similar nature prepared by an official for a client to submit in a proceeding before the official’s agency if: (i) the work is performed pursuant to the official’s profession; and (ii) the official does not make any contact with the agency other

than contact with agency staff concerning the process or evaluation of the documents prepared by the official. (Regulation 18704(d)(6)(A).)

Also, an official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if: (i) the committee's sole function is to review architectural designs or engineering plans and to make recommendations to a planning commission or other agency; (ii) the committee is required by law to include architects, engineers, or persons in related professions, and the official was appointed to the body to fulfill this requirement; and (iii) the official is a sole practitioner. (Regulation 18704(d)(6)(B).)

Additional Consulting Services: Recommendations by a consultant regarding additional services for which the consultant or consultant's employer would receive additional income if the agency has already contracted with the consultant, for an agreed upon price, to make recommendations concerning services of the type offered by the consultant or the consultant's employer, and the consultant does not have any other economic interest, other than in the firm, that would be foreseeably and materially affected by the decision. (Regulation 18704(d)(7).)

III. Financial Interests

The first step in determining whether an official has a disqualifying conflict of interest under the Act is identifying the official's financial interests with respect to the decision at issue. Section 87103 identifies the following financial interests which may give rise to an official's disqualifying conflict of interest under the Act:

- A business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- Real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- A source of income totaling \$500 or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made. (Section 87103(c).)
- A giver of a gift or gifts totaling \$500² or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made. (Section 87103(e).)
- The official's personal finances and those of "immediate family," defined in Section 82029 as the spouse and dependent children. (Section 87103.)

IV. Foreseeability of Financial Effect

A. Explicitly Involved

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in the decision. (Regulation (18701(a).) An official's financial interest is "explicitly involved" in a decision if the interest is a "named party in, or the subject of," the decision, and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, denial, or revocation of any license, permit, other entitlement to, or contract with, the interest.³ Additionally, an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6), discussed further below. (*Ibid.*)

B. Not Explicitly Involved

When an official's financial interest is not explicitly involved in a decision, the financial effect of the decision is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. The effect need not be likely to be reasonably foreseeable. (Regulation 18701(b).)

Factors to be considered when determining if a decision's effect on an official's not explicitly involved interest is reasonably foreseeable include, but are not limited to, the following:

- The extent to which the occurrence of the effect is contingent upon intervening events (other than future governmental decisions by the official's agency or an agency subject to the budgetary control of the official's agency). (Regulation 18701(b)(1).)
- Whether the official should anticipate a financial effect on the financial interests at issue as a potential outcome under normal circumstances when using appropriate due diligence and care. (Regulation 18701(b)(2).)
- Whether the official has an interest of the type that would typically be affected by the terms of the decision. (Regulation 18701(b)(3).)
- Whether the decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the official has a financial interest. (*Ibid.*)
- Whether a reasonable inference can be made that the financial effects of the decision on the official's financial interest might compromise an official's ability to fulfill their duty to act in the best interests of the public. (Regulation 18701(b)(4).)
- Whether the decision will provide or deny an opportunity, or create an advantage for one of the official's financial interests. (Regulation 18701(b)(5).)

- Whether the official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the decision on the official's financial interest in formulating a position. (Regulation 18701(b)(6).)

V. Materiality Standards

Regulation 18702(a) provides that the next step in the analysis is to determine if the decision's reasonably foreseeable financial effect on the official's financial interest is material. If the official's interest is in:

- A business entity, then apply the materiality standards of Regulation 18702.1. (Regulation 18702(a)(1).)
- A real property, then apply the materiality standards of Regulation 18702.2. (Regulation 18702(a)(2).)
- A source of income, then apply the materiality standards of Regulation 18702.3. (Regulation 18702(a)(3).)
- A source of a gift or gifts, then apply the materiality standards of 18702.4. (Regulation 18702(a)(4).)
- Their personal finances or those of immediate family, then apply materiality standard of 18702.5. (Regulation 18702(a)(5).)

A. Business Entity Interests

Regulation 18702.1 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on a business in which an official has an interest, and provides that the effect is material if any of the following standards is met:

- The business is explicitly involved in the decision, meaning that the business is "a named party in, or the subject of, the decision, including any decision in which the business:
 - Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the business with the official's agency. (Regulation 18702.1(a)(1)(A).)
 - Offers to sell a product or service to the official's agency. (Regulation 18702.1(a)(1)(B).)
 - Bids on, or enters into, a contract with the official's agency, or is identified as a subcontractor on a bid or contract with the agency. (Regulation 18702.1(a)(1)(C).)
 - Is the named or intended manufacturer or vendor of any products to be purchased by the official's agency with an aggregate cost of \$1,000 in any 12-month period. (Regulation 18702.1(a)(1)(D).)

- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the official's agency. (Regulation 18702.1(a)(1)(E).)
- Is the subject of any inspection, action, or proceeding under the regulatory authority of the official's agency. (Regulation 18702.1(a)(1)(F).)
- Is subject to an action taken by the official's agency that is directed at the entity. (Regulation 18702.1(a)(1)(G).)
- The decision may result in an increase or decrease of the business's annual gross revenues, or the value of its assets and liabilities, in an amount equal to or more than:
 - \$1,000,000; or
 - Five percent of the business's annual gross revenues, and the increase or decrease is \$10,000 or more. (Regulation 18702.1(a)(2).)
- The decision may cause the business to incur or avoid additional expenses or to reduce or eliminate expenses in amount equal to or more than:
 - \$250,000; or
 - One percent of the business's annual gross revenues, and the increase or decrease is at least \$2,500. (Regulation 18702.1(a)(3).)
- The official knows or has reason to know that business 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 18702.1(a)(4).)

Thus, if the decision's reasonably foreseeable financial effect on an official's business interest meets any of the four standards above, that effect is material, and the official is disqualified from taking part in the decision.

Small Shareholder Exception: Regulation 18702.1(b) sets forth the "Small Shareholder Exception," which provides that a decision's reasonably foreseeable financial effect on an official's financial interest in a business is not material under Regulation 18702.1(a)(1) or (a)(4)(A) if both:

- The official's only financial interest in the business is an "investment interest" under Section 87103(a) valued at \$25,000 or less; and
- The official's interest in the business is less than one percent of the business's shares.

If the Small Shareholder Exception applies, the official is not disqualified.

B. Real Property Interests

Regulation 18702.2 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on real property in which an official has an interest as either an owner or lessee.

Explicitly Involved Real Property Interest: It is reasonably foreseeable a decision will have a material financial effect on an official's interest in real property any time the interest is explicitly involved in the decision. Therefore, the decision's reasonably foreseeable effect is material in any of the types of decisions described in Regulation 18702.2(a)(1) to (6), including a decision that:

- Involves the adoption of or amendment to a development plan or criteria applying to the property. (Regulation 18702.2(a)(1).)
- Determines the property's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries. (Regulation 18702.2(a)(2).)
- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the property. (Regulation 18702.2(a)(3).)
- Authorizes the sale, purchase, or lease of the property. (Regulation 18702.2(a)(4).)
- Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on, the property. (Regulation 18702.2(a)(5).)
- Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. (Regulation 18702.2(a)(6).)

Not Explicitly Involved Real Property Interest: A decision's reasonably foreseeable financial effect on an official's interest in real property is material if it is of a type described in Regulation 18702.2(a)(7) through (8), (b) or (c), including a decision that:

- Involves property located 500 feet or less from the official's property unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)
- Involves property located more than 500 feet but less than 1,000 feet from the official's property, and the decision would change the official's property's: development potential; income producing potential; highest and best use; character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or market value (Regulation 18702.2(a)(8)(A) through (E).)

- Involves property located 1,000 feet or more from the property line of the official's property if there is clear and convincing evidence the decision would have a substantial effect on the official's property. (Regulation 18702.2(b).)
- Involves property leased by the official and the decision will:
 - Change the termination date of the lease;
 - Increase or decrease the potential rental value of the property;
 - Change the official's actual or legally allowable use of the property; or
 - Change the official's use and enjoyment of the property. (Regulation 18702.2(c)(1) through (4).)

Real Property Interest 1,000 Feet or More from Property Involved in Decision: As mentioned above, Regulation 18702.2(b) sets forth a presumption that the financial effect of a decision involving property located 1,000 feet or more from the property line of the official's property is not material. That presumption, however, may be rebutted with clear and convincing evidence the decision would have a substantial effect on the official's real property interest.

Exceptions for Planning Objectives or Policy: A decision's reasonably foreseeable financial effect on an official's real property interest is not material, and therefore the official is not disqualified from the decision, if the decision solely concerns:

- Repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities. (Regulation 18702.2(d)(1).)
- Adoption or amendment of a general plan, as defined in Regulation 18702.2(e)(2), if certain specified conditions are met. (See Regulation 18702.2(d)(2).)

