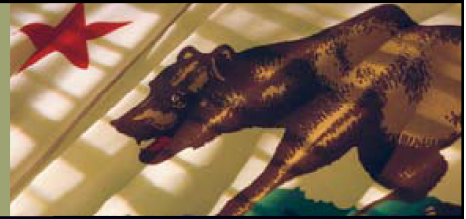




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CONFLICTS OF INTEREST HANDBOOK

Summary of the Major Provisions and Requirements of the Principal Conflicts of Interest Laws

- Selected Regulations of
The Fair Political Practices Commission
Title 2, Division 6, California Code of Regulations
- Text of Government Code Sections 1090-1099
- Updated with Changes Effective January 1, 2014

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INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California's principal conflicts of interest laws and regulations. The first part of the Handbook summarizes the basic provisions of the laws and regulations. The second part contains the text of major provisions of these laws and regulations. This Handbook is designed for city officials and staff. We hope you will find it useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact us.

LOS ANGELES

355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Telephone: 213.626.8484
Facsimile: 213.626.0078
E-mail: la@rwglaw.com

SAN FRANCISCO

44 Montgomery Street, Suite 3800
San Francisco, California 94104-4811
Telephone: 415.421.8484
Facsimile: 415.421.8486
E-mail: sf@rwglaw.com

ORANGE COUNTY

1 Civic Center Circle, PO Box 1059
Brea, California 92822-1059
Telephone: 714.990.0901
Facsimile: 714.990.6230
E-mail: oc@rwglaw.com

TEMECULA

41000 Main Street, Suite 309
Temecula, California 92589-9033
Telephone: 951.695.2373
Facsimile: 951.695.2372
E-mail: tem@rwglaw.com

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Summary of the Major Provisions and Requirements of the Principal Conflicts of Interest Laws and Regulations

SUMMARY OF THE MAJOR PROVISIONS AND REQUIREMENTS OF THE PRINCIPAL CONFLICTS OF INTEREST LAWS AND REGULATIONS

I. LAWS AND REGULATIONS AFFECTING DECISION-MAKING

A. The Political Reform Act

In 1974, California voters approved Proposition 9, a statewide initiative titled “the Political Reform Act” (the “Act” or the “PRA”). Gov’t Code § 81000 et seq.¹ At the time, the measure was the most detailed disclosure law in the nation, and it included new requirements for reporting campaign and lobbying activities. Although the Act was initially written before the Watergate scandal broke, by the time Proposition 9 appeared on the ballot the drama had unfolded, and nationwide reform proposals were being drafted.

The Act passed by an overwhelming majority, and one of its provisions created a new state agency called the Fair Political Practices Commission (“FPPC”). The FPPC was charged with interpreting and enforcing the Act, and pursuant to this authority, the agency drafted a series of regulations. Since the Act went into effect in 1975, the FPPC has issued new regulations and amendments to existing regulations almost every year.

The Act covers numerous topics germane to ethical behavior in public office—financial data reporting obligations, lobbying restrictions, required campaign disclosures, limitations on campaign financing, proscriptions on mass mailings, restrictions on gifts and honoraria, and most significantly, prohibitions on conflicts of interest in the making of governmental decisions. The Act also contains reporting procedures for financial interests and campaign contributions, as well as disqualification requirements when certain financial interests or campaign contribution standards are satisfied.

Please note that this Handbook is general in nature and may not cover all aspects of an actual conflicts of interest issue. Thus, it is not intended to constitute advice on specific conflicts of interest questions. In the event you think you have a conflict of interests issue, you should contact your city attorney or agency counsel for further advice.

¹All statutory references are to the California Government Code unless otherwise indicated. Regulations of the FPPC are referred to as “Regulation.”

1. Financial Interest Disclosure Requirements of the Political Reform Act

(a) Statements of Economic Interests

The Act requires public officials to disclose assets and income that may be materially affected by their official actions by filing a “Statement of Economic Interests” (also known as a “Form 700”). § 87202; Regulation 18115. The requirement applies to council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. § 87200.

Officials must file the Form 700 within 30 days of assuming office, and candidates must file no later than the final filing date of a declaration of candidacy. §§ 87201-02. An official must file annually thereafter until he or she leaves office, at which point he or she must file a final statement. §§ 87202-03. The required disclosures on the Form 700 include:

- i Investments in business entities (e.g., stock holdings, owning a business, a partnership) that do business in the jurisdiction;
- i Interests in real estate (real property) in the jurisdiction, but not including the official’s home address;
- i Sources of personal income, including gifts, loans and travel payments; and
- i Positions of management or employment with business entities that do business in the jurisdiction.

§ 87203. If the official no longer holds certain investments and real property interests at the time of filing, but held them during the 12 months prior to filing, he or she must still disclose those interests on the Form 700. *Id.* The Form 700 is a public document open to inspection and duplication. In 2013, the Legislature enacted Assembly Bill 409, which allows the FPPC to develop an online system for filing these forms. The system has not yet been created.

For public officials not covered by these requirements, including employees of state and local government agencies, it is up to the agencies that employ them to decide what their disclosure requirements are. Each state and local agency must adopt a conflicts of interest code tailoring the disclosure requirements for each position within the agency to the types of governmental decisions a person holding that position would make. For example, an employee who approves contracts for goods or services purchased by his or her agency would not be required to disclose real estate interests, but would be required to disclose

investments in and income from individuals and entities that supply equipment, materials, or services to the agency. §§ 87301-02.

As of January 1, 2013, a city that maintains an internet website must post a list of the elected officers who file a Form 700 with that city. A statement must also be posted on the website indicating that these Form 700s may be obtained by visiting the FPPC office or the city clerk's office. The statement must include the physical address for both the FPPC and the city clerk's office. Finally, a link to the FPPC website must be posted with a statement that indicates that Form 700 "for some state and local government agency elected officers may be available in electronic format" on the FPPC's internet website. § 87505.

Also as of January 1, 2013, local agencies have the option of establishing a system that allows certain filers to file their Form 700 electronically. If a local agency elects to establish such a system, these filers must submit their Form 700 electronically, and the local agency must submit a detailed proposal of the system that complies with FPPC regulations. § 87500.2

(b) Behested Contributions

There are also disclosure requirements for certain fundraising activities that elected officials perform for others. Elected officials who successfully solicit a contribution of \$5,000 or more for a "legislative, governmental or charitable cause" during a calendar year must file a report with the official's agency (typically the city clerk) within 30 days of reaching the \$5,000 threshold. § 82015(b)(2)(B)(iii). The report must contain the following information:

- i The contributor's name and address;
- i The amount of the contribution;
- i The date or dates on which the payments were made;
- i The name and address of the contribution recipient;
- i If goods or services were contributed, a description of those goods and services; and
- i A description of the purpose or event for which the contribution was used.

The statute does not define the term "legislative, governmental or charitable cause," but charitable causes typically involve 501(c)(3) organizations. Examples of "governmental"

causes include fundraising for a new city hall roof, an inaugural celebration committee,² litigation expenses,³ a breakfast honoring public safety personnel,⁴ and youth conferences.⁵ The term “legislative cause,” in turn, refers to a 1996 FPPC opinion in which a state senator asked a private party to pay for a witness’s airfare and expenses to testify at a legislative hearing.⁶

2. Conflicts of Interest under the Political Reform Act

In addition to the disclosure requirements, the Act requires public officials to disqualify themselves from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. § 87100. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on certain listed financial interests. The listed financial interests are:

- i Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more.
- i Any real property in which the public official has a direct or indirect interest worth \$2,000 or more.
- i Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to the public official within 12 months prior to the time when the decision is made.
- i Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- i Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$440 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

² Sutton Advice Letter, No. A-05-256, 2005 WL 3693740 (2005).

³ Stoen Advice Letter, No. A-03-185, 2004 WL 334564 (2004) (district attorney’s expenses in suing a private company when governing body withdrew funding for effort).

⁴ Gallegos Advice Letter, No. A-00-059, 2000 WL 311529 (2000).

⁵ Gallegos Advice Letter, No. A-98-192, 1998 WL 671296 (1998).

⁶ Schmidt Advice Letter, No. A-96-098, 1996 WL 779579 (1996).

§ 87103; Regulation 18940.2. The FPPC regulations interpret and provide guidance for most of the terms used in the Act, as well as provide standards for determining if each element of the Act's prohibitions has been satisfied.

3. The FPPC's Eight-Step Test for Analyzing Conflict of Interest Questions

The FPPC regulations currently in effect set forth an eight-step test to determine whether a conflict of interest exists under the Act. Regulation 18700. Each step of this test is discussed below.

Please note, however, that the FPPC is in the process of a comprehensive reorganization of its conflict of interest regulations. As part of this process, the FPPC has adopted amendments of Regulations 18700 and 18706 (Step Six) and a new Regulation 18706.1. The effective date for these regulations has been delayed until the FPPC completes other amendments as part of its reorganization project. The full regulations reprinted in the Appendix contain both the existing, and the newly adopted (but not yet effective), versions of Regulations 18700, 18706, and 18706.1.

Public officials may continue to refer to the current eight-part test discussed below until the new regulations go into effect, but should contact their city attorney or agency counsel for further updates regarding the new regulations.

STEP ONE: Is a Public Official Involved?

Determine whether the individual is a public official within the meaning of the Act.

The Act applies only to "public officials." A "public official" is defined to include a "member, officer, employee, or consultant" of a local government agency. § 82048. The regulations define "member" and "consultant" as follows:

- i A "member" includes a person serving on a board or commission with decision-making authority. A board or commission possesses decision-making authority, in turn, if it can make a final governmental decision, compel or prevent a governmental decision, or make substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another official or agency. Regulation 18701(a)(1).
- i A "consultant" includes an individual who, pursuant to a contract with a state or local government agency, is empowered to make a governmental decision or serve in a staff capacity with the agency. Regulation 18701(a)(2).

STEP TWO: Is There a Government Decision Involved?

Determine whether the public official will be making, participating in the making, or using or attempting to use his/her official position to influence a governmental decision.

The Act applies when a public official is “making, participating in making, or using or attempting to use his/her official position to influence a government decision.” Regulation 18702. The FPPC regulations define each of these actions for purposes of applying the Act:

- i A public official “makes” a governmental decision when the official, acting within the authority of his or her office or position, votes on a matter, appoints a person, commits his or her agency to a course of action, enters into a contract, or determines not to act.⁷ Regulation 18702.1.
- i A public official “participates in making” a governmental decision, when the official, acting within the authority of his or her office or position, advises or makes recommendations to a decision-maker, or negotiates, without significant substantive review, with a third party regarding a government decision. Regulation 18702.2.
- i A public official is “attempting to use his or her official position to influence” a decision if, for purposes of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence any member, officer, employee or consultant of the agency. Regulation 18702.3. A public official is also “attempting to use his or her official position to influence” a decision if he or she advocates on behalf of his or her agency to another governmental agency.

There are limited exceptions to this rule. A public official is not making, participating in making, or influencing a government decision when the official appears before the public agency as a member of the general public to represent specific and limited “personal interests,” speaks to the public or press, or negotiates his or her compensation or terms of employment. Regulation 18702.4.

⁷ A public official’s “determination not to act” does not constitute participating in “making” a government decision when the public official is abstaining from a decision due to a personal financial interest.

STEP THREE: What Are the Public Official's Economic Interests that Are Affected?

Identify the public official's economic interests.

A public official's economic interests under the Act include investments and positions in business entities, interests in real property, sources of income and gifts, and the personal expenses, income, assets and liabilities of the public official, as detailed in the following list:

- i Any direct or indirect investment worth at least \$2,000 in a business entity.
- i Any real property in which the public official has a direct or indirect interest worth at least \$2,000. Real property interests include leases, excluding month-to-month leases and leases with terms shorter than a month.
- i Any "source of income" of at least \$500 that is provided or promised to the public official within 12 months prior to a governmental decision, not including gifts and loans by banks available to the general public. The term "source of income" includes individuals, organizations, and businesses. If the "source of income" is a business that provides or promises the official at least \$500 within 12 months prior to a governmental decision, the official also has a source-of-income interest in any individual owning 50% or greater interest in that business and in any individual who has the power to direct or cause the direction of management and policies of the business.
- i Any business entity in which the public official is a director, officer, partner, trustee, or employee, or holds any position of management.
- i Any donor of gifts aggregating at least \$440 in the 12 months prior to a governmental decision.
- i The personal finances of the public official and immediate family. This is a sort of "catch-all" provision that is meant to address economic interests of a public official and his or her immediate family that do not qualify as investments, property, or business entities, but are nonetheless potentially affected by government decisions.

§§ 82047, 87103; Regulations 18703-18703.5, 18940.2. The terms “indirect investment” and “indirect interest” are used to indicate investments and interests owned by the spouse or dependent child of the public official, an agent of the public official, or a business entity in which the official or his or her family has at least a ten percent ownership interest.

STEP FOUR: Are Those Interests Directly or Indirectly Involved?

For each of the public official’s economic interests, determine whether that interest is directly or indirectly involved in the governmental decision at issue.

The next step is to determine whether the financial interests are directly or indirectly involved in the government decision. Whether the interest is direct or indirect will affect whether the interest is considered “material” in steps five and six. The following standards apply:

- i A person or entity (including business entities, sources of income, and sources of gifts) is “directly involved” in a decision when that person or entity initiates, is a named party in, or is the subject of a proceeding concerning the decision before the official or his or her agency. Regulation 18704.1.

- i An interest in real property is “directly involved” in a decision if the decision concerns: a site within 500 feet of the official’s property; the zoning, annexation, sale, lease or similar decision affecting the official’s property; the issuance or denial of a license, permit or other entitlement for the property; the imposition or modification of any taxes or fees assessed or imposed on the property; or construction or improvements to streets, sewers, storm drains and other infrastructure serving the property. Regulation 18704.2.

- i A public official’s person finances are “directly involved” in a decision if that decision has any financial effect on his or her personal finances or those of his or her immediate family. Regulation 18704.5.

Economic interests that do not qualify as being “directly involved” are deemed to be “indirectly involved” in the decision.

STEP FIVE: Which “Materiality” Standard Applies?

Determine the applicable materiality standard for each economic interest.

The fifth step in the analysis is to determine the applicable “materiality” standard as set by the regulations. This will depend, in turn, on the degree of involvement of the interest in the governmental decision, as established in step four. The materiality thresholds are significantly lower for direct financial interests than indirect interests. The materiality standards for the various forms of financial interests are set forth below.

(a) Business Entities

The financial effect of a decision on a directly involved for-profit business entity interest is presumed to be material unless the official’s only economic interest is an investment worth \$25,000 or less. Regulations 18704.1, 18705.1. For nonprofit entities, a similar standard applies: the financial effect of a decision on a directly involved non-profit business entity is material if there is any reasonably foreseeable financial effect on the nonprofit entity. Regulation 18705.3.

When the interest of a business entity is indirectly involved, or the official’s only economic interest is an investment worth \$25,000 or less, the materiality of a financial effect hinges on the size of the entity and the decision’s impact on the entity’s gross revenue, expenses, assets and liabilities. Regulations 18704.1, 18705.1.

For large “Fortune 500” business entities, a decision will be found to materially affect the business entity if the decision will affect the gross revenues, expenses, assets or liabilities by \$10,000,000 or more in a fiscal year or result in an increase or decrease in expenses by \$2,500,000 or more in a fiscal year. Regulation 18705.1(c)(1). Lower thresholds apply for companies that are listed or meet the criteria for listing on the New York Stock Exchange or the NASDAQ or American Stock Exchange. Regulation 18705.1(c)(2), (3).

For small companies that are not listed or that do not meet the criteria for listing on the Fortune 500, NYSE, NASDAQ, or AMEX, the decision is regarded as materially affecting the company if the decision will result in an increase or decrease in gross revenues for a fiscal year of \$20,000 or more, or increase or reduce expenses by \$5,000 or more in a fiscal year, or result in an increase or decrease in the value of its assets or liabilities by \$20,000 or more. Regulation 18705.1(c)(4).

Certain other standards apply if the business entity is a non-profit organization. Regulation 18705.3(b)(2). All of these standards are set forth in the following table.

Type of Business	Change in revenues, assets, or liabilities (\$)	Change in Expenses (\$)
Listed in the Fortune 500	10,000,000.	2,500,000.
Listed on NYSE or had net income of at least \$2.5M	500,000.	200,000.
Listed on NASDAQ/AMEX or had net income of at least \$750K	300,000.	100,000.
For-profit entities not falling into the above 3 categories	20,000.	5,000.
Nonprofit entity with gross receipts of at least \$400M	1,000,000.	250,000.
Nonprofit with gross receipts of at least \$100M but less than \$400M	400,000.	100,000.
Nonprofit with gross receipts of at least \$10M but less than \$100M	200,000.	50,000.
Nonprofit with gross receipts of at least \$1M but less than \$10M	100,000.	25,000.
Nonprofit with gross receipts of at least \$100K but less than \$1M	50,000.	12,500.
Nonprofit with gross receipts of less than \$100K	10,000.	2,500.