Common Area Exception to the Definition of Interest in Real Property: Regulation 18702.2(e)(4) provides that an "interest in real property," as defined in Section 82033, does not include "any common area as part of the official's ownership interest in a common interest development as defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq.)."

C. Source of Income Interests

Regulation 18702.3 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on a source of income to an official, and provides that the effect is material if any of the following criteria is met:

- The source is explicitly involved in the decision because it is "a named party in, or the subject of, the decision," including a claimant, applicant, respondent, or contracting party. (Regulation 18702.3(a)(1).)
- The source is an individual and any of the following applies:

- The decision may affect the individual's income, investments, or other assets or liabilities by \$1,000 or more (excluding an interest in a business entity or real property). (Regulation 18702.3(a)(2)(A).)
- The official knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the materiality standards applicable to a business set forth in Regulation 18702.1. (Regulation 18702.3(a)(2)(B).)
- The official knows or has reason to know that the individual: (i) has a real property interest and the property is explicitly involved in the decision; or (ii) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(2)(C).)
- The source is a nonprofit organization and any of the following applies:
 - 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, in an amount equal to or more than: (i) \$1,000,000; or (ii) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).)
 - The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: (i) \$250,000; or (ii) one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500. (Regulation 18702.3(a)(3)(B).)
 - The official knows or has reason to know that the organization has a real property interest and: (i) the property is explicitly involved in the decision; (ii) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)
- The source is a business that will be financially affected under the materiality standards applicable to a business set forth in Regulation 18702.1 (Regulation 18702.3(a)(4).)
- If there is a nexus between the decision and income received by the official or official's spouse. Otherwise referred to as the nexus test, any reasonably foreseeable financial effect on an official's source of income interest 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 receive or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

Exception for Retail Sales: Section 87103.5(a) provides that a retail customer of a business engaged in retail sales of good or services to the public generally is not a source of income to an official who owns a 10-percent or greater interest in the business if: the retail customers of the business constitute a significant segment of the public generally, and the amount of income received from an individual customer is not distinguishable from the amount of income received from its other customers.

Section 87103.5(b) sets forth a similar retail sales exception for a jurisdiction with a population of 10,000 or less that is located within a county with 350 or fewer retail businesses.

For purposes of applying Section 87103.5, Regulation 18702.3(c) provides that the retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction. (Regulation 18702.3(c)(1).)

Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the other customers of the business. (Regulation 18702.3(c)(2).) An official is unable to recognize a significant monetary difference when the business:

- Is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or
- Has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer. (*Ibid.*)

Income from a Government Entity: The materiality standards of Regulation 18702.3 do not apply where a government entity qualifies as a source of income as defined in Section 82030, including where an official is paid by the entity as a consultant or contractor. (Regulation 18702.3(d).) Under Regulation 18703(e)(7), an official with an interest in such an entity is disqualified from taking part in a decision only if there is a unique effect on the official. (*Ibid.*)

D. Source of Gift Interests

Regulation 18702.4 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on the source of a gift to an official, and provides that the decision's effect is material if:

- The source is explicitly involved in the decision because the source "is named or otherwise identified as the subject of the proceeding," including a claimant, applicant, respondent, or contracting party. (Regulation 18702.4(a).)
- The source is an individual that will be financially affected under the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's personal finances set forth in Regulation 18702.5 or the official knows or has reason to know that the individual has an interest in a business or real property that will be financially affected under the materiality standards provided in Regulation 18702.1 or 18702.2, respectively. (Regulation 18702.4(b))

- The source is a nonprofit organization that will receive a measurable financial benefit or loss as a result of the decision or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the materiality standards in Regulation 18702.2. (Regulation 18702.4(c).)
- The source is a business that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.4(d).)

E. Interest in Personal Finances

Regulation 18702.5(a) provides the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's personal finances, including those of immediate family. Also known as the personal financial effect rule, a reasonably foreseeable effect on the official's personal finances is material if the decision may result in the official or the official's immediate family receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision.