Independent of all the above thresholds, a special rule called the “nexus test” applies to situations in which a public official receives or is promised income to achieve a goal or purpose that would be affected by the governmental decision. Under this test, any reasonably foreseeable effect of the decision on a business entity that is a source of income or promised source of income to the public official is deemed material. Regulation 18705.3(c). The thresholds stated above would not apply, and a financial effect of even one penny would be “material” under the regulation. Accordingly, a public official must consider carefully whether his or her job description involves accomplishing goals that would be achieved by a governmental decision.

(b) Real Property – the “500-Foot Rule”

The financial effect of a decision on a directly involved real property interest is presumed to be material without regard to the effect of the decision on the value of the real property. Property in which the public official has an interest is deemed directly involved in a decision when the governmental decision involves property within 500 feet of the public official’s real property. However, the presumption may be rebutted by proof that it is not reasonably foreseeable the decision will have any financial effect on the public official’s real property. Regulation 18705.2.

For indirectly involved real property, the financial effect of the governmental decision is presumed not to be material. Property of a public official that is located more than 500 feet from the property that is the subject of the decision is deemed indirectly involved and thus presumed to not be materially affected. This presumption, too, may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property that make it reasonably foreseeable that the effect will be material. The FPPC regulations list three specific factors to consider:

- i The development potential or income producing potential of the real property in which the official has an economic interest;
- i The use of the real property in which the official has an economic interest;
- i The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

Regulation 18705.2(b)(1). It should be noted that the foregoing is not an all-inclusive list and other factors may be relevant to analyzing the financial effect of a decision on real property.

The regulation adds a few extra provisions for leasehold properties. In the event a public official leases a property with a term of longer than 30 days, and the property is directly involved in a governmental decision, then there is a presumption of materiality, just as with owned properties. For leased properties, however, the FPPC identifies specific factors that an official may use to rebut the presumption of materiality:

- i The termination date of the lease;
- i The amount of rent paid by the lessee for the leased real property, either positively or negatively;
- i The value of the lessee's right to sublease the real property, either positively or negatively;
- i The legally allowable use or the current use of the real property by the lessee; or
- i The use or enjoyment of the leased real property by the lessee.

Regulation 18705.2(a)(2). If an official can provide proof that the government decision will have no effect on any of the above factors, he or she can rebut the presumption of materiality and still participate in the decision.

Similarly, for indirectly involved leasehold properties, there are specific factors that will rebut the presumption of non-materiality. In particular, if there is proof that the circumstances of the governmental decision, its financial effect, and the nature of the real property make any of the following factors reasonably foreseeable, then the interest would be material:

- i A change in the legally allowable use of the leased real property, when the lessee has a right to sublease the real property;
- i A change in the lessee’s actual use of the real property;
- i A substantial enhancement or a significant decrease in the lessee’s use or enjoyment of the leased real property;
- i An increase or decrease in the amount of rent for the leased real property by at least 5 percent during any 12-month period following the decision; or
- i A change in the termination date of the lease.

Regulation 18705.2(b)(2).

(c) Sources of Income

The FPPC regulations also provide materiality standards for sources of income. A “source of income,” as discussed above, is any person from whom a public official has received at least \$500 in the last twelve months (Regulation 18705.3), and a “person” includes individuals, organizations, and business entities. § 82047. For sources of income that are directly involved in a governmental decision, the FPPC regulations presume that the effect of the decision is material.

For business entities and organizations that are indirectly affected sources of income, the materiality standards for business entities already discussed above apply. Indirectly affected sources of income that are individuals are materially affected if the decision affects the individual’s income, investments, liabilities or assets by \$1,000 or more, affects their real property materially (as explained in the section above), or if there is a “nexus” between the official’s receipt of the income and the governmental decision. Regulations 18705.3(b)(3), (c).

(d) Sources of Gifts

The regulations also provide materiality standards for sources of gifts. Recall that under the regulations a donor becomes a “source of gifts” by providing a public official with gifts valued at \$440 or more in the aggregate in the 12 months prior to a governmental decision. Regulations 18703.4, 18940.2. Sources of gifts are “materially” affected by a governmental decision if the source of the gift is directly involved in the decision or if the decision is likely to affect the source of the gift in a manner deemed material for business entities, non-profit entities or individuals, whichever is applicable. Regulation 18705.4.

(e) Personal Finances

Finally, the regulations provide materiality standards for personal finances. A reasonably foreseeable financial effect on a public official's or his or her immediate family's personal finances is considered material if it is at least \$250 in any 12-month period, excluding financial effects on the value of real property owned directly or indirectly by the official and on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest. There is a narrow exception that states that the financial effects of certain types of decisions affecting only the salary, per diem, or reimbursement for expenses the public official or his or her immediate family member receives from a federal, state, or local government agency are immaterial.

STEP SIX: Is It Reasonably Foreseeable that the Government Decision Will Materially Affect the Official's Economic Interests?

Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect on each economic interest.

EXISTING REGULATION

A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. Regulation 18706. In order to determine whether it is substantially likely that the materiality threshold will be exceeded, a public official should consider the following factors:

- i The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;
- i The market share held by the official or the official's source of income in the jurisdiction;
- i The extent to which the official or the official's source of income has competition for business in the jurisdiction;
- i The scope of the governmental decision in question; and
- i The extent to which the occurrence of the material financial effect is contingent upon intervening events.

Regulation 18706(b). The FPPC indicated that this is not meant to be an exclusive list.

The “reasonably foreseeable” test is likely the most subjective determination in the eight-step test, and ultimately the public official must make his or her own determination as to whether it is “substantially likely” that the applicable materiality threshold will be exceeded. While certainty is not required, an effect that is merely a possibility is not reasonably foreseeable. *Downey Cares v. Downey Community Development Comm’n*, 196 Cal. App. 3d 983 (1987); *In re Thorner*, 1 FPPC Ops. 198 (1975).

NEWLY ADOPTED REGULATIONS THAT ARE NOT YET EFFECTIVE

On September 12, 2012, the FPPC amended Section 18706, but the amendment will not go into effect until the FPPC completes its broader reorganization of its conflict of interest regulations. As of the publishing of this Handbook, the amendment is not effective. Public officials may continue to refer to the current regulation discussed above until the new regulations go into effect, but should contact their city attorney or agency counsel for further updates regarding the new regulations.

As amended, FPPC Regulation Section 18706 would draw a distinction between an economic interest that is explicitly involved in a decision versus one that is not. A financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. An economic 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 economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18704.2. Regulation 18706(a).

On the other hand, the amended Section 18706 would provide that a financial effect need not be likely to be considered reasonably foreseeable. If the financial effect can be recognized as a realistic possibility and 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 would not be reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on an economic interest that is explicitly involved, the following factors should be considered:

- i The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.
- i Whether the public official should anticipate a financial effect on his or her economic interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

- i Whether the public official has an economic interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental 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 public official has an economic interest.
- i Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's economic interest could compromise the public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.
- i Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's economic interests, including whether the economic interest may be entitled to compete or be eligible for a benefit resulting from the decision.
- i Whether the public official has the type of economic interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her economic interest in formulating a position.

In addition, on September 12, 2012, the FPPC added Section 18706.1. Pursuant to this newly added regulation, possession of a real estate or other professional license, regardless of the official's business activity does not in itself make a material financial effect on the official's economic interest reasonably foreseeable. Regulation 18706.1. As in the case of the amendment to Section 18706, this regulation will not go into effect until the FPPC completes its broader reorganization of its conflict of interests regulations. As of the publishing of this Handbook, the amendment is not effective. Public officials may continue to refer to the current regulation discussed above until the new regulations go into effect, but should contact their city attorney or agency counsel for further updates regarding the new regulations.

STEP SEVEN: Does the "Public Generally" Exception Apply?

Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally.

Once it is determined that it is reasonably foreseeable that a decision will have a material financial effect on a public official's economic interest, it is necessary to evaluate whether an exception to the disqualification requirement is applicable. One exception, known as the "public generally" exception, provides that even if a governmental decision will have a reasonably foreseeable material financial effect on the official's financial interest, disqualification is required only if the effect on the public official is distinguishable from the

effect on the financial interests of the public generally, or a significant segment of the public. The “public generally” is comprised of the entire jurisdiction of the public agency. In re Legan, 9 FPPC Ops. 1 (1985).

The “public generally” exception involves two core elements. First, the governmental decision must affect a “significant segment” of the public in the jurisdiction of the public agency. Second, the governmental decision must affect the official’s economic interest in “substantially the same manner” as it will affect that significant segment. Regulation 18707.

In order to determine what constitutes a sufficiently “significant” segment of the public, the FPPC has provided the standards summarized in the following table:

Individuals	i 10% of population of the jurisdiction, or i 5,000 residents of the jurisdiction
Real Property	i 10% of property owners of jurisdiction, or i 5,000 property owners of the jurisdiction
Business Entities, including Nonprofit Organizations	i 2,000 business entities in the jurisdiction, or i 25% of business entities in the jurisdiction
Governmental Entities	i All members of the public under the jurisdiction of the agency

Regulation 18707.1.

Whether an official’s interest will be affected in “substantially the same manner” as a significant segment of the public is largely an individual determination. For example, a council member owning one home in the city who votes on a citywide zoning regulation would likely be affected in substantially the same manner as other homeowners. If, however, the council member owned five houses, the impact of the decision would potentially be much greater on the council member than most homeowners, and so it is likely the exception would not apply.

Note that specialized “public generally” exceptions exist for decisions to establish or adjust assessments, taxes, fees, charges, or rates (Regulation 18707.2), decisions affecting principal industries, trades, or professions in the jurisdiction (Regulation 18707.7), decisions made by appointed members of certain types of boards or commissions (Regulation 18707.4), decisions affecting sources of income to owners of retail business entities (Regulation 18707.5), and decisions in specified “states of emergency” (Regulation 18707.6).

STEP EIGHT: Is the Public Official's Participation Legally Required?

Determine if the public official's participation is legally required despite the conflict of interest.

The last step in the FPPC eight-step analysis is to determine whether the exception for "legally required participation" applies to the governmental decision. A public official is permitted to participate in making a governmental decision, despite having a conflict of interest in the decision, if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision. Regulation 18708. This exception is applied when a quorum of a legislative body cannot be convened due to the disqualifying conflicts of interests of its members. In that situation, as many members as are needed to create the minimum number for the quorum may be selected at random to participate. In these situations, stringent disclosure requirements apply, not only regarding the basis of the selected member's conflict of interest, but also the reason why there is no alternative source of decision-making authority. Regulation 18708(b).

Note that this rule is construed narrowly and may not be invoked to permit an official who is otherwise disqualified to vote to break a tie or to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not such other members are actually present at the time of the decision. Regulation 18708(c).

4. Abstention

When a public official has a conflict of interest under the Act, he or she is required to abstain from making, participating in making, or using or attempting to use his or her official position to influence the local agency's decision. § 87103. Abstention avoids a violation of the conflict of interest provisions of the Act.

The Act establishes specific procedures that most public officials must follow when he or she has a conflict of interest and is required to abstain from a decision. Immediately prior to the consideration of the matter, the official must: (i) identify the financial interest that gives rise to the conflict in detail sufficient to be understood by the public (except that disclosure of the exact street address of a residence is not required); (ii) publicly state his or her recusal from the matter; and (iii) leave the room until after the disposition of the matter unless the matter appears on a consent calendar, or other similar portion of an agenda for uncontested matters, or the official is speaking as a member of the public regarding an applicable personal interest. § 87105; Regulation 18702.5.

This procedure must be followed by all council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. §§ 87105, 87200. The Act does not require other public officials who must file financial

disclosure forms under local conflict of interest codes to follow the same procedure. The Act does not, however, prohibit a local agency from requiring by custom or regulations these other public officials to follow the same procedure.

Depending on the nature of his or her interest, a public official who must abstain from a decision may comment on the item as a member of the public during the public comment period on a matter related to his or her “personal interests.” The term “personal interest” is defined to include an interest in real property or a business entity that is wholly owned by the official or his or her immediate family. Regulation 18702.4. It also includes business entities over which the official, or the official and his or her spouse, exercise sole direction and control. Regulation 18702.4(b). There are a few other minor “personal interests.” If a public official wishes to speak on a matter related to his or her “personal interests,” the official must leave the dais to speak from the same area as the members of the public. The official may listen to the comments of other speakers on the matter with the members of the public. Regulation 18702.5(d)(3).

Note that when a public official abstains from a decision, his or her presence does not count toward achieving a quorum. Regulation 18702.1(b). Accordingly, if several officials must abstain from a decision under the Political Reform Act, there may not be sufficient members of the body present to consider a matter under the Brown Act. In such a circumstance, it may be possible to use the exception for legally required participation, as discussed above.

5. Penalties for Violation

Administrative, civil and criminal penalties exist for violation of the conflict of interest provisions of the Act. The FPPC may levy administrative penalties after a hearing and may impose a fine of up to \$5,000 per violation, a cease and desist order, and an order to file reports. § 83116. Civil penalties include injunctive relief that may be sought by the district attorney or any person residing in the jurisdiction. § 91003. In the event a court finds that the actions would not have been taken but for the action of the official with the conflict of interest, the court is empowered to void the decision. § 91003. Misdemeanor criminal penalties are provided in situations where a knowing or willful violation of the act occurs, and generally, persons convicted of violating the Act may not be a candidate for elective office or act as a lobbyist for four years after the conviction. §§ 91000, 91002. The statute of limitations for civil and criminal enforcement actions is four years from the date of the violation. §§ 91000(c), 91011(b). The statute of limitations for administrative actions brought by the FPPC is five years from the date of the violation. § 91000.5.

6. Seeking Advice on Conflict of Interest Questions

It is important to note that only a formal advice letter from the FPPC staff can immunize a public official from potential enforcement by the FPPC or the District Attorney in the event the public official participates in a decision and someone subsequently alleges the public

official had a prohibited conflict of interest. A formal advice letter usually takes the FPPC staff at least a month to prepare, is only provided if the request relates to prospective acts as distinguished from past acts, and if it contains sufficient facts upon which the FPPC is able to render a decision. Informal written advice (without immunity from potential enforcement action) may also be requested from the FPPC staff as well as informal telephonic advice through their technical assistance division at 1-866-ASK-FPPC (1-866-275-3772). Based on the time frames required to obtain formal or informal written advice from the FPPC, it is important for public officials to consult their city attorney or local agency counsel as early as possible so as to provide adequate time to gather all relevant facts, draft a letter to the FPPC, and respond to the advice once given.

B. Government Code Section 1090

Government Code Section 1090 provides in relevant part: “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

The purpose of the prohibition contained in Section 1090 is to preclude a public official from using his or her position to obtain business or financial advantage through the approval of contracts by the public entities on which he or she serves. As more fully explained below, the prohibition applies to not only preclude a member of the body or board that approves the contract from directly contracting with that same public entity, but it also applies when the public official has a financial or other specified relationship to the entity that seeks to contract with the public entity. The intent of the law is to remove the possibility of any personal influence that might bear on an official’s decision-making activities on contracts executed by his or her public entity.

Upon the enactment of the Act in 1974, questions arose as to whether that new law impliedly repealed or preempted the provisions of Section 1090. The California Attorney General addressed this issue first, concluding in a 1976 opinion that the PRA did not implicitly repeal or preempt Section 1090. 59 Ops. Cal. Att’y Gen. 604, 671 (1976). Since that time, the courts and the Attorney General have consistently considered Section 1090 as having continuing effect. For example, in *People v. Honig*, 48 Cal. App. 4th 289, 328-29 (1996), the defendant in a criminal case for violations of Section 1090 argued that the Act superseded Section 1090. The California Court of Appeal declined to so rule, holding instead that the term “financially interested” in Section 1090 has a different meaning than the term “material financial effect” in the Act. In another case, the California Court of Appeal again held that the Act and Section 1090 are “two different statutory schemes.” *City of Vernon v. Central Basin Mun. Water Dist.*, 69 Cal. App. 4th 508, 513 (1999); see also *Fraser-Yamor Agency, Inc. v. County of Del Norte*, 68 Cal. App. 3d 201 (1977); *People v. Vallergera*, 67 Cal. App. 3d 847 (1977); *City Council v. McKinley*, 80 Cal. App. 3d 204 (1978); *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191 (1980); *Thomson v. Call*, 38 Cal. 3d 633 (1985); *Campagna v. City of Sanger*, 42 Cal. App. 4th 533 (1996); 67 Ops. Cal. Att’y Gen. 369,

375 (1984); 69 Ops. Cal. Att’y Gen. 102 (1986); 70 Ops. Cal. Att’y Gen. 45, 47 (1987); 73 Ops. Cal. Att’y Gen. 191, 194-95 (1990).

Both the Act and the common law (meaning court-made) doctrine against conflicts of interest require the public official with the conflict of interest to abstain from participation in the decision. Section 1090, by contrast, prohibits the public entity from entering into the contract in which one of its officers or employees has a financial interest unless certain exceptions apply. Specifically, if an official is a member of a board or commission that executes the contract, he or she is conclusively presumed to be involved in the making of his or her agency’s contracts. *Thomson v. Call*, 38 Cal. 3d at 649. This absolute prohibition applies regardless of whether the contract is found to be fair and equitable or the official abstains from all participation in the decision. *Thomson*, 38 Cal. 3d at 649-50; *Fraser-Yamor Agency*, 68 Cal. App. 3d at 211-12; *City of Imperial Beach*, 103 Cal. App. 3d at 195. The only way a public entity could still enter into a contract in which an official has a financial interest would be if that interest qualifies as a “remote interest” or “non-interest” within the meaning of specified provisions discussed below.

1. Three Principal Components to the Prohibition Contained in Section 1090

The prohibition contained in Section 1090 involves three principal components: (1) the person subject to the prohibition must be an officer or employee of one of the types of governmental entities listed in Section 1090; (2) the public officer or employee must be “financially interested” in a contract; and (3) the contract must be made by either the public official in his or her official capacity or by the body or board of which the official is a member.

(a) Officer or Employee of Listed Government Entity

The first element is whether the person subject to the prohibition is a member of the Legislature or an officer or employee of the state, a county, a district, a judicial district, or a city. Virtually every officer or employee of a municipality or local governmental district is subject to the prohibition of Section 1090.

(b) Financial Interest in a Contract

The second element of the prohibition is the existence of a direct or indirect financial interest in a contract. The courts have interpreted the term “financially interested” as including any direct interest, such as that involved when a public official enters directly into a contract with the body of which he is a member. *Thomson v. Call*, 38 Cal. 3d 633 (1985). The courts have also interpreted “financially interested” as including indirect financial interests in a contract, where, for example, a public official has a business relationship with the entity that would be contracting with the public entity, or when the public official would gain something financially by the making of the contract. *Fraser-Yamor Agency*, 68 Cal. App.

3d 201 (1977); *Finnegan v. Schrader*, 91 Cal. App. 4th 572, 579 (2001). In *Thomson v. Call*, the California Supreme Court described the breadth of the statute this way:

“Section 1090 forbids city officers . . . from being “financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” The proscribed interest certainly includes any direct interest, such as that involved when an officer enters directly into a contract with the body of which he is a member. California courts have also consistently voided such contracts where the public officer was found to have an indirect interest therein. . . . Neither the absence of actual fraud nor the possibility of a “good faith” mistake on [the officer’s] part can affect the conclusion that this contract violates section 1090 and is therefore void.”

38 Cal. 3d at 645-46 (citations omitted) (emphasis added).

In *Thomson*, a council member sold certain real property to a third party, knowing that the city was negotiating a deal to acquire multiple parcels of property in that area for a public park. The third party then conveyed the councilman’s property to the city, in an apparent attempt to evade the provisions of Section 1090. The court essentially “unwound” and invalidated the entire transaction based on the council member’s interest in the transaction. The court refused to focus on the isolated contract between the city and the third-party that bought the property from the council member, but rather viewed all of the successive contracts as one complex multi-party agreement. The court ordered the council member to disgorge all funds he received in the transaction and ordered that the city retain title to the property. The court noted that this type of severe remedy was necessary to discourage violations of Section 1090.

Other decisions have followed this same broad reading of “indirect interests.” In *People v. Vallerga*, the California Court of Appeal summarized court decisions addressing financial interests under Section 1090 as follows: “However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void.” 67 Cal. App. 3d 847, 867 (1977); see also *People v. Honig*, 48 Cal. App. 4th 289, 315 (1996) (stating the same rule). The scope of indirect interests that could form a “devious and winding chain” back to a public contract is broad, but this reflects the judicial stance of vigilant enforcement of Section 1090. See, e.g., *Thomson*, 38 Cal. 3d at 652 (“[T]he policy of strict enforcement of conflict-of-interest statutes . . . provides a strong disincentive for those officers who might be tempted to take personal advantage of their public offices, and it is a bright-line remedy which may be appropriate in many different factual situations.”); *Berka v. Woodward*, 125 Cal. 119, 128 (1899) (noting the need for “strict enforcement” of the conflict of interest statutes).

In addition to a “financial interest,” there must be a contract in order for Section 1090 to apply. General contract principles apply to this determination and include such arrangements as purchase and service contracts as well as development agreements

between a city and a developer (78 Ops. Cal. Att’y Gen. 230 (1995)); 82 Ops. Cal. Att’y Gen. 126, 129 n.4 (1999)), joint powers agreements (People v. Gnass, 101 Cal. App. 4th 1271, 1301 (2002)), and payments for conference attendance expenses (75 Ops. Cal. Att’y Gen. 20 (1992)).

(c) A Contract “Made” by the Official or by a Body or Board of which the Official Is a Member

The third element necessary for a Section 1090 violation is that the contract has to be “made” either by the official or employee acting in his or her official capacity, or by any body or board of which the official is a member. The “making” of a contract is most commonly implicated by a city council’s approval of a simple purchase order as part of the approval of a demand warrant registrar; this is likely to constitute the making of a contract within the scope of Section 1090. The courts have construed the term “made” as encompassing such elements in the formation of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, and drawing of plans or specifications and solicitation for bids. *Millbrae Ass’n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968). For example, in *City Council of San Diego v. McKinley*, 80 Cal. App. 3d 204, 212 (1978), a court of appeal found a Section 1090 violation when a city council entered into an agreement with a landscape architectural firm, of which the president, a stockholder, was also a member of the city’s parks and recreation board. The board investigated and advised the city council on parks and recreation development issues, and it approved plans for a Japanese garden for which the board member’s company ultimately received the development contract. Even though the board member was not a member of the city council, which awarded the contract to his company, the board member’s participation in the planning for the garden was sufficient to constitute participation in “making” the contract:

“[T]here is ample authority the negotiations, discussions, reasoning, planning, and give and take which go beforehand in the making of a decision to commit oneself must all be deemed to be a part of the making of an agreement in the broad sense. [Citation omitted.] Thus, the final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented.”

80 Cal. App. 3d at 212.

Similarly, in *Stigall v. City of Taft*, 58 Cal. 2d 565, 569-70 (1962), the California Supreme Court held that an impermissible conflict existed in a contract with a plumbing company owned by a council member, even though the council member resigned before the plumbing company’s bid was accepted. The court recognized that activities prior to the signing of a contract can be integral to the decision to accept the contract. “[T]he negotiations, discussions, reasoning, planning and give and take which goes beforehand in the making of the decision to commit oneself must all be deemed to be a part of the making

of an agreement in the broad sense. . . .” Id. at 569; see also *Campagna v. City of Sanger*, 42 Cal. App. 4th 533, 538 (1996) (noting that a contract “made” in an official capacity includes one in which a person governed by Section 1090 engages only in “preliminary discussions, negotiations, compromises, [and] reasoning”).

2. Exceptions to Section 1090

- (a) A Public Entity May Enter into and Amend Contracts in which a Member of Its Governing Body or Board Has a Statutorily Defined “Remote Interest” if the Board Member Discloses and Does Not Participate in the Decision on the Contract or Amendment.

There are two categories of exceptions to Section 1090. The first, encompassing what are commonly referred to as “remote interests,” is set forth in Section 1091. If an official has only a remote interest in a contract, then the local agency may enter into the contract as long as the official abstains from participating in the decision in any way. Some examples of “remote interest” exceptions that can apply to a public entity contract decision include the following:

- i Remote interest exception for compensated officer or employee of a nonprofit corporation (Section 1091 (b)(1));
- i Government salary remote interest exception when the contract involves the department of the government entity that employs the board member (Section 1091 (b)(13)); and
- i Remote interest exception for a litigation settlement agreement between an officer that is party to litigation involving the body or board of which the officer is a member (Section 1091 (b)(15)).

The “remote interest” exception applies only if the interest is disclosed to the body that approves the contract, the disclosure is noted in that body’s official records, and the official abstains from voting. Further, members with a “remote interest” may not attempt to influence any other member of the body or board of which they are members to enter into the contract.

- (b) Public Entity Board Members May Participate in Decisions to Enter into or Amend Contracts in which the Board Member Has a Statutorily Defined “Non-Interest”

The second category of exceptions is found in Section 1091.5. These are called “non-interest” exceptions and apply to a type of interest that is completely exempt from Section 1090 and, if held by the official, does not require abstention. The “non-interest” exceptions are listed in Section 1091.5. Examples of some of those exceptions are listed below:

- i Non-interest exception for government salary when the contract does not involve the department of the government entity that employs the board member (Section 1091.5 (a)(9));
 - i Non-interest exception for government salary to a board member's spouse when the board members' spouse was employed by the government entity for at least one year prior to board member's appointment (Section 1091.5 (a)(6));
 - i Non-interest exception for non-compensated officer of a non-profit corporation that supports the functions of the public entity and to which the public entity is required to give particular consideration (Section 1091.5 (a)(8));
 - i Non-interest exception for non-salaried member of a non-profit corporation (Section 1091.5 (a)(7)); and
 - i Non-interest exception involving the receipt of public services on the same terms as would be provided if not a member (Section 1091.5(a)(3)); and
 - i Non-interest exception for contracts for public services between special districts and its board members if the special district requires board members to be a landowner or a representative of a landowner and the contract is made on the same terms and conditions granted to everyone else. Section 1091.5(a)(14)). This exception was newly enacted in 2013. For purposes of the exception, "public services" include the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.
3. A Contract Made in Violation of Section 1090 is Void and Officials Violating Section 1090 Are Subject to Severe Penalties

Finally, it is important to note the extreme consequences of a Section 1090 violation and thus the caution with which persons must act to ensure compliance with this law. A public official who willfully violates any of the provisions of Section 1090 "is punishable by a fine of not more than \$1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state." § 1097. The civil fines applicable to Section 1090 violations now can be up to \$10,000. § 1097.3(a). In addition, a contract made in violation of Section 1090 is void under Section 1092. People ex rel. State v. Drinkhouse, 4 Cal. App. 3d 931, 935 (1970) ("[A] contract in which a public officer is interested is void, rather than voidable as the statute indicates."). And as with the Political Reform Act, acting on the

advice of counsel is not a defense to a Section 1090 violation. See *People v. Chacon*, 40 Cal. 4th 558 (2007); *Chapman v. Superior Court*, 130 Cal. App. 4th 261 (2005).

Given these consequences, it is advisable for public officials to be very cautious in deciding whether they may participate in a contracting decision based on the existence of a “non-interest exception,” whether they must abstain from those decisions based on the application of a “remote interest” exception, or whether their financial interest lies outside any exception and therefore precludes the public entity from entering into the contact altogether.

4. Seeking Advice on Government Code Section 1090

In 2013, the State Legislature adopted Assembly Bill 1090, which amended the enforcement provisions applicable to Government Code Section 1090. With the adoption of AB 1090, a person who is subject to the prohibition in Government Code Section 1090 may request advice and/or a formal opinion from the FPPC. § 1097.1(c). Such advice is admissible as evidence of good faith conduct by the requester if the requester truthfully disclosed all material facts and relied on the advice of the or opinion of the FPPC. § 1097.1(c). In addition, the FPPC is now authorized to enforce the prohibition in Government Code Section 1090 through administrative or civil actions. § 1097.1(a).

5. Statute of Limitations

The statute of limitations for bringing a criminal prosecution under Section 1090 is three years from the discovery of the violation. *People v. Honig*, 48 Cal. App. 4th 289, 304 (fn. 1) (1996); Penal Code §§ 801, 803(c). However, under Government Code Section 1092, a four-year statute of limitations applies to actions brought under Section 1090 to invalidate a contract. This four-year statute of limitations begins to run from the date that the plaintiff has discovered the violation, or in the exercise of reasonable care, should have discovered the violation. A four-year statute of limitations also applies to civil actions brought by the FPPC. § 1097.3(c).

C. Common Law Doctrine Against Conflicts of Interest

The common law doctrine against conflicts of interest constitutes the courts’ expression of the public policy against public officials using their official positions for their private benefit. See *Terry v. Bender*, 143 Cal. App. 2d 198, 206 (1956). This doctrine provides an independent basis for requiring public officials and employees to abstain from participating in matters in which they have a financial interest. Violation of the doctrine can amount to official misconduct and can result in loss of office. *Nussbaum v. Weeks*, 214 Cal. App. 3d 1589 (1989).

By virtue of holding public office, an elected official “is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the

benefit of the public.” *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928). An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of a private interest. *Id.*

The common law doctrine against conflicts of interest has been primarily applied to require a public official to abstain from participation in cases where the official’s private financial interest may conflict with his or her official duties. 64 Ops. Cal. Att’y Gen. 795, 797 (1981). However, the doctrine also applies when specific circumstances preclude a public official from being a disinterested, unbiased decision maker for a quasi-judicial matter. In one case, a council member who voted to deny permits for a condominium project near his house was deemed to have a common law conflict of interest (e.g., bias) due to his interest in preserving his ocean view and his personal animosity toward the applicants. *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

However, a more recent court decision creates some uncertainty as to whether the common law doctrine should be applied when statutory conflict of interest laws already address the particular situation. In *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1233 (2000), the court declined to construe allegations of an official’s bias in a decision to constitute a conflict of interest at common law when the applicable statutes already had been construed not to create a conflict of interest in that situation. In *BreakZone*, the court indicated, “[w]e continue to be cautious in finding common law conflicts of interest We reject the application of the doctrine in this case, assuming, arguendo, it exists.” 81 Cal. App. 4th at 1233.

II. OTHER SPECIALIZED CONFLICTS OF INTEREST LAWS AND REGULATIONS

A. Common Law Doctrine Against Incompatible Offices

1. The Common Law Doctrine against Holding Incompatible Offices

In addition to Government Code Section 1126 (discussed below), a common law doctrine (that is, legal principles established over time by court decisions) applies to prevent public officials from holding multiple public offices simultaneously. The common law doctrine against incompatibility of offices arose from a concern that the public interest would suffer when one person holds two public offices which might possibly come into conflict. The California Supreme Court set forth the following test for incompatibility of offices in *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636 (1940):

“Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and

duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both.”

16 Cal. 2d at 641-42. Incompatibility of offices is not measured only by conflicts which do exist, but also by those conflicts which might arise. Chapman, 16 Cal. 2d 636, 641-42 (1940); 66 Ops. Cal. Att’y Gen. 382, 384 (1983); 64 Ops. Cal. Att’y Gen. 288, 289 (1981).

In order to determine whether two positions are in conflict, it is necessary to determine first whether the two positions are both public offices within the scope of the doctrine. No statutory definition is given to the term “public officer.” However, in Chapman, the court stated:

“[A] public office is said to be the right, authority, and duty, created and conferred by law—the tenure of which is not transient, occasional, or incidental—by which for a given period an individual is invested with power to perform a public function for public benefit

One of the prime requisites is that the office be created by the Constitution or authorized by some statute. And it is essential that the incumbent be clothed with a part of the sovereignty of the state to be exercised in the interest of the public.”

16 Cal. 2d at 640 (citation omitted).

Incompatibility can be triggered if the duties of the two offices “overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest.” People ex rel. Bagshaw v. Thomson, 55 Cal. App. 2d 147, 150 (1942). Only one significant clash of duties and loyalties is required to make offices incompatible. 37 Ops. Cal. Att’y Gen. 21, 22 (1961). The policy set forth in Chapman includes prospective as well as present clashes of duties and loyalties. 63 Ops. Cal. Att’y Gen. 623 (1980).

Abstention has not been recognized as a remedy for incompatible offices. The general rule provides:

“The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflicts nor provides assurances that they would be employed. Accordingly, the ability to abstain when a conflict arises will not excuse the incompatibility or obviate the effects of the doctrine.”

66 Ops. Cal. Att’y Gen. 176, 177 (1983) (citation omitted).

The effect of the doctrine of incompatibility of offices is that a public official who enters into the duties of a second office is deemed to have automatically vacated the first office if the two are incompatible. Chapman, 16 Cal. 2d at 644.