Exceptions: Under Regulation 18702.5(b), however, a decision's effect on an official's personal finances and those of immediate family is not material if the decision would:

- Affect only the salary, per diem, or reimbursement for expenses the official or their immediate family member receives from a federal, state, or local government agency, unless the decision is:
 - To appoint (except as specified), hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or their immediate family; or
 - To set a salary for the official or a member of their immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the official's immediate family is the only person in the job classification or position. (Regulation 18702.5(b)(1).)
- Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meeting of the group or body aggregating \$500 or more in any 12-month period, the effect is material unless the appointing body posts all of the following on its website:
 - A list of each appointed position and its term. (Regulation 18702.5(b)(2)(A).)
 - The amount of the stipend for each appointed position. (Regulation 18702.5(b)(2)(B).)
 - The name of the official who has been appointed to the position. (Regulation 18702.5(b)(2)(C).)

- The name of any official who has been appointed to be an alternate for the position. (Regulation 18702.5(b)(2)(D).)
- Appoint the official to be an officer of the governing body of which the official is already a member (such as a decision to appoint a city councilmember to be the city's mayor.) (Regulation 18702.5(b)(3).)
- Establish or change the benefits or retirement plan of the official or the official's immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group. (Regulation 18702.5(b)(4).)
- Result in the payment of any travel expenses incurred by the official or their immediate family while attending a meeting as an authorized representative of an agency. (Regulation 18702.5(b)(5).)
- Permit the official's use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official's duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty. (Regulation 18702.5(b)(6).)
- Result in the official's receipt of any personal reward from their use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official's approved travel expenses and is no different from the reward offered to the public. (Regulation 18702.5(b)(7).)

Effect on Personal Finances and a Business or Real Property Interest: If a decision would have a reasonably foreseeable financial effect on a business or real property interest of an official, any related effect on the official's personal finances is not considered separately, and the effect is only analyzed under the respective materiality standards for business and real property interests, i.e. Regulations 18702.1 and 18702.2. (Regulation 18702.5(c).)

VI. The Public Generally Exception

Under Section 87103, if a decision's financial effect on an official's financial interest is indistinguishable from the decision's effect on the public generally, the official is not disqualified from taking part in the decision. Regulation 18703 sets forth the "Public Generally Exception."

The General Rule: A decision's financial effect on an official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a "significant segment" of the public is affected and the "effect on the official's interest is not unique" compared to the effect on the significant segment. (Regulation 18703(a).)

A "significant segment" of the public is defined as:

- At least 25 percent of:
 - All businesses or nonprofit entities within the official's jurisdiction;
 - All real property, commercial real property, or residential real property within the official's jurisdiction; or
 - All individuals within the official's jurisdiction. (Regulation 18703(b)(1).)
- At least 15 percent of residential real property within the official's jurisdiction if the only interest the official has in the decision is the official's primary residence. (Regulation 18703(b)(2).)

A unique effect on an official's financial interest includes a disproportionate effect on:

- The development potential or use of the official's real property, or the income producing potential of the official's real property or business;
- An official's business or real property resulting from the proximity of a project that is the subject of a decision;
- An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;
- An official's interest in a business or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;
- A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; and
- An official's personal finances or those of immediate family. (Regulation 18703(c)(1)-(6).)

"Jurisdiction" means:

- The jurisdiction of the state or local government agency as defined in Section 82035;
- The designated geographical area the official was elected to represent; or
- The area to which the official's authority and duties are limited if not elected. (Regulation 18703(d).)

Specific Rules for Special Circumstances: Regulation 18703(e) also provides seven Specific Rules for Special Circumstances which govern the Public Generally Exception's applicability in those special circumstances. Under these rules, a decision's financial effect is deemed indistinguishable from its effect on the public generally if there is no unique effect on the official's interest and the official establishes:

- **Public Services and Utilities:** The decision sets or adjusts the amount of an assessment, tax, fee, or rate for water, utility, or other similar public services that is applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. However, an official is not permitted to take part in a decision that would impose the assessment, tax, or fee, or determine the boundaries of a property or who is subject to the assessment, tax, or fee. An official is only permitted to take part in setting or adjusting the assessment, tax, or fee amount, once other related decisions have already been made. (Regulation 18703(e)(1).)
- **General Use or Licensing Fees:** The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction. (Regulation 18703(e)(2).)
- **Limited Neighborhood Effects:** The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent, of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at a specific location. (Regulation 18703(e)(3).)
- **Rental Properties:** The decision is limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property, including a decision regarding a rent control ordinance or tenant protection measures, provided all of the following criteria are met:
 - The decision applies to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.). (Regulation 18703(e)(4)(A).)
 - The official owns three or fewer residential rental units. (Regulation 18703(e)(4)(B).)
 - Only interests resulting from the official's leasehold interest as a lessor of residential real property and the lessee or owner of the official's primary residence are affected by the decision. (Regulation 18703(e)(4)(C).)
- **Required Representative Interest:** The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented. (Regulation 18703(e)(5).)