A list of some of the offices that the California Attorney General has found to be incompatible are as follows:

- i County board of supervisors member and community college board member. 78 Ops. Cal. Att’y Gen. 316 (1995).
- i Fire chief and board of supervisors member. 66 Ops. Cal. Att’y Gen. 176 (1983).
- i Public utility district member and county board of supervisors member. 64 Ops. Cal. Att’y Gen. 137 (1981).
- i School district trustee and council member. 73 Ops. Cal. Att’y Gen. 354 (1990).
- i School board member and council member. 65 Ops. Cal. Att’y Gen. 606 (1982).
- i County planning commissioner and council member. 63 Ops. Cal. Att’y Gen. 607 (1980).
- i Fire chief and council member. 76 Ops. Cal. Att’y Gen. 38 (1993).
- i County planning commissioner and city planning commissioner. 66 Ops. Cal. Att’y Gen. 293 (1983).
- i County planning commissioner and county water district director. 64 Ops. Cal. Att’y Gen. 288 (1981).
- i City planning commissioner and school district board member. 84 Ops. Cal. Att’y Gen. 91 (1997).
- i City manager and school district board member. 80 Ops. Cal. Att’y Gen. 74 (1997).
- i School district board member and community services district board member. 75 Ops. Cal. Att’y Gen 112 (1992).

2. The Statutory Codification of the Common Law Doctrine of Incompatible Offices – Government Code Section 1099

Government Code Section 1099 is intended to create a statutory rule against holding incompatible offices. This section is not intended to expand or contract the common law rule and is intended to be interpreted based on precedent created through court decisions under the common law doctrine. Stats. 2005, c.254 (S.B. 274), § 2.

Section 1099 provides that a public officer, including but not limited to an appointed or elected member of a governmental board, commission, committee or other body, shall not simultaneously hold two public offices that are incompatible as defined by the statute. Section 1099 provides that offices are incompatible when:

- i Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- i Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties and loyalties between the offices; or
- i Public policy considerations make it improper for one person to hold both offices.

As is the case under the common law doctrine, Section 1099 provides that when two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second office. However, Section 1099 recognizes that certain state laws or local ordinances may expressly provide for the simultaneous holding of particular offices and that result would not be precluded by Section 1099. Section 1099 does not apply if one of the positions is an employment rather than an office. It also does not apply when one of the positions is a member of a legislative body that has only advisory powers. § 1099(c), (d).

B. Incompatible Outside Activities

Government Code Section 1126(a) provides:

“[A] local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. . . .”

The provisions of Section 1126 prohibit officials and employees of a local government agency from engaging in outside employment or activities where any part of the employment or activity will be subject to approval by any other officer, employee, board or commission of the local agency. Exceptions are created to permit a public official to engage in outside employment by a private business, and to permit an attorney employed by a local agency in a non-elective position to serve on an appointed or elected governmental board of another agency. §§ 1127, 1128.

However, the court in *Mazzola v. City and County of San Francisco*, 112 Cal. App. 3d 141 (1980) ruled that Section 1126 provides only authorization to implement standards for incompatibility pursuant to paragraph (b) of Section 1126. The court ruled that the restrictions of Section 1126 are not self-executing because existing and future employees should have notice that specific outside activities are or are not compatible with their duties as an officer or employee of the local agency. Thus, Section 1126 would not bar a public official from holding a position outside his or her public agency unless the public agency in which he or she serves as a public official adopts an ordinance in compliance with the requirements of Section 1126 that specifies that the two positions or activities are incompatible. Many cities have not adopted such ordinances.

In light of the court's decision in *Mazzola*, the Attorney General ruled that Section 1126 did not apply to any elected official, such as a council member, since elected officials do not have an "appointing power" that can promulgate guidelines for their activities pursuant to Section 1126. However, if a local agency adopts such guidelines, they can be made applicable to officers and employees subordinate to the legislative body of the local agency, including members of advisory boards and commissions. § 1126(a).

C. Successor Agency and Oversight Board Conflicts

1. Form 700s

Regarding any city that adopted a resolution establishing a successor agency to the former redevelopment agency as a separate legal entity, the FPPC staff has clarified that an official who already files an annual Form 700 in his or her capacity as a city official does not need to file an Assuming Office Statement ("Assuming Office Form 700") within 30 days of assuming his or her position with the successor agency as long as these same city officials are already required to disclose all categories of economic interests. The successor agency official or employee will, however, have to file an Assuming Office Form 700 if he or she is not already required to disclose as a city official all categories of economic interests.

With respect to those successor agency officers and employees who do have an obligation to file an Assuming Office Form 700, the 30-day deadline for completing those filings is likely 30 days from the date he or she was appointed rather than 30 days after the officer or employee is sworn in to office or starts to perform duties. This means that if the successor agency was formed as a separate governmental entity, the date that the official was

appointed to his or her position would be the date that the successor agency adopted its rules and regulations, established successor agency positions in those rules, and designated specific city officials to fill those positions. However, if the successor agency appointed certain city officials to those positions at a later point in time, that later date would be the date from which the 30 day period would commence to run.

Members of an oversight board are subject to the PRA. This means oversight board members must comply with both the conflict of interest disqualification and the disclosure requirements of the PRA. Oversight board members who do not also hold a concurrent city position need to file an Assuming Office Form 700 within 30 days of their appointment. For example, the appointees of the county, superintendent of schools, and other non-city representatives who do not concurrently hold a city position, should file an Assuming Office Form 700 as an oversight board member and file it with the city clerk. Similarly, if one or both of the mayor's appointees do not concurrently hold a position with the city requiring disclosure of economic interests in all categories, they should file an Assuming Office Form 700 within 30 days of their appointment. However, if a person appointed by the mayor to represent the city on the oversight board or any other appointee to the oversight board concurrently holds a position with the city that is already required to broadly disclose in all categories, these persons would not be required to file an Assuming Office Form 700 under the FPPC staff rationale noted above.

2. Obligation of Successor Agencies to Adopt Conflict of Interest Codes

The PRA requires that local government agencies must adopt a conflict of interest code. An exception applies for those agencies where all of its officials and employees are already required to file Statements of Economic Interests as city officials. In the case of a successor agency, some members of its oversight board will not be city officials or employees. For example, the county, school district, county superintendent, and community college appointees are most likely not going to be current city officials or employees. Consequently, the successor agency must adopt a conflict of interest code that includes the oversight board.

3. City Councils are the Code Reviewing Bodies for the Successor Agency's Conflict of Interest Code

Section 8201(c) provides that for "city agencies," the code reviewing body is the city council.

The term "city agencies" is not defined in the PRA but has been interpreted by the FPPC to mean local government agencies located solely within the boundaries of one city. In the past, the FPPC has interpreted a redevelopment agency as being a "city agency" and the city council as being the code reviewing body for the redevelopment agency. In the case of a successor agency of a former redevelopment agency that operates solely within the boundaries of one city, the successor agency will not have a jurisdictional boundary that

extends beyond the boundary of the city. Consequently, the city council of the city in which the former redevelopment agency operated will be the code reviewing body for the successor agency.

The city council, as the code reviewing body, is required to review and approve the successor agency's conflict of interest code not later than six months from the date the successor agency came into existence. § 87303. However, we recommend that this step be completed prior to that deadline for reasons mentioned below. Thus, it is appropriate to place the successor agency's conflict of interest code on a city council agenda for approval soon after the successor agency has adopted it.

4. The City Council May Designate the City Clerk as the Filing Officer for the Successor Agency's Statements of Economic Interests

The term "filing officer" is defined in the PRA to be the office or officer with whom any statement or report is required to be filed under this title. § 82027. In determining where Form 700s are to be filed for officials of a successor agency, the city council, as the code reviewing body, may designate whether the "agency" (successor agency or the "code reviewing body" (city council) is to be the entity with which Form 700s are filed. § 87500(p). Once that designation is made, the duty to perform the functions of filing officer must be delegated to an individual in either entity such as the city clerk, pursuant to Regulation 18227. The person designated becomes the "filing officer." Regulation 18227 provides that every entity with whom forms are filed shall assign to a specific official the responsibility for receiving and forwarding reports filed pursuant to Section 87500 (including Form 700s). Once assigned, the filing officer has a duty to supply Form 700s, review submitted Form 700s for completeness, and notify all persons who have failed to file forms and report violations to appropriate agencies. See § 81010.

Thus, the city clerk or the successor agency secretary will most likely be the filing officer for the successor agency but such designation will ultimately to be determined by the city council when acting as the code reviewing body for the successor agency's conflict of interest code. In the action to approve the successor agency's conflict of interest code, the city council should approve the successor agency's designation of the city clerk or successor agency secretary to be the filing officer for the successor agency's officials. In the meantime, it is appropriate for the city clerk or successor agency secretary to begin performing the duties of the filing official for the successor agency even though such designation will not be finalized until approved by the city council as the code reviewing body.

It is recommended that one of the first steps for the city clerk or successor agency secretary to undertake is to make a record of the appointment date for each officer of the successor agency and each member of the oversight board. With respect to those officials of the successor agency and oversight board that are not otherwise exempt from filing Assuming Office Form 700s for their position with the successor agency, city clerks should provide

forms to those persons and facilitate the filing of those forms within the 30-day time period required.

D. Discount Passes on Common Carriers

Article XII, Section 7 of the California Constitution states:

“A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission.”

The Attorney General has explained this provision applies in the following manner:

- i The prohibition applies to public officers, both elected and non-elected, but not employees.
- i The prohibition applies to interstate and foreign carriers as well as domestic carriers, and to transportation received outside California.
- i The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.
- i Violation of the prohibition is punishable by forfeiture of office.

There have only been a few decisions that address this constitutional prohibition. In one opinion, the Attorney General granted leave to sue two members of a city council who accepted free airline tickets to London given by Laker Airlines as part of the airline’s promotion of its new Los Angeles to London service. Despite the fact that the council members were unaware of the prohibition, the Attorney General allowed a quo warranto suit that subsequently settled before judgment. Cited in 76 Ops. Cal. Atty. Gen. 1, 3 (1993).

In another opinion, the mayor of a city received an upgrade from a coach seat to a first class seat on Hawaiian Airlines. 76 Ops. Cal. Atty. Gen. 1 (1993). There, the mayor’s ticket was one of 20 first-class upgraded tickets that the airline was allowed to provide to “high profile, prominent members of the community.” At issue was whether that situation fit within an exception to the constitutional prohibition for situations when the free transportation or discount is provided to a public officer as a member of a larger group unrelated to the official’s position. The Attorney General ruled that the facts did not satisfy the exception and that a violation of the prohibition had occurred.

The exception considered in that opinion stemmed out of a 1984 opinion of the Attorney General which held that a public officer could accept first-class ticket upgrades by virtue of the airline's policy to do so for all persons on their honeymoon. In 67 Ops. Cal. Atty. Gen. 81 (1984), the Attorney General concluded that a public officer, whose spouse was a flight attendant, could accept a free transportation pass or discount when such was offered to all spouses of flight attendants without distinction to the official status of the recipient.

Consequently, if the pass or discount is provided to the official because of his or her position as a governmental official, the prohibition applies. If it is provided to the official as a member of a larger group that is not related to the functions of his or her office, the prohibition may not be applicable.

E. Conflicts upon Leaving Office – the “Revolving Door” Limitations

Former elected officials and former city managers are restricted from receiving compensation for lobbying their city for one year after they leave public office. This restriction also applies to elected county and district officials and their chief administrative officers or general managers, but not to department directors or other public officials and employees. § 87406.3(a). A violation of the statute constitutes a misdemeanor, and the FPPC is authorized to impose administrative fines and penalties for its violation. § 91000.

The type of lobbying subject to the ban includes both formal and informal appearances before a local agency and making any oral or written communication to the agency. The statute proscribes the appearances and communications if they are made to influence administrative or legislative action, or affect the issuance, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. § 87406.3(a).

The term “administrative actions” within the scope of the lobbying ban includes “the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial.” However, matters that are “solely ministerial” are expressly excluded from the prohibition. § 87406.3(d)(1). The type of “legislative action” within the scope of the ban includes:

“the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.”

§ 87406.3(d)(2). The lobbying ban does not apply to any public official who is appearing or communicating on behalf of another local governing body or public agency of which the individual is a board member, officer or employee. Therefore, if such former elected city

official or former city manager is contacting his or her city on behalf of the state, county, a school district or some other governmental entity, such activity is not precluded by the ban. Some cities have their own preexisting “revolving door” ordinances that regulate the lobbying activities of their former public officials. This state law expressly does not preempt those ordinances or prevent cities from adopting additional ordinances on the subject in the future, provided those ordinances are more restrictive than the state law. § 87406.3(c). Thus, the new state law merely sets a new minimum standard applicable to all cities.

F. Laws Prohibiting Bribery

A number of state statutes prohibit bribery of public officials. Specifically, it is illegal to give or offer to give a bribe to a public official, or for a public official to ask, receive, or agree to receive any bribe. Penal Code §§ 67, 68. Under a strict reading of these statutes, Penal Code Section 68 applies to bribery of a “ministerial officer, employee, or appointee,” and Penal Code Section 67 applies only to bribery of an “executive officer in this state,” but the courts have interpreted both statutes as having a broad scope applicable to public officials generally. *People v. Hallner*, 43 Cal. 2d 715, 717 (1954) (observing that Penal Code Section 67, despite its wording, is “all inclusive” and includes city officials, and that “[b]y the sixty-seventh section the offense defined is that of one who offers; by the sixty-eighth, that of one who receives a bribe”); *People v. Strohl*, 57 Cal. App. 3d 347, 360 (1976) (“Numerous California Supreme Court and appellate court decisions since 1954 have held that ‘executive officers’ of various levels of local government, including the county level, as herein involved, come within [Penal Code] Section 67.”).

The Legislature also expressly made bribery of council members and supervising officials a crime, as well as solicitation of bribes by council members and supervisors. Penal Code § 165. Another statute makes it a crime for anyone to attempt to bribe “any person who may be authorized by law to hear or determine any question or controversy.” Penal Code § 92. Considered together, these statutes cover the spectrum of public officials.

The term “bribe” signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity. Penal Code § 7(6). Note that under all of the bribery statutes, it is not only the actual giving or accepting of a bribe that is criminal; merely offering to give or receive a bribe constitutes a violation of law. See, e.g., *People v. Pic'l* (1982) 31 Cal. 3d 731, 739 (noting that a “meeting of the minds” is unnecessary for a bribery conviction).

A public officer forfeits his office if he requests, receives, or agrees to receive a bribe. Penal Code § 68. In addition, every officer convicted of any crime defined in the Penal Code sections pertaining to bribery and corruption is forever disqualified from holding any office in the state. Penal Code § 98.

Note also that bribery and soliciting bribery potentially violate not only the Penal Code, but also the conflict of interest statutes. For example, in *Terry v. Bender*, 143 Cal. App. 2d 198 (1956), a court of appeal held that a council member violated Government Code Section 1090 when he solicited and received a bribe from an attorney in exchange for the council member's vote to employ the attorney with the city. 143 Cal. App. 2d at 207 (observing that by accepting the bribe, the council member "had placed himself in a position of economic servitude" in violation of Section 1090). Because the bribe "restricted the free exercise of the discretion vested in him for the public good," there was an impermissible conflict of interest.

G. Campaign Contributions

1. Conflicts of Interests Arising on Appointed Boards and Commissions

The Political Reform Act contains restrictions on the receipt and solicitation of campaign contributions. Under a portion of the PRA known as the "Levine Act," a public agency official may not participate in decisions affecting individuals or entities who have given the official more than \$250 in campaign contributions within the past 12 months. Gov't Code § 84308. However, a city council is not considered an "agency" for purposes of the statute. § 84308(a)(3). This disqualification therefore does not apply to a council member when participating in a decision of the council. It also does not apply to a council member who sits on the board of another agency of the city if the governing board of that agency is made up entirely of members of the city council when that member is participating in a decision of that agency. Regulation 18438.1 (a)(1). However, it does apply to a council member when that person is serving on the board of a joint powers authority and it does apply to planning commissioners and other officers of the public entity who are not directly elected by the voters.

The PRA also classifies campaign contributions differently than other financial interests. As discussed previously, the PRA requires that public officials abstain from government decisions in which they have a financial interest, with certain exceptions. § 87100. A public official generally has a proscribed financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on (among other things): (i) a source of income aggregating \$500 or more in value during the 12 months prior to the decision; or (ii) a donor of a gift or gifts aggregating \$440 or more in value during the 12 months prior to the decision. § 87103(c), (e); Regulations 18703.4, 18940.2. Campaign contributions, however, are not considered a "financial interest" for purposes of this disqualification because they are neither "income" nor a "gift" within the meaning of the statute. §§ 82028(b)(4), 82030(b)(1). This disqualification therefore is not triggered as a result of a council member's receipt of a campaign contribution.

In other words, council members acting in their capacity as elected council members are not prohibited from acting on a matter which involves someone who has given them a political contribution. Regulation 18438.1(a). For example, the California Supreme Court ruled that

Los Angeles City Council members were not disqualified from voting on a subdivision map by reason of receiving campaign contributions from the applicants and their agents. *Woodland Hills Residents Ass'n, Inc. v. City Council*, 26 Cal. 3d 938, 945 (1980) (“Plaintiffs’ accusation that receipt of a campaign contribution inevitably results in an appearance of bias or prevents a fair hearing is unwarranted.”). Similarly, a court of appeal concluded that Torrance City Council members were not disqualified from voting on a conditional use permit application by reason of receiving campaign contributions from a party alleged to be in opposition to the application. *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205 (2000).

Receipt of a campaign contribution can, however, disqualify a public official who serves on more than one public body. For example, under the Levine Act, a council member acting on behalf of an agency other than the city must abstain from a license, permit or other use entitlement decision involving an applicant, proponent or opponent who has made a contribution to the council member’s campaign in excess of \$250 within the preceding 12 months. The fact of the campaign contribution must also be disclosed prior to the abstention. This disqualification is inapplicable, however, if the campaign contribution is returned within 30 days of receipt. § 84308.

2. Application of Federal Corruption Laws to the Offer or Solicitation of Illegal Campaign Contributions Tied to an Official Act

Another exception to the general rule that campaign contributions do not preclude an official from voting on a matter affecting a campaign contributor is the application of federal corruption laws to situations where the receipt of illegal, laundered or unreported campaign contribution are tied to an official act. In one recent case arising out of the City of San Diego, two council members were charged and convicted of wire fraud for conspiring to change the city’s ordinance regulating adult-oriented businesses in exchange for campaign contributions from an adult-oriented business that had been illegally “laundered” through contributions made by residents of the city or which had been unreported and which constituted bribes. See *United States v. Inzunza*, 303 F. Supp. 2d 1041, 1043 (S.D. Cal. 2004) for a list of the charges; the case was referred to in the press as the San Diego “Strippergate” case. The charges included the alleged use of wire communications in interstate commerce in furtherance of the alleged conspiracy to defraud the public of their intangible right to honest service, in violation of 18 U.S.C. §§ 1951 (the Hobbs Act) and 1952 (Interstate Transportation in Aid of Racketeering). One of those convictions was later overturned. However, the case points out that direct connections between official acts and illegal or unreported campaign contributions may result in charges of bribery under California law and a violation of certain federal wire fraud and racketeering laws.

3. Ban on Local Agency Officials and Employees Soliciting Campaign Contributions from Other Officials and Employees of the Same Agency

In an effort to avoid local agency public employees being drawn into local political campaigns or having their positions the subject of political reward or retribution, California law contains a prohibition on the solicitation of campaign contributions by a local agency official or employee of other officials or employees within the same local agency. Section 3205 prohibits an officer or employee of a local agency from soliciting political contributions from an officer or employee of that same local agency. The prohibition applies to incumbents seeking re-election and to non-incumbent candidates for local agency office. An exception exists for broad general public solicitations to a “significant segment of the public” that also include some local agency officials and employees of that agency. § 3205(c). No definition exists as to what constitutes a significant segment of the public. In the context of conflict of interest provisions in the Political Reform Act, that term is defined to include segments of the local agency population such as ten percent of all residents, and, in the absence of any court interpretation of the law, that standard provides some guidance on what may be a sufficiently broad solicitation to come within the scope of the exception. Violation of the prohibition is punishable as a misdemeanor and may be prosecuted only by the County District Attorney. § 3205(d).

H. Nepotism

One other potential source of a conflict of interest is a governmental decision that affects a family member. If a public official’s relative has an application before the government agency on which the public official serves, the public official would potentially have an improper incentive to approve the relative’s application. Because the financial interests of a public official’s spouse and dependent children (children under 18 years of age who are dependent financially on their parents) are attributed to the public official under the Political Reform Act and Section 1090, participation in decisions financially benefiting spouses and dependent children is limited. §§ 82030, 87103; *Thorpe v. Long Beach Community College Dist.*, 83 Cal. App. 4th 655 (2000) (holding that Section 1090 prohibited a community college district board from voting to approve the promotion of the spouse of a board member). If the approval did not require a decision by the legislative body, however, the public entity could still potentially approve an application or make a decision if the related public official did not participate.

With respect to adult children and more extended family members, the Political Reform Act and Section 1090 would not automatically apply in the absence of some financial relationship between the public official and the adult child or extended family members. *Davies Advice Letter*, No. I-90-329, 1990 WL 698051 (1990). Currently, state law only prohibits such “extended family” interests for the governing boards of school districts. Educ. Code § 35107(e). Under that statute, a school board member must abstain from participating in personnel matters that uniquely affect his or her relative. “Relative” is defined as an adult who is related to the official by blood or affinity within the third degree,

or in an adoptive relationship within the third degree. There is no comparable statute for cities and counties, but some local governments have established similar restrictions through ordinances or policies.

The issue of familial relations comes up more frequently in the context of personnel decisions, as when a public entity prohibits the hiring of relatives of public officials or employees. Such anti-nepotism policies are generally upheld by the courts. For example, in *Parsons v. County of Del Norte*, 728 F. 2d 1234 (9th Cir. 1984), the Ninth Circuit upheld a county policy prohibiting spouses from working in the same department. The Ninth Circuit held that the policy did not violate the Equal Protection and Due Process clauses of the U.S. Constitution and was rationally related to a legitimate government interest: avoidance of conflicts of interest and favoritism in employee hiring, supervision and allocation of duties. See also *Kimura v. Roberts*, 89 Cal. App. 3d 871, 875 (1979) (upholding a policy prohibiting spouses from serving on both the city council and planning commission, reasoning that “the finding of the mayor and the city council that an actual or implied conflict of interest existed, is eminently rational, practical and legally sound”).

Note, however, that state law prohibits the application of anti-nepotism rules to spouses in some circumstances. The Fair Employment and Housing Act prohibits an employer from making an employment decision based on whether an employee or applicant has a spouse presently employed, except in two specific situations:

- i For business reasons of supervision, safety, security or morale, an employer may refuse to place one spouse under the direct supervision of the other spouse.
- i For business reasons of supervision, security or morale, an employer may refuse to place both spouses in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples than for other persons.

2 C.C.R. § 7292.5(a) (emphasis added). Accordingly, any anti-nepotism policy that a city or county adopts must not apply to the hiring of spouses, except in cases of direct supervision, where greater conflicts or hazards occur for married persons, or where a conflict of interest statute applies.

III. LAWS AND REGULATIONS AFFECTING RECEIPT OF GIFTS, HONORARIA AND LOANS

The PRA provisions and other conflict of interest laws discussed above do not prohibit a public official from having an interest in a business or real property. Instead, they merely limit the official’s ability to participate in a decision that would materially affect those interests.

There are additional restrictions in the PRA, however, with regard to certain gifts, honoraria and loans. The statute precludes local officials (including council members and planning commissioners) from receiving certain gifts, honoraria and loans. These prohibitions apply whether or not the source of the gift, honorarium or loan is or will ever be affected by a decision of the official's agency. This section outlines these prohibitions.

A. Limitations on Receipt of Gifts

1. General Gift Limitation

Government Code Section 89503(a) provides: "No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than [\$440]." (The gift limit amount has been adjusted in accordance with Regulation 18940.2.) Officials listed in Section 87200, in turn, include mayors, council members, planning commissioners, city managers, city attorneys, city treasurers, chief administrative officers and other public officials who manage public investments, and candidates for any of these offices.

A similar limitation prohibits a city employee designated in a local conflict of interest code from accepting gifts from a single source totaling more than \$440 in value in any calendar year, if the gifts would be required to be reported on his or her statement of economic interests. § 89503(c).

2. Biennial Gift Limit Adjustment

The Act authorizes the FPPC to make an inflationary adjustment of the gift limitations set forth in Section 89503 every two years. § 89503(f). The most recent adjustment became effective on January 1, 2013, wherein the gift limit increased to \$440. Regulation 18940.2. This figure will be further adjusted in future odd-numbered years.

3. Exceptions to Gifts

None of the following is a gift and none is subject to any limitation on gifts (Regulation 18942):

(a) Informational Materials

Informational materials such as books, reports, calendars, audio and video recordings, scale models, maps, free or discounted admission to informational conferences or seminars, and on-site demonstrations, tours or inspections that are provided to convey information for the purpose of assisting the official in the performance of official duties are not considered gifts. The cost of transportation for on-site demonstrations, tours or inspections may fall into this exception in particular situations. Regulations 18942(a)(1), 18942.1.

(b) Returned Gifts

Except for passes and tickets as provided for in Regulation 18946.1, a gift that is not used and that, within 30 days of receipt, is returned, donated, or for which reimbursement is paid pursuant to Regulation 18941, is not a gift. The donation of a gift under this exception must be to either a 501(c)(3) charitable organization with which the official or a member of his or her family holds no position or to a government agency, without being claimed as a tax deduction. Regulation 18942(a)(2).

(c) Family Gifts

A payment from an individual's family member is not subject to the gift limitations, unless the donor is acting as an agent or intermediary for any other person. The family members included in this exception are a spouse or former spouse, child or step-child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, current or former brother-in-law, current or former sister-in-law, nephew, niece, aunt, uncle, grand nephew, grand niece, grand aunt, grand uncle, first cousin or first cousin once removed, or the current or former spouse of any such person other than a former in-law. Regulation 18942(a)(3).

(d) Campaign Contributions

Campaign contributions are not subject to gift limitations. However, an official is nonetheless required to report campaign contributions on his or her Form 700. Regulation 18942(a)(4).

(e) Inherited Money or Property

Devises or inheritances of any kind are exempt from gift limitations. Regulation 18942(a)(5).

(f) Awards

A personalized plaque or trophy with an individual value of less than \$250 is not a gift. Regulation 18942(a)(6).

(g) Home Hospitality

The cost of home hospitality is not considered a gift unless any part of the cost is paid directly or reimbursed by another person, any person deducts any part of the cost as a business expense on a tax return, or the host has an understanding with someone else that any amount of compensation the host receives from that person includes a portion to be utilized to provide gifts of hospitality. Regulation 18942(a)(7). "Home hospitality" is defined as any benefit received by the official, and the official's spouse and family members when accompanying the official, which is provided by an individual with whom the official has a relationship, connection, or association unrelated to the official's position

and the hospitality is provided as part of that relationship, connection, or association in the individual's home when the individual is present. Home hospitality includes entertainment, occasional overnight lodging, and any food, including food provided by other guests at the event and benefits received by the official when the official serves as the host. In determining where this exception is available, the official is to presume that the cost of the hospitality is paid by the host unless the host discloses to the official or it is clear from the surrounding circumstances that someone other than the host paid the cost or part of the cost of the hospitality. Regulation 18942.2.

A "home" includes a vacation home owned, rented, or leased by the individual for use as his or her residence, including in some cases a timeshare or a motor home or boat owned, rented, or leased by the individual for use as his or her residence. "Home" also includes any facility in which the individual has a right-to-use benefit by his or her home residency, such as a community clubhouse. Regulation 18942.2.

(h) Presents on Personal or Family Occasions

Benefits commonly exchanged between an official and an individual, other than a lobbyist, on holidays, birthdays, or similar occasions are not gifts as long as the presents exchanged are not substantially disproportionate in value. For purposes of this exception, "benefits commonly exchanged" includes food, entertainment, and nominal benefits provided to guests at an event by an honoree or other individual, other than a lobbyist, hosting the event. Regulation 18942(a)(8)(A).

(i) Reciprocal Exchanges

Reciprocal exchanges made in a social relationship between an official and another individual who is not a lobbyist and with whom the official participates in repeated social events are not gifts where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities. The repeated social events may include lunches, dinners, rounds of golf, attendance at entertainment or sporting events, or any other such event so long as the total value of payments received by the official within the year is not substantially disproportionate to the amount paid by the official. If the official receives much more than what he or she paid, the official has received a gift for the excess amount. This exception does not apply to any single payment that is equal to or greater than \$440. Regulation 18942(a)(8)(B).

(j) Leave Credits Donated to an Official

Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer are not gifts as long as they are available to all

employees in the same job classification or position. This exception does not include donations of cash. Regulation 18942(a)(9).

(k) Disaster Assistance

Payments received under a government agency program or a program established by a 501(c)(3) organization designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients are not gifts as long as such payments are available to members of the public regardless of official status. Regulation 18942(a)(10).

(l) Admission when "Speech" Made

Payment of the official's admission by the organizer of an event is exempt from the gift limitations if the official makes a "speech" at the event. Regulation 18942(a)(11). This exemption applies if the official is "making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event. Regulation 18950(b)(2). For the purpose of the exemption, the price of admission can include food and "nominal items" including things like pens, stress balls, note pads, etc. Regulation 18942(a)(11).

(m) Campaign Travel

The payments made to an elected officer or candidate for his or her transportation, lodging, or subsistence provided in direct connection with campaign activities, including attendance at political fundraisers, are exempt from the gift limitations. Payments made during the six-month period prior to an election are considered "in direct connection" with the campaign activities if the payment is for necessary transportation, lodging, or subsistence and used for the officer's or candidate's participation in forums, debates or other speaking events or attendance at campaign strategy meetings with staff or consultants. Beyond this six-month period, the payment is considered a gift unless it is clear from the surrounding circumstances that the payment was made directly in connection with campaign activities. Regulations 18942(a)(12), 18950.4.

(n) Ticket for Ceremonial Role

A ticket which is provided to an official and one guest of the official for his or her admission to an event where the official performs a ceremonial role on behalf of the agency is not a gift, so long as the agency reports the ticket on its Form 802. The term "ceremonial role" means an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event where, for a period of time, the focus of the event is the act performed by the official. Examples include throwing out the first pitch at a baseball game, cutting a ribbon at a library opening, or presenting a certificate or award. A city may adopt specific policies to either limit or expand the permissible ceremonial roles for an official in that city, the full list of which must be forwarded to the FPPC. Any official who attends the event as part of his or her job duties to assist the official who is performing

the ceremonial role has not received a gift or income by attending the event. Regulations 18942(a)(13), 18942.3.

(o) Prize or Award in Bona Fide Contest or Competition

A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance is not a gift. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery. Regulation 18942(a)(14).

(p) Weddings Benefits

Benefits received as a guest attending a wedding or civil union are not gifts if the benefits are substantially the same as the benefits received by the other guests attending the event. Regulation 18942(a)(15).

(q) Bereavement Offerings

Bereavement offerings typically provided in memory of and at the time of the passing of a spouse, parent, child, or sibling or other relative of the official are not gifts. Regulation 18942(a)(16).

(r) Acts of Neighborliness

A service performed as an act of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances is not a gift. Examples of such services include the loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away. Individuals need not be actual neighbors for this exception to apply. Regulation 18942(a)(17).

(s) Bona Fide Date or Dating Relationship

Personal benefits commonly exchanged between people on a date or in a dating relationship are not gifts. However, such benefits are gifts if the individual providing the benefit to the official is a lobbyist or otherwise has particular interests in the official's role in the agency within 12 months of the date. Even if the benefit is from such an individual, the gift is still not reportable or subject to limits but the aggregate value is subject to the conflict of interest provisions if the value is \$440 or greater. Regulation 18942(a)(18)(A).

(t) Acts of Human Compassion

Payments provided to an official or his or her family member by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other

unexpected calamity are not gifts. Payments provided to an official or his or her family member to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child are also not gifts. However, under this exception, the source of the donation must be an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment must be made without regard to official status under other circumstances in which it would be common to receive community outreach. In any case, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official's role in the agency within 12 months of the payment. Regulation 18942(a)(18)(B).

(u) Best Friends Forever

A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency is not a gift. However, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official's role in the agency within 12 months of the payment. Regulation 18942(a)(18)(C).

(v) Catch-All

Any other payment that would otherwise meet the definition of gift is not a gift where the payment is made by an individual who is not a lobbyist and it is clear that the payment was made because of an existing personal or business relationship unrelated to the official's position. Additionally, there can be no evidence whatsoever at the time the payment is made that the official makes or participates in the type of governmental decisions that may have a foreseeable material financial effect on the individual who is the source of the payment. Regulation 18942(a)(19).

4. Gifts to an Agency

Regulation 18944 provides a narrow exception to the normal gift reporting requirements and value limitations for gifts made directly to a public agency. A payment made to a state or local government agency that is used for official agency business is not considered a gift or income to an individual public official who is the end recipient, even though the official receives an incidental personal benefit from the payment. As such, the gift does not have to be reported by the individual and is not subject to the annual value limitation.

A payment shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met: the payment must be used for official agency business; the agency head must determine and control the agency's use of the payment, including the selection of the official who will use the payment; and the agency must report the payment on a Form 801. The Form 801, which must be signed by the

agency head and maintained as a public record in accordance with Government Code Section 81008, must include the following information:

- i Donor Information: The reporting form requires not only the donor's name, but also his or her address, and must identify any other persons who contributed to the gift, as well as the amount each person contributed. If the donor is not an individual, the report must describe the business activity or nature of the entity giving the gift.
- i Description of Payment: The form requires a description of the payment, the date it was received, the intended purpose and the amount of the payment or the actual or estimated fair market value of the goods or services provided, if the amount is unknown.
- i Recipient Information: The form also requires that the agency specify the name, title, and department of the agency official who used the payment.