- **State of Emergency:** The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency. (Regulation 18703(e)(6).)
- **Governmental Entities:** The decision affects a federal, state, or local government entity in which the official has an interest. (Regulation 18703(e)(7).)

VII. Legally Required Participation

Section 87101 provides that the prohibition of Section 87100 does not prevent an official from making or participating in the making of a decision to the extent the official's participation is legally required for the action or decision to be made. However, the existence of a tied vote does not make the disqualified official's participation legally required.

No Alternative Source of Decision: Regulation 18705(a) provides that an official who is financially interested in a decision may establish that the official is legally required to make or to participate in the making of a decision within the meaning of Section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

“Quorum” Defined: Regulation 18705(d) provides that a “quorum” is the minimum number of members required to conduct business. When the vote of a supermajority is required to adopt an item, a “quorum” is the minimum number of members needed to adopt the item.

Narrowly Construed: Regulation 18705(c) requires the regulation be narrowly construed, and specifically provides that the regulation shall not to be construed:

- To permit an official who is otherwise disqualified under Section 87100 to vote to break a tie. (Regulation 18705(c)(1).)
- To allow a member of any agency who is otherwise disqualified under Section 87100 to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not those other members are actually present at the time of the disqualification. (Regulation 18705(c)(2).)

Random Means of Selection: Regulation 18705(c)(3) requires participation by the smallest number of officials with a conflict that are “legally required” for the decision to be made under Section 87101 and permits a “random means of selection” (e.g. drawing straws) to be used to select only the number of officials necessary to make the decision. When an official is selected, that official is selected for the duration of the proceedings in all related matters until their participation is no longer legally required, or the need for invoking the exception no longer exists. (Regulation 18705(c)(3).)

Public Identification of an Otherwise Disqualified Official's Financial Interests in a Decision: Regulation 18705(b) provides that when an official who has a financial interest in a decision is legally required to make or participate in making that decision, the official must state the existence of the potential conflict as follows:

- The official must disclose the existence of the conflict of interest and describe with particularity the nature of the official's disqualifying financial interest or interests. This requirement is satisfied if the official discloses:
 - The type of financial interest or interests involved in the decision, and;
 - Other specified information identifying the interest depending on the type of interest at issue.
- The official or another officer or employee of the agency must summarize the circumstances under which the conflict may arise.
- The official or another officer or employee of the agency must disclose the legal basis for the determination that there is no alternative source of decision.

Manner of Disclosure: The disclosures required by Regulation 18705(b) must be disclosed as follows:

- If the decision is made during an open session of a public meeting, the disclosures must be made orally before the decision is made;
- If the decision is made during a closed session of a public meeting, the disclosures must be made orally during open session either before the body goes into closed session or immediately thereafter;
- If the decision takes place outside of a public meeting, the disclosures must be made in writing; and
- In all three circumstances immediately above, the disclosures must be made part of the public record, as specified. (Regulation 18705(b)(4).)

VIII. Segmentation

Under the Act's conflict of interest provisions, each governmental decision must be analyzed independently to determine if the decision will have a disqualifying effect on an official's financial interest. (*In re Owen* (1976) 2 FPPC Ops. 77.) Accordingly, an agency may segment a decision in which an official has a disqualifying conflict of interest to allow the official to participate in associated decisions which would not have a disqualifying effect on the official's interests under Regulation 18706.

Required Conditions for Segmentation: Regulation 18706(a) provides that an agency may segment a decision in which an official is financially interested, to allow the official

to participate in associated decisions in which the official is not financially interested, provided all the following conditions are met:

- The decision in which the official is financially interested can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
- The decision in which the official is financially interested is segmented from the other decisions;
- The decision in which the official is financially interested is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- Once the decision in which the official is financially interested has been made, the official's participation in associated decisions does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

“Inextricably Interrelated”: Regulation 18706(b) provides that decisions are “inextricably interrelated” when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

Budget and General Plan Decisions Affecting Entire Jurisdiction: Regulation 18706(c) provides that once all separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the official may participate in the final vote to adopt or reject the agency's budget or general plan.

IX. Disqualification Requirements

Section 87105 governs the recusal of a public official specified in Section 87200 from a decision from which the official has been disqualified. Subdivisions (a)(1)-(3) of that section require the disqualified official to: identify the potential conflict of interest to publicly identify the official's financial interest or interests at issue; recuse from voting, discussing or attempting to influence the matter; and leave the room until after the matter is concluded. Subdivision (a)(4) excludes members of the Legislature from these recusal requirements.

Regulation 18707 provides further direction and guidance on the recusal requirements applicable to a public official specified in Section 87200 who is disqualified from a decision relating to an agenda item noticed for consideration at a public meeting subject to open meeting laws (i.e. the Bagley-Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.)).

Form and Content of Public Identification: The disqualified official must publicly identify each type of financial interest, identified in Section 87103, held by the official

that gives rise to the disqualifying conflict of interest. (Regulation 18707(a)(1).) The identification must be oral and part of the public record (Regulation 18707(a)(1)(B)), and provide the following information, as applicable:

- For a business interest: the name of the business, a general description of its activities, and any position held by the official. (Regulation 18707(a)(1)(A)(i).)
- For a real property interest: the property's address, assessor's number, or identification that the property is the official's personal residence. (Regulation 18707(a)(1)(A)(ii).)
- For a source of income interest: the name of the source of income. (Regulation 18707(a)(1)(A)(iii).)
- For a source of gift interest: the name of the source of gift. (Regulation 18707(a)(1)(A)(iv).)
- For all interests: the nature of the expense, liability, asset, or income affected. (Regulation 18707(a)(1)(A)(v).)

Timing: The public identification required by Regulation 18707(a)(1) must be made immediately prior to consideration of the agenda item. (Regulation 18707(a)(2).)

- Partial absence from a meeting does not excuse the disqualified official's public identification requirement. (*Ibid.*)
- If the official leaves a meeting in advance of an agenda item from which the official is disqualified, the official must provide the public identification required by Regulation 18707(a)(1) prior to leaving the meeting. (Regulation 18707(a)(2).)
- If the official first joins a meeting after consideration of the agenda item, the official must provide the public identification immediately upon joining the meeting. (*Ibid.*)

Recusal and Leaving the Room: The disqualified official must recuse, leave the room after the public identification required by Regulation 18707(a)(1), and refrain from participation in the decision. (Regulation 18707(a)(3).) The disqualified official does not count toward achieving a quorum while the item is discussed. (*Ibid.*)

- For an agenda item on a consent calendar (uncontested items), the official may remain in the room during the consent calendar. (Regulation 18707(a)(3)(A).)
- If the official has a "personal interest" in the agenda item, as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, the official may leave the dais and speak or observe from the area reserved for members of the public after making the public identification required by Regulation 18707(a)(1) and recusing. (Regulation 18707(a)(3)(B).)

Special Rules for Closed Session: The public identification required by Regulation 18707(a)(1) must be made orally during the open session before the body goes into

closed session and may be limited to a declaration that the official's recusal is because of a conflict of interest under Section 87100. (Regulation 18707(a)(4).) The declaration must be made part of the official public record. (*Ibid.*) The official must not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the decision. (*Ibid.*)

Other Decisions: For a decision other than an agenda item involving a public official specified in Section 87200 (governed by Regulation 18707(a)), Regulation 18707(b) provides the following:

- If the official determines not to act because of a financial interest, the official's determination may be accompanied by an oral or written disclosure of the interest.
- The official's presence will not be counted toward achieving a quorum.
- During a closed meeting of the agency, a disqualified official must not be present when the decision is considered, or knowingly obtain or review a recording or any other nonpublic information regarding the decision.
- An agency may adopt a local rule requiring the official to step down from the dais or leave the chambers.

Confidential Information: Regulation 18707(c) expressly provides that nothing in Regulation 18707 is intended to cause any disclosure that would reveal the confidences of a closed session or any other privileged information contemplated by law, including privileged information under Regulation 18740.

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 (the "Commission") are contained in Sections 18110 through 18997 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.

² We note that the annual gift limit is adjusted biennially. The current gift limit is prescribed in Regulation 18940.2. The adjusted annual gift limit amount in effect for the period January 1, 2021, to December 31, 2022, is \$520.

³ For an official's interest in a business entity or real property, Regulation 18702.1(a) and Regulation 18702.2(a)(1)-(6), provide additional guidance for determining if the interest is explicitly involved.