Regulation 18944(c)(3). For any quarter year period in which the payments received by the agency aggregate to \$2,500 or more since the last filing, a local agency must submit a copy of the form or a detailed summary of the information to its filing officer within 30 days after the close of the quarter. Thereafter, the filing officer must post a copy of the form or the information in a "prominent fashion" on its website within 30 days after the close of the quarter. If the local agency does not maintain a website, the agency must send its Form 801 to the FPPC, which will post the document on its own website. Regulation 18944(d).

5. Gifts to an Official's Family

Regulation 18943 governs gifts to an official's or candidate's family. This regulation was substantially revised in late 2009 and again in 2011. Regulation 18943 adds new definitions and requirements that public officials should carefully review.

Regulation 18943 adds definitions for an official's "family member," which includes an official's spouse or registered domestic partner, a dependent child, and an official's child.

"Dependent child" means a child (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.

An "official's child" (including an adoptive child or stepchild) means a child who meets all of the following criteria:

- i The child is at least 18 but no more than 23 years old and is a full-time or part-time student;

- i The child the same principal residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school is not the child's "principal place of residence"; and
- i The child does not provide more than one-half of his or her own support.

Gifts to Both an Official and One or More Family Members. A single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. See "Wedding Gifts" section below for a particular exception to this rule.

Gifts Solely to Family Members. A gift given solely to a member of an official's family is a gift to the official, when there is no established working, social, or similar relationship between the donor and the official's family member that would suggest an appropriate association for making such a payment and there is evidence to suggest the donor had a purpose to influence the official, such as when:

- i The donor is a lobbyist, lobbying firm, lobbyist employer, or other similar person and is registered to lobby the official's state agency;
- i The donor is involved in an action or decision before the local or state government agency in which the official will reasonably foreseeably participate or in an action in which he or she has participated within the last twelve (12) months; or
- i The donor has a contract with the official's agency or the donor engages in a business that regularly seeks contracts, licenses, permits or other entitlements and the official may reasonably foreseeably make or participate in such a decision or has participated in such a decision within twelve (12) months of the time the gift is made, unless the donor has less than a ten percent (10%) interest in the business.

6. Invitation-Only Events

(a) Invitation-Only Events

When an official and one of his or her guests attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a non-profit or political fundraiser as set forth in Regulation 18946.4, the value received is the official's and the guest's pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending the event. A calculation of the pro-rata share means the total cost of the list above, divided by the

number of acceptances or the number of attendees. Any other specific benefit provided to the official and guest at the event, such as golf green fees, is valued at fair market value. Regulation 18946.2.

(b) Official or Ceremonial Functions

When an official performs an official or ceremonial function at an invitation-only event in which the official is invited to participate by the event's sponsor or organizer to perform an official or ceremonial function, the value received is the pro-rata cost of any meal provided to the official and guest, plus the value of any specific item that is presented to the official and his or her guest at the event. Regulation 18946.2(d).

(c) Drop-In Visit

Except for an event sponsored by a lobbyist, lobbying firm, or lobbyist employer, if an official attends an invitation-only event and does not stay for any meal or entertainment otherwise provided at the event, receiving only minimal appetizers or drinks, the value of the gift received is the value of any specific item, other than food, that is presented to the official and his or her guest at the event. For purposes of this subdivision, "entertainment" means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18946.2(e).

(d) Lobbyists, Lobbying Firms, and Lobbyist Employers

Where an official attends an invitation-only event sponsored by a lobbyist, lobbying firm, or lobbyist employer, the value of the gift is the pro-rata share of the cost of the event. If the official notifies the lobbyist, lobbying firm, or lobbyist employer that the official attended the event but that he or she did not stay for any meal or entertainment, receiving only minimal appetizers and drinks, the value of the gift received is the cost of the food and beverage consumed by the official and guests accompanying the official, plus the value of any specific item that is presented to the official at the event. The term "entertainment" means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18946.2(f).

7. Tickets to Political and Charitable Fundraisers

Regulation 18946.4 has special rules for tickets provided to public officials to fundraisers for nonprofit and political organizations. Such tickets are not considered gifts to a public official if certain requirements are met. This exception applies only to two tickets provided to an official, and only if it is provided directly by the charity or campaign committee; additional tickets are treated as regular gifts. The requirements vary depending on whether the organization is a 501(c)(3) nonprofit, a non-501(c)(3) nonprofit, or a political organization.

(a) Non-501(c)(3) Nonprofit Fundraiser

Regulation 18946.4 provides that a ticket to a fundraising event for a nonprofit, tax-exempt organization that is neither a political campaign committee nor a 501(c)(3) nonprofit shall be valued as follows:

- (1) Where the ticket to the fundraiser clearly states that a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price that constitutes the donation, then the value of the gift is the face value of the ticket or admission reduced by the amount of the donation.
- (2) If there is no ticket or other official information provided by the organization indicating the value of the nondeductible portion of the admission, the value of the gift is the pro-rata share of the cost of any food, catering service, entertainment, and any other item provided to the official that is available to the other guests. A calculation of the pro-rata share means the total cost of the list above, divided by the number of acceptances or the number of attendees. Any other specific benefit provided to the official at the event, such as golf green fees, is valued at fair market value.

(b) Fundraiser for a 501(c)(3) Religious, Charitable, Scientific, Literary or Educational Organization

Where the event is a fundraising event for an organization exempt from taxation under Internal Revenue Code Section 501(c)(3), such an organization may provide two tickets per event to an official, and the ticket shall have no value, so long as the actual value of the non-donation portion of the ticket, plus the aggregate of all other non-donation tickets the official receives from that donor, do not exceed \$440 in a calendar year. Gov't Code § 89503, Regulation 18946.4.

(c) Political Fundraiser

For the gift of a ticket, pass, or other admission privilege to a political fundraising event for a "campaign committee" or a comparable committee regulated under federal law or the laws of another state, the committee or candidate may provide two tickets per event to an official that shall be deemed to have no value. A "campaign committee" is any person or persons who directly or indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year, makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year, or makes contributions totaling ten

thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

8. Tickets and Passes to Events

(a) Exempt from Reporting Requirements and Value Restrictions.

In 2010 and 2011, the FPPC completely revised the regulations regarding tickets and passes that provide admission or access to facilities. Regulation 18944.1 applies only to tickets or passes given to an agency for admission to a facility, event, show or performance for an entertainment, amusement, recreational or similar purpose. The regulation does not apply to: tickets to lunch or dinner events such as non-profit fundraisers where there is no recreation or entertainment; tickets provided in which the official performs a ceremonial role, or; admission provided to a school, college or university official, coach, athletic director or employee to attend an amateur event performed by students of that school, college or university. Accordingly, when a public official receives a ticket or pass that qualifies under this regulation and the official uses the ticket or pass, it does not have to be reported as a gift if one or more of the following exceptions apply:

- (1) Reimbursement. The ticket or pass is not considered a gift if the official reimburses the agency for the ticket.
- (2) Treated as Income. The ticket or pass is not considered a gift if the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income on its Form 802.
- (3) Agency-Distributed Ticket or Pass from Outside Source. If a third party gives a ticket or pass to an agency, and the agency then distributes the ticket to an official for his or her use, it is not a gift so long as: the original source of the ticket or pass has not earmarked it for use by particular agency officials; the agency determines in its sole discretion who uses the ticket or pass; and the distribution of the ticket or pass by the agency is made in accordance with a legitimate policy adopted by the agency, as described below.
- (4) Agency-Provided Ticket or Pass. A ticket or pass that an agency (1) obtains pursuant to the terms of a contract for use of public property, (2) obtains or controls because the agency controls the event or venue, or (3) purchases at fair market value and distributes in accordance with a legitimate policy adopted by the agency, as described below, is not a gift.

(b) Written Policy for Distribution of Tickets.

The distribution of tickets and passes must be made pursuant to a written policy approved by the agency board and posted on the agency website which contains provisions: setting forth the public purposes of the agency for which tickets or passes may be distributed, which may include supporting general employee morale, retention or to reward public service if tickets or passes are given to officials who are not elected; requiring that the distribution of any ticket or pass to or at the behest of an official accomplish a stated public purpose of the agency; and prohibiting the transfer of any ticket received by an agency official, except to his or her immediate family or no more than one guest.

(c) Form 802 for Reporting Distribution of Tickets and Passes.

The head of the agency must fill out and certify a Form 802 describing the distribution of tickets or passes to an official. The Form requires (1) the name of the official who received the ticket or pass, (2) a description and date of the event, (3) the face value of each ticket or pass, (4) the number of tickets or passes distributed to the official, (5) if the official gave the ticket or pass to another person, the name of that person, and (6) the specific public purpose under which the distribution was made or that the ticket or pass was distributed as income to the official. This form must be maintained as a public record, subject to inspection and copying, and be forwarded to the FPPC for posting on its website.

(d) Regulations Limited to Ticket or Pass and Not Food, Beverages or Other Gifts.

If the distribution of a ticket or pass to an official is not a gift to the official, the provision of other benefits, such as food or beverage or other gifts provided to the official “that are included with the admission” are not exempt from the gift reporting requirements and value limitations.

9. Gifts from a Government Agency to an Official in That Agency

A payment by an agency that provides food, beverage, entertainment, goods or services of more than a nominal value to an official in that agency is a reportable gift to that official, unless the payment is a “lawful expenditure of public moneys.” Regulation 18944.3.

Several commentators have questioned the need or usefulness of this regulation because a public agency is already prohibited from making a payment that is not a “lawful expenditure of public moneys.” Boiled down, the regulation states that it is illegal for an agency to give a gift unless the gift is legal. Until the FPPC issues some formal opinions or advice letters clarifying the regulation, or revises the text, its immediate application is unclear.

10. Wedding Gifts

The value to an official of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift's total value. This is an exception to the rule, described above in "Gifts to an Official's Family," that a single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. Wedding gifts may exceed the maximum gift value of \$440. Regulations 18942(b), 18946.3.

11. Certain Gifts of Travel

Payments for travel for a public official are generally subject to the annual gift limit, unless the payment is otherwise exempt. FPPC regulations state that a "payment for travel" includes "any payment that provides transportation to an official from one location to another location," as well as the cost of lodging and food connected with the travel. Regulation 18950(b).

For reporting purposes, payments of air travel are valued in accordance with FPPC regulation 18946.5, as follows. Air travel is valued as the price the carrier charges the public for the same class seat on the flight provided to the official in the case of a commercial flight. The value of all other air transportation is the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of passengers aboard the flight.

Exceptions for certain gifts of travel are found in both the Act and the FPPC regulations, which are discussed below. The FPPC regulations on this point were substantially revised in 2013. Public officials should review these exceptions closely and consult with the agency's legal counsel before relying on them.

- (a) Travel payments related to speeches that serve a governmental purpose

Section 89506(a)(1) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if made in connection with a speech made by the official in the US. § 89506(a)(1); Regulation 18950(a). These types of payments for travel are not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(1); Regulation 18950(a).

- (b) Travel payments related to a governmental purpose made by government agencies and certain non-profits

Section 89506(a)(2) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if provided by a governmental agency, a 501(c)(3) nonprofit, and a few other limited organizations/persons. § 89506(a)(2). These types of

payments for travel are not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(2); Regulation 18950(a).

(c) Travel for education, training, or intra-agency purposes

Regulation 18950(c)(2), as amended in 2013, now expressly states that any payment for travel and per diem expenses received from a state, local, or federal agency is not a gift or income if used by the official for "education, training, or other inter-agency programs or purposes." Regulation 18950(c)(2).

(d) Travel in a vehicle or plane owned by another official or agency

Regulation 18950(c)(3), as amended in 2013, now provides that "transportation provided to an official in a vehicle or aircraft owned by another official or agency when each official is traveling to or from the same location for an event as a representative of their respective offices" does not constitute a "payment" and therefore does not count as a gift. Regulation 18950(c)(3).

(e) Travel Made in Conjunction with Official Agency Business

Regulation 18950.1, as revised in 2013, now provides an exception for travel provided by sources other than local, state, or federal agencies if the travel is made in conjunction with certain types of official agency business. This exemption applies only to travel payments that meet all of the following requirements:

- (1) The payment is made directly to or coordinated with the government employer and not made to the employee;
- (2) The payment is used for official agency business;
- (3) The government employer determines which official will use the payment for travel;
- (4) The payment provides no personal benefit to the official who uses the payment;
- (5) The duration of travel is limited to that necessary to accomplish the purposes for which the travel was provided; and
- (6) The government employer reports the payment, as specified below.

The second requirement above – that the payment be used for official agency business – is satisfied under any of the following circumstances:

- i The payment is made pursuant to a provision in a contract requiring the contracting party to pay any expenses associated with any required governmental travel resulting from the government agency's participation in the contract and the payment is used for that purpose;
- i The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform;
- i The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members;
- i The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event;
- i The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official's job duties and the payment is provided by an organization that commonly provides such training;
- i The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting; or
- i The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially

enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase the product pursuant to the jurisdictional authority of the official's governmental employer.

The third requirement above – that the payment is made directly to or coordinated with the agency – is satisfied if the government employer selects the public official who will use the payment for travel. If, however, the payment relates to an oral presentation to provide training or discuss policy and direction in implementing the agency's functions, the donor of the payment may request the official who is most qualified to make the presentation. Regulation 18950.1(d).

The fourth requirement above – that the payment of travel does not provide a personal benefit to the official – is satisfied under Regulation 18950.1(e) if both of the following requirements are met:

- i The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties.
- i Travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense.

The latter requirement does not apply to either of the following:

- i Payment for food where food is provided as part of the admission to the event. Otherwise, any payments for food must be made to the government employer pursuant to the employer's per diem travel policy. Regulation 18950.1(b).
- i Payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees. Regulation 18950.1(g).

The sixth requirement above – that the payment is reported – is satisfied by the agency reporting the payment on a quarterly basis on a form prescribed by the FPPC. Regulation 18950.1(f). All such forms must be maintained as a public record and subject to inspection and copying under Government Code Section 81008.

(f) Travel in Connection with Bona Fide Business

The FPPC regulations reiterate the general rule in Government Code Section 89506, whereby a payment made for transportation, lodging, or food, which is made in connection with a bona fide business trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Internal Revenue Code Sections 162 and 274, is not an honorarium or gift, unless the sole or predominant activity of the business, trade or profession is making speeches. Regulation 18950.2.

(g) Travel Paid from Campaign Funds

A payment made to an official who is a candidate to cover his or her transportation, lodging or food, in connection with campaign activities, is a contribution to the campaign committee of that official. Regulation 18950.3(a). A payment made to an official by or at the behest of a committee for the official's actual travel expenses (including food and lodging), or for other actual and allowable campaign expenses, is neither income nor a gift to the official so long as the expenses are reportable by the committee under the relevant sections of the Political Reform Act (Government Code Sections 84100 et seq.) or applicable federal law. Any other payment for travel from a committee to an official that is not covered by Regulation 18950.3(a) and (b) is income or a gift.

B. Prohibitions on Receipt of Honoraria

Government Code Section 89502 provides that an elected officer of a local government agency and any official listed in Section 87200 shall not accept an honorarium. An "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

1. Exceptions to the Prohibition on Honoraria

(a) Earned Income Exception

"Honorarium" does not include income earned for personal services if:

- (1) The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting; and
- (2) The services are customarily provided in connection with the business, trade, or profession.

Regulation 18932.

(b) Informational Materials

“Honorarium” does not include informational materials such as books, calendars, videotapes, or free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties. Regulation 18932.4(a).

(c) Family Payments

“Honorarium” does not include a payment received from one’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not listed in this paragraph. Regulation 18932.4(b).

(d) Campaign Contributions

“Honorarium” does not include a campaign contribution that is required to be reported. Regulation 18932.4(c).

(e) Personalized Plaque or Trophy

“Honorarium” does not include a personalized plaque or trophy with an individual value of less than \$250. Regulation 18932.4(c).

(f) Admission and Incidentals at Place of Speech

“Honorarium” does not include free admission, refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. Regulation 18932.4(e).

(g) Incidentals at Private Conference

Likewise, “honorarium” does not include any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:

- (1) Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering; or

- (2) Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.

However, the foregoing may be reportable as gifts. Regulation 18932.4(f).

(h) Travel that Is Exempt from Gifts

Any payment made for transportation, lodging, and subsistence that is exempt by the gift exceptions listed in Section 89506 and Regulation 18950 et seq. Regulation 18932.4(g).

C. Prohibitions on Receipt of Certain Types of Loans

1. Prohibition on Loans Exceeding \$250 from Other City Officials, Employees, Consultants and Contractors

Elected officials and other city officials specified in Section 87200, including council members, may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member or consultant of their city or any local government agency over which their city exercises direction and control. § 87460(a), (b). In addition, elected officials and other city officials specified in Section 87200 may not receive a personal loan that exceeds \$250 at any given time from any individual or entity that has a contract with their city or any agency over which their city exercises direction and control. § 87460(c), (d).

2. Requirement for Loans of \$500 or More from Other Persons and Entities to Be in Writing

Elected local officials may not receive a personal loan of \$500 or more unless the loan is made in writing and clearly states that terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. § 87461.

3. Exceptions to Loan Limits and Documentation Requirements

The following loans are not subject to the limits and documentation requirements specified in subparts 1 and 2 above:

- i Loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status.
- i Loans received by an elected officer's or candidate's campaign committee.

- i Loans received from the elected or appointed official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption.
- i Loans made, or offered in writing, prior to January 1, 1998.
- 4. Loans that Become Gifts Subject to the Gift Prohibition

Under the following circumstances, a personal loan received by any public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file a Statement of Economic Interests) may become a gift and subject to gift and reporting limitations:

- i If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.
- i If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of: the date the loan was made; the date the last payment of \$100 or more was made on the loan; or the date upon which the official has made payments aggregating to less than \$250 during the previous 12-month period.
- 5. Exceptions – Loans that Do Not Become Gifts

The following loans will not become gifts to an official:

- i A loan made to an elected officer's or candidate's campaign committee.
- i A loan on which the creditor has taken reasonable action to collect the balance due.
- i A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)
- i A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

- i A loan that would not be considered a gift as outlined in paragraph 3 above (e.g., loans from family members).

§ 87462.

IV. PROHIBITION AGAINST MASS MAILINGS

The Political Reform Act also prohibits the sending of newsletters and other so-called “mass mailings” at public expense. § 89001. A “mass mailing” is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency. Regulation 18901. The underlying intent of the Government Code provision and the implementing FPPC Regulation is to preclude elected officials from using newsletters as indirect campaign flyers for themselves. The law and regulations are intended to clamp down on prior abuses of newsletters so that elected officials cannot use publicly funded newsletters to bolster their name or accomplishments while in office.

A. Test for Prohibited Mass Mailing

The FPPC regulations provide a four prong test to determine the legality of mass mailings. A mass mailing is prohibited if each of the following elements is present:

- i A delivery of a tangible item,
- i that “features,” or includes reference to, an elected official,
- i at public expense,
- i in a quantity of 200 or more items.

Regulation 18901. Most public agencies that publish newsletters attempt to avoid the prohibition by ensuring that the newsletter does not meet the second element of the test. Each of the four elements is discussed in numerical order below.

1. Delivery of Tangible Item

First, a court will determine whether “[a]ny item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. . . . [T]he item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.” Regulation 18901(a)(1). This means that if a city intends to deliver a written document, such as a city newsletter, by U.S. mail or by hand to residents or businesses, this element is satisfied.

2. Features or Includes Reference to an Elected Official

The second part of the test is the most important and is stated as follows:

The item sent either:

- i Features an elected officer affiliated with the agency which produces or sends the mailing, or
- i Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

Regulation 18901(a)(2). The term “features an elected officer” is defined in a later portion of the regulation to mean that “the item mailed includes the elected officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, type face, or type color.” Regulation 18901(c)(2). And the term “elected officer affiliated with the agency” in this manner means “an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.” Regulation 18901(c)(1).

This means that if the written document includes the photograph of a council member, even if it just shows the council member cutting a ribbon on a civic project or giving out a plaque to a member of the community, this element would be satisfied and the mailing would be prohibited. It also precludes articles about an elected city official or articles in which they are “singled out” for discussion or reference.

The other way this second part of the mass mailing test can be satisfied is if an elected city official’s “name, office, photograph, or other reference” is included in a written document and the document, or any part of it “is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.” This restriction presents elected officials with a choice. If the elected official involves him- or herself in the preparation of the document, then even the official’s name is excluded from appearing in the document pursuant to this second subpart. If, on the other hand, the elected official does not involve him- or herself in the preparation of the document, his or her name may appear in the document, but just not in a way that it is “featured” by way of headlines, captions, type size, type face, or type color.

3. Public Expense

The third part of the test is whether:

- i Any of the costs of distribution [are] paid for with public moneys; or
- i Costs of design, production, and printing exceeding \$50 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

Regulation 18901(a)(3). This part of the test precludes the city from either paying the costs of mailing a mass mailing, or paying more than \$50 of the cost of having it produced if another entity then pays for the cost of distributing the mailing.

4. At Least 200 Copies of the Item

The fourth and final element of the test to determine whether a mass mailing is prohibited is whether “[m]ore than 200 substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request.” Regulation 18901(a)(4). This means that if more than 200 copies of the same written document, such as a city newsletter, are sent to the public in the same month, this element will be satisfied, with minor exceptions discussed below.

A city newsletter is particularly prone to violating the mass mailing proscriptions, especially the first, third and fourth elements of the test. The key to a lawful newsletter is to ensure that each issue of the newsletter fully avoids meeting the criteria of the second element of the test. This means that the newsletter cannot “feature” an elected city official and cannot include an elected official’s name or reference if that official participates in the preparation of the newsletter, as discussed above. For example, many cities issue proclamations and awards at council meetings, and it is customary for an honoree to be photographed with the mayor. In order to comply with the mass mailing restrictions, the cities take two photographs: one of the honoree shaking the mayor’s hand, for distribution to non-city publications such as a local newspaper, and one of the honoree standing alone, for publication in the city newsletter.

B. Exceptions to the Mass Mailing Prohibition

Subdivision (b) of the regulation contains a list of certain types of documents that are exempt from the prohibition of mass mailings. The first of these documents is a letter on city letterhead where the elected official’s name only appears in the letterhead along with a list of all other elected officers of the city and the letter does not contain other references to the elected official. Regulation 18901(b)(1). Under this exemption, a non-elected official, such as the city manager, may send a letter on city letterhead at city expense to members of

the community but an elected officer, such as the mayor, cannot do the same because the signature on the letter will be considered a separate reference to the elected official. If a letter signed by the mayor is to be sent to the community, a private individual or group would have to pay for the cost of producing and sending that letter.

Other exemptions include press releases to the media, intra-agency communications (Regulation 18901(b)(4)), statements and bills (Regulation 18901(b)(5)), telephone directories (Regulation 18901(b)(8)), meeting or event announcements (Regulation 18901(b)(9)), and meeting agendas (Regulation 18901(b)(10)). All of these items are subject to their own specific limitations, as set forth in the regulation.

V. EXPENDITURES TO SUPPORT OR DEFEAT A BALLOT MEASURE

A local government may not spend public funds to assist with the passage or defeat of an initiative or other ballot measure or to contribute to a campaign for or against a candidate. Public monies may not be spent on commercials, announcements, banners or any other promotional materials. This is based on the theory that it would be unfair to voters with opposing views to use public funds in this way. The prohibition also serves to prevent elected officials from using government funds to promote themselves or their allies in office. § 54964; *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976); *League of Women Voters v. County-Wide Criminal Justice Coordinating Comm'n*, 203 Cal. App. 3d 529 (1988). However, this section does not prohibit the expenditure of city funds to provide information to the public about the possible effects of the ballot measure on the activities, operations, or policies of the city, as long as these activities are otherwise allowed under California law, and the information is factual, accurate, fair, and impartial.

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*, 17 Cal. 3d 206(1976). In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director lacked such authority and set forth the basic rule that “in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign.” Only impartial “informational” communications would be permissible, such as a fair presentation of the facts in response to a citizen’s request for information.

The *Stanson* Court also recognized that the line between improper “campaign” expenditures and proper “informational” activities is not always clear. “[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case.” *Id.* at 221-22. The *Stanson* test was recently reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*, 46 Cal.4th 1 (2009).

Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff's use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was "political" and not "informational" as permitted by *Stanson* because the cards presented only one side of Justice Bird's fitness to be retained in office. 200 Cal. App. 3d 730, 746-747 (1987). In another appellate decision, *Schroeder v. City Council of Irvine*, another court of appeal upheld Irvine's "Vote 2000" Program. 97 Cal. App. 4th 174 (2002). The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the city had taken a public position in favor of the proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure. Because the city presented a neutral position on "Measure F," at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that "express advocacy" is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the city's utility users tax ("Measure O") sued the city alleging improper government expenditures, the court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing. Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the "express advocacy" standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in *Stanson*. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the city's regular annual budget pertaining to the maintenance of the city's website, the publication of the city's regular quarterly newsletter, and the ordinary provision of information to the public regarding the city's operations. The Supreme Court found that in posting on the city's website the minutes of city council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at city council meetings, the city engaged in informational rather than campaign activity. Similarly, the city did not engage in campaign activity in producing a one-page document listing the program reductions that the city council voted to implement should Measure O be approved, or in making copies of the document available to the public at the city clerk's

office and public libraries. The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the city council voted to implement should Measure O be approved.

Finally, the court found that the city engaged in permissible informational activity by mailing to city residents the fall 2002 “City Round-Up” newsletter containing articles describing proposed reductions in city services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court’s conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all city residents as a general practice, the style and tenor of the publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.

The Supreme Court illustrated the insufficiency of the “express advocacy” standard by suggesting that if the city were to post billboards throughout the city prior to an election stating, “IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE,” it would defy common sense to suggest that the city had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard.

Vargas and Stanson reflect that local agencies must exercise caution when communicating to voters about local measures. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for “informational activities.” Whether a communication is permissible will be based on a combination of these factors, and public officials should therefore seek the advice of the city attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Last, public officials should also be aware of a fairly new mass mailing rule that regulates communications pertaining to candidates and ballot measures. In 2009, the FPPC adopted a new regulation to prohibit government agencies from paying for mass mailings that expressly advocate or “unambiguously urge” a particular result in an election. Regulation 18901.1 prohibits a mailing if all of the following criteria are met:

- i A delivery of a tangible item such as a written document, video tape, record, or button and is delivered to the recipient at his or her residence, place of employment or business, or post office box;
- i The item sent expressly advocates or unambiguously urges a particular result in an election;

- i The public agency (1) pays to distribute the item or (2) pays costs, exceeding \$50, reasonably related to designing, producing, printing or formulating the content of the item including, but not limited to payments for polling or research and payments for the salary, expenses, or fees of the agency’s employees, agents, vendors, or consultants with the intention of sending the item; and

- i More than 200 substantially similar items are sent during the course of the election including items sent during the qualification drive or in anticipation of an upcoming election.

A mailing “unambiguously urges a particular result in an election” if the communication can be reasonably characterized as campaign material or activity and is not a fair presentation of facts serving only an informational purpose when taking into account the style, tenor, and timing of the communication.

There are exceptions to this rule, and the following are not considered campaign related mass mailings: an agency report providing the agency’s internal evaluation of a measure sent to a member of the public upon the individual’s request; a written argument sent to a voter in the voter information pamphlet; and a communication clearly and unambiguously authorized by law. Essentially, this regulation utilizes the standards articulated by the Supreme Court in the Vargas case and provides that communications that violate those standards are prohibited mass mailings.

VI. PROHIBITION ON GIFTS OF PUBLIC FUNDS

Article XVI, Section 6 of the California Constitution prohibits state and local governments from making gifts of public funds or property. A transfer of property without consideration is a gift. Civ. Code § 1146. However, where property is transferred for a “public purpose” it will not be considered a gift of public funds. There, “[t]he benefit to the government from an expenditure for a ‘public purpose’ is in the nature of consideration and funds expended are therefore not a gift even though private persons are benefited therefrom.” 69 Ops. Cal. Att’y Gen. 168 (1986) (citing California Employment Stabilization Comm’n v. Payne, 31 Cal. 2d 210, 216 (1947); Alameda County v. Janssen, 16 Cal. 2d 276, 281 (1940)).

In determining whether a legislative body has made a gift of public funds, courts will look first at “whether the money is to be used for a public or private purpose.” Oakland v. Garrison, 194 Cal. 298, 302 (1941). “If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift.” Id. As the California Court of Appeal explained in Board of Supervisors v. Dolan, “[i]t is settled that if a public purpose is served by the expenditure of public funds, the constitutional prohibition is not violated even though there may be incidental benefits to private persons.” 45 Cal. App. 3d 237, 243 (1975). However, to avoid violating the constitutional prohibition,

public financial assistance must be tailored or “directly related” to a public purpose. *California Housing Finance Authority v. Elliott*, 17 Cal. 3d 575 (1976). Thus, financial assistance that does not directly further the proffered public purpose may still be found to be unconstitutional.

Courts defer to the legislative body’s determination of what constitutes a “public purpose.” The concept of public purpose has been “liberally construed by the courts,” and a city council’s determination of public purpose will be upheld unless it is “totally arbitrary.” *County of Alameda v. Carleson*, 5 Cal. 3d 730, 746 (1971). Where a city acts pursuant to a state statute or in furtherance a state statute, courts will defer to the state legislature in determining whether a public purpose exists.

VII. CONCLUSION

More often than not, determining the application of conflicts of interest laws in particular circumstances requires complicated analysis. Because the consequences for a violation of these laws can be very serious, it is important that potential conflicts be identified as soon as possible to ensure that the appropriate analysis can be performed. To that end, we recommend that public agency staff prepare 500 foot radius maps of council members (and other public officials, such as planning commissioners) so that such officials may be alerted to projects that are located within 500 feet of their residence. Keep in mind, however, that it is the individual responsibility of a public official to determine whether that public official has a conflict.

We encourage officials and staff to seek advice from the city attorney when in doubt about a conflicts of interest issue. Because only a formal, written opinion from the FPPC can immunize someone from prosecution, we strongly encourage officials and staff to seek advice from the city attorney as early as possible, so that, if necessary, the public agency may request a formal opinion from the FPPC prior to any participation in a decision where a public official may have a conflict.

In addition, the Legislature has enacted a statute that requires public officials to take at least two hours of ethics training every two years if the local agency provides that official with any type of compensation, salary or stipend or provides reimbursement for necessary and reasonable expenses incurred by that official in the performance of their official duties. § 53235(a). Ethics training would also be required of any employee designated by the local agency to receive such training. § 53234(c). Please seek advice from the city attorney regarding further details about ethics training.

Appendix A

Selected Regulations of the Fair Political Practices Commission

Title 2, Division 6, California Code of Regulations

**SELECTED REGULATIONS OF
THE FAIR POLITICAL PRACTICES COMMISSION,
Title 2, Division 6, California Code of Regulations**

**CHAPTER 7. CONFLICTS OF INTEREST
ARTICLE 1. GENERAL PROHIBITION**

Section 18700. Basic Rule; Guide to Conflict of Interest Regulations.

Note: On April 25, 2013, the FPPC amended this section but delayed the effective date of the new regulation pending adoption of further amendments as part of a comprehensive reorganization of the FPPC's conflict of interest regulations. As of this Handbook's date of publication, the amendment is not effective. The following is the text of the existing regulation. The text of the new regulation follows afterward.

- (a) No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official's participation is legally required.
- (b) To determine whether a given individual has a disqualifying conflict of interest under the Political Reform Act, proceed with the following analysis:
 - (1) Determine whether the individual is a public official, within the meaning of the Act. (See Government Code § 82048; 2 Cal. Code Regs. section 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Political Reform Act.
 - (2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (See 2 Cal. Code Regs. section 18702.) If the public official is not making, participating in making, or using or attempting to use his/her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Political Reform Act.
 - (3) Identify the public official's economic interests. (See 2 Cal. Code Regs. section 18703.)

- (4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (See 2 Cal. Code Regs. section 18704.)
- (5) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704. (See 2 Cal. Code Regs. section 18705.)
- (6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of Regulations, title 2, section 18705) on each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See 2 Cal. Code Regs. section 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If it is reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, and the official does not participate in the decision, determine whether the official may segment the decision into separate decisions to allow his or her participation in subsequent decisions. (See 2 Cal. Code Regs. section 18709.)
- (7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the official can establish that the reasonably foreseeable material financial effect on his or her economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Political Reform Act. (See 2 Cal. Code Regs. section 18707.)
- (8) Determine if the public official's participation is legally required despite the conflict of interest. If the official can establish that his or her participation is legally required, he or she may participate in the governmental decision despite the conflict of interest. (See 2 Cal. Code Regs. section 18708.)

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100 and 87103, Government Code.

Section 18700. Basic Rule; Application: Definitions; Guide to Conflict of Interest Regulations.

Note: This is the text of the April 25, 2013 amendment to Section 18700. The FPPC delayed the effective date of the new regulation pending adoption of further amendments as part of a comprehensive reorganization of the FPPC's conflict of interest regulations. As of this Handbook's date of publication, the amendment is not effective. The following is the text of the amended regulation. The text of the existing regulation is found above.

- (a) Basic Rule: A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c) (A-F) herein (Sections 87100, 87101 and 87103).
- (b) Application: The Act's conflict of interest prohibitions apply only to public officials and only to governmental decisions that have a financial effect.
- (c) For purposes of the Act's conflict of interest provisions. (Sections 87101-87105; Regulations 18700-18706, the following definitions apply:
 - (1) "Public Official" (see Section 82048) means every member, officer, employee or consultant of a state or local government agency other than:
 - (A) A judge or court commissioner;
 - (B) A member of the Board of Governors and designated employees of the State Bar of California.
 - (C) A member of the Judicial Council;
 - (D) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.
 - (E) A federal officer or employee serving in an official federal capacity on a state or local government agency.

- (2) “Member” does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.
- (A) A committee, board, commission, group or other body possesses decisionmaking authority whenever:
- (i) It may make a final governmental decision;
 - (ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
 - (iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.
- (B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (3)(A)(i-iii), above.
- (3) “Governmental agency” means any state or local agency or any entity or organization acting as a governmental agency as determined under Regulation 18700.1.
- (4) “Governmental decision” means any action taken by a government agency, that has a financial effect on any person other than the governmental agency making the decision.
- (5) “Financial effect” means an effect that provides a benefit of monetary value or provides, prevents, or avoids a detriment of monetary value.
- (6) “Financial interest” means anything or anyone listed in subparagraphs (A-E) below and includes an interest in the public official’s own personal finances and those of a member of his or her immediate family.
- (A) Any business entity, as defined in Section 82005, in which the public official has a direct or indirect investment worth of at least \$2,000 (Section 87103(a)). For a “parent subsidiary or otherwise related business entity,” see Regulation 18700.2.

- (B) Any real property, as determined under Regulation 18700.3, in which the public official has a direct or indirect interest of at least \$2,000 (Section 87103(b));
 - (C) Any source of income, as defined in Section 82030, amounting to a total of at least \$500, provided or promised to, and received by the public official within 12 months before the decision is made (Section 87103(c)). Income is “promised to” the public official if he or she has a legally enforceable right to the promised income [moved from Regulation 18703.3]. For a source of income that is a business entity that is a “parent, subsidiary, or otherwise related business entity”, see Regulation 18700.3.
 - (D) Any business entity, as defined in Section 82005, in which the public official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)). For a “parent, subsidiary, or otherwise related business entity,” see Regulation 18700.2.
 - (E) Any donor, or any intermediary or agent for a donor of, a gift or gifts amounting to a total of at least \$440 provided to, received by, or promised to the public official within 12 months before the decision is made (Section 87103(e); Regulation 18941(b)).
 - (F) For purposes of this paragraph (c)(8), indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and depending children own directly, indirectly, or beneficially at least a 10 percent interest (Section 87103(e); see also Sections 82033 and 82034).
- (d) To determine whether a public official has a prohibited conflict of interest under the Act, proceed with the following analysis:
- (1) Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official’s financial interests? To determine if the financial effect is reasonably foreseeable, apply Regulation 18701. If the answer is no, there is not conflict of interest under the Act. If the answer is yes, proceed to Step Two.
 - (2) Step Two: Will the reasonably foreseeable financial effect be material? To determine if the reasonably foreseeable financial effect is material, apply Regulation 18702. If the answer is no, there is no conflict of interest under the Act. If the answer is yes, proceed to Step Three.

- (3) Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally? To determine if the material financial effect on any of the public official's financial interest is indistinguishable from its effect on the public generally, apply Regulation 18703. If the answer is yes, there is no conflict of interest under the Act. If the answer is no, proceed to Step Four.
- (4) Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision. To determine if the public official is "making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision," apply Regulation 18704. If the public official will be called upon to make, participate in the making, or use his or her official position to influence a governmental decision in which he or she has a financial interest as determined under Step One through Step Three, he or she will have a prohibited conflict of interest.
- (e) Exception: Notwithstanding the provisions of Sections 87100 and 87103 and this regulation, a public official may make or participate in a governmental decision in which he or she has a prohibited conflict of interest if the provisions of Section 87101 and Regulation 18705 apply.
- (f) Segmentation: To determine if an agency may segment a decision in order to allow a public official to participate in a governmental decision by removing from consideration the elements of the governmental decision in which the official would otherwise have a prohibited conflict of interest, apply Regulation 18706.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100 and 87103, Government Code.

Section 18701. Public Official, Definitions.

- (a) For purposes of Government Code section 82048, which defines "public official," and Government Code section 82019, which defines "designated employee," the following definitions apply:
 - (1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority.
 - (A) A committee, board or commission possesses decisionmaking authority whenever:

- (i) It may make a final governmental decision;
 - (ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
 - (iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.
- (B) A committee, board, or commission does not possess decisionmaking authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.
- (2) “Consultant” means an individual who, pursuant to a contract with a state or local government agency:
- (A) Makes a governmental decision whether to:
 - (i) Approve a rate, rule, or regulation;
 - (ii) Adopt or enforce a law;
 - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
 - (v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
 - (vi) Grant agency approval to a plan, design, report, study, or similar item;
 - (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

- (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code section 87302.
- (b) For purposes of Government Code section 87200, the following definitions apply:
- (1) "Other public officials who manage public investments" means:
 - (A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;
 - (B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and
 - (C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision(b)(1)(B) above.
 - (2) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.
 - (3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.
 - (4) "Management of public investments" means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

COMMENT: In limited circumstances, the members of a nonprofit organization may be “public officials.” (In re Siegel (1977) 3 FPPC Ops. 62.)

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82019, 82048, 87100, 87200 and 87302, Government Code.

Section 18702. Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined.

- (a) To determine if a public official is making, participating in making, or using or attempting to use his/her official position to influence a government decision, apply 2 Cal. Code Regs. sections 18702.1 through 18702.4, respectively.
- (b) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1)–(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 81002, 81003, 87100, 87101, 87105, and 87200, Government Code.

Section 18702.1. Determining When a Public Official is Making a Governmental Decision.

- (a) A public official “makes a governmental decision,” except as provided in 2 Cal. Code Regs. section 18702.4, when the official, acting within the authority of his or her office or position:
 - (1) Votes on a matter;
 - (2) Appoints a person;
 - (3) Obligates or commits his or her agency to any course of action;
 - (4) Enters into any contractual agreement on behalf of his or her agency;
 - (5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or (a)(4), above, unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official’s financial interest, the official’s determination may be accompanied by an oral or written disclosure of the financial interest.

- (b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.
- (c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.
- (d) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1) – (a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

COMMENT: Nothing in this section authorizes or prohibits an agency by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers.

Section 18702.2. Determining When a Public Official is Participating in Making a Governmental Decision.

A public official “participates in making a governmental decision,” except as provided in Title 2, California Code of Regulations, section 18702.4, when, acting within the authority of his or her position, the official:

- (a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
- (b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:
 - (1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
 - (2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A).

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87100, Government Code.

Section 18702.3. Determining When a Public Official is Using or Attempting to Use His/Her Official Position to Influence a Governmental Decision.

- (a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.
- (b) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87100, Government Code.

Section 18702.4. Exceptions.

- (a) Making or participating in making a governmental decision shall not include:
 - (1) Actions of public officials which are solely ministerial, secretarial, manual, or clerical;
 - (2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Title 2, California Code of Regulations, section 18702.4(b)(1); or
 - (3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract. In the case of public officials who are "consultants," as defined in Title 2, California Code of Regulations, section 18701(a)(2), this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the agency, so long as they are acting in their private capacity.

- (b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:
- (1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:
 - (A) An interest in real property which is wholly owned by the official or members of his or her immediate family.
 - (B) A business entity wholly owned by the official or members of his or her immediate family.
 - (C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.
 - (2) Communicates with the general public or the press.
 - (3) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.
 - (4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.
 - (5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:
 - (A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;
 - (B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related

professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner.

(c) Academic Decisions

(1) Except as provided in subsection (c)(2), neither disclosure of financial interests nor disqualification is required under Government Code sections 87100, 87302, or any Conflict of Interest Code, in connection with:

(A) Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching;

(B) Decisions made by a person who has teaching or research responsibilities at an institution of higher education to pursue personally a course of academic study or research, to apply for funds to finance such a project, to allocate financial and material resources for such academic study or research, and all decisions relating to the manner or methodology with which such study or research will be conducted. Provided, however, that the provisions of this subsection (c)(1)(B) shall not apply with respect to any decision made by the person in the exercise of institution- or campus-wide administrative responsibilities respecting the approval or review of any phase of academic research or study conducted at that institution or campus.

(2) Disclosure (consistent with 2 Cal. Code Regs. section 18755) shall be required under Government Code section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, but disqualification may not be required under Government Code sections 87100, 87302 or any Conflict of Interest Code in connection with any such decision if the decision is substantively reviewed by an independent committee established within the institution.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87100, Government Code.

Section 18702.5. Public Identification of a Conflict of Interest for Section 87200 Filers.

- (a) Government Code section 87105 and this regulation apply when a public official who holds an office specified in Government Code section 87200 has a financial interest in a decision within the meaning of Government Code section 87100, and the governmental decision relates to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.).
- (b) Content & Timing of Identification: The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:
 - (1) The public official shall publicly identify:
 - (A) Each type of economic interest held by the public official which is involved in the decision and gives rise to the conflict of interest (i.e., investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and
 - (B) The following details identifying the economic interest(s):
 - (i) if an investment, the name of the business entity in which each investment is held;
 - (ii) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;
 - (iii) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;
 - (iv) if income or gifts, then identification of the source; and
 - (v) if personal financial effect, then identification of the expense, liability, asset or income affected.
 - (2) Form of Identification: If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.
 - (3) Recusal/Leaving the Room: The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and

(b)(2) of this regulation is made. He or she shall not be counted toward achieving a quorum while the item is discussed.

- (c) **Special Rules for Closed Session:** If the governmental decision is made during a closed session of a public meeting, the public identification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his or her recusal is because of a conflict of interest under Government Code section 87100. The declaration shall be made part of the official public record. The public official shall 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 governmental decision.
- (d) **Exceptions:**
- (1) **Uncontested Matters:** The exception from leaving the room granted in Government Code section 87105(a)(3) for a “matter [that] has been placed on the portion of the agenda reserved for uncontested matters” shall mean agenda items on the consent calendar. When the matter in which the public official has a financial interest is on the consent calendar, the public official must comply with subdivisions (b)(1) and (b)(2) of this regulation, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.
 - (2) **Absence:** If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, then Government Code section 87105 and this regulation impose no public identification duties on the public official for that item at that meeting.
 - (3) **Speaking as a Member of the Public Regarding an Applicable Personal Interest:** When a personal interest found in 2 Cal. Code Regs. section 18702.4(b) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion of the matter with the members of the public.

COMMENT: Nothing in the provisions of this regulation is intended to cause an agency or public official to make any disclosure that would reveal the confidences of a closed session or any other privileged information as contemplated by law including but not limited to the recognized privileges found in 2 Cal. Code Regs. section 18740.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87105 and 87200, Government Code.

Section 18703. Economic Interests, Defined.

For purposes of Title 2, Division 6, Chapter 7 of the California Code of Regulations, the term “economic interest” includes the interests defined in Title 2, California Code of Regulations, sections 18703.1 through 18703.5, inclusive.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18703.1. Economic Interest, Defined: Business Entities.

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in a business entity if any of the following are true:

- (a) The public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more in the business entity.
- (b) The public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.
- (c) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code section 87103(a) or (d).
- (d) Parent, Subsidiary, Otherwise Related Business Entity, defined.
 - (1) Parent-subsidiary. A parent-subsidiary relationship exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.
 - (2) Otherwise related business entity. Business entities, including corporations, partnerships, joint ventures and any other organizations and enterprises operated for profit, which do not have a parent-subsidiary relationship are otherwise related if any one of the following three tests is met:
 - (A) One business entity has a controlling ownership interest in the other business entity.
 - (B) There is shared management and control between the entities. In determining whether there is shared management and control, consideration should be given to the following factors:

- (i) The same person or substantially the same person owns and manages the two entities;
 - (ii) There are common or commingled funds or assets;
 - (iii) The business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis;
 - (iv) There is otherwise a regular and close working relationship between the entities; or
- (C) A controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.
- (e) Although a public official may not have an economic interest in a given business entity pursuant to subdivisions (a)-(c) of this section, the public official may nonetheless have an economic interest in the business entity if it is a source of income to him or her. (See 2 Cal. Code Regs. section 18703.3.)

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18703.2. Economic Interest, Defined: Real Property.

- (a) For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more in fair market value.

COMMENT: For the statutory definition of “interest in real property,” see Government Code section 82033.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18703.3. Economic Interest, Defined: Source of Income.

- (a) (1) For purposes of disqualification under Sections 87100 and 87103, a public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars (\$500) or more within 12 months prior to the time when the relevant governmental decision is

made. A public official's income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income.

- (2) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has an interest as defined in Section 87103(c). "Parents, subsidiaries, and otherwise related business entities" are defined in Regulation 18703.1(d).
 - (3) In addition to having an economic interest in any business entity from which the official has received income of five hundred dollars (\$500) or more within 12 months prior to the time when the relevant governmental decision is made, the official has a source-of-income economic interest in all of the following:
 - (A) Any individual owning a 50 percent or greater interest in that business entity.
 - (B) Any individual, regardless of the extent of the individual's ownership interest in that entity, who has the power to direct or cause the direction of the management and policies of the business entity.
- (b) Former employers. Source of income, as used in Section 87103(c) and this section, shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.
- (c) Sources of Commission Income to Brokers, Agents and Salespersons
- (1) "Commission income" means gross payments received by a public official as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.
 - (2) The sources of commission income in a specific sale or similar transaction include for each of the following:
 - (A) An insurance broker or agent:
 - (i) The insurance company providing the policy;
 - (ii) The person purchasing the policy; and

- (iii) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.
- (B) A real estate broker:
 - (i) The person the broker represents in the transaction;
 - (ii) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;
 - (iii) Any brokerage business entity through which the broker conducts business; and
 - (iv) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
- (C) A real estate agent:
 - (i) The broker and brokerage business entity under whose auspices the agent works;
 - (ii) The person the agent represents in the transaction; and
 - (iii) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
- (D) A travel agent or salesperson:
 - (i) The airline, hotel, tour operator or other person who provided travel services or accommodations in the transaction;
 - (ii) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and
 - (iii) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.
- (E) A stockbroker:
 - (i) The brokerage business entity through which the broker conducts business; and

- (ii) The person who trades the stocks, bonds, securities or other investments through the stockbroker.
 - (F) A retail or wholesale salesperson:
 - (i) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and
 - (ii) The person who purchases the product or service.
- (3) For purposes of determining whether disqualification is required under the provisions of Sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.
- (d) Sources of Incentive Compensation. “Incentive compensation” means income received by an official who is an employee, over and above salary, which is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official’s employer which correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive compensation does not include: salary; commission income; bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum; and such executive incentive plans as may be based on company performance, provided that the formula for determining the amount of the executive’s incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company. Incentive compensation also does not include payments for personal services which are not marketing or sales.

The purchaser is a source of income to the official if all three of the following apply:

- (1) The official’s employment responsibilities include directing sales or marketing activity toward the purchaser; and
- (2) There is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- (3) There is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

COMMENT: For further discussion of incentive compensation, see Peninsula Health Care District v. Fair Political Practices Commission, Sacramento County Superior Court, Case No. 02CS01766, and In re Hanko, O-02-088 (August 9, 2002).

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18703.4. Economic Interest, Defined: Source of Gifts.

For purposes of disqualification under Sections 87100 and 87103, a public official has an economic interest in any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$440 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8, 87103 and 89503, Government Code.

Section 18703.5. Economic Interest, Defined: Personal Finances.

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing.

COMMENT: Cross-references: For the definition of “immediate family,” see Government Code section 82029. For the definition of “income,” see Government Code section 82030 and California Code of Regulations, Title 2, section 18232.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18704. Determining Whether an Economic Interest Is Directly or Indirectly Involved in a Governmental Decision.

- (a) In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official’s economic interest is directly involved or indirectly involved in the governmental decision. If a public official’s economic interest is not directly involved in a governmental decision, it is indirectly involved.
 - (1) For governmental decisions which affect business entities, sources of income, and sources of gifts apply Regulation 18704.1;
 - (2) For governmental decisions which affect real property interests apply Regulation 18704.2.

- (3) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his or her immediate family (personal financial effect) apply Regulation 18704.5.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18704.1. Determining Whether Directly or Indirectly Involved in a Governmental Decision; Business Entities, Sources of Income, Sources of Gifts.

- (a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:
 - (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
 - (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.
- (b) If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(b), section 18705.3(a), or section 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(c), section 18705.3(b), or section 18705.4(b), respectively.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18704.2. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.

- (a) Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply:
 - (1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental

decision. For purposes of subdivision (a)(5), real property is located “within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision” if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

- (2) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms “zoning” and “rezoning” shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.
 - (3) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official has an interest.
 - (4) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.
 - (5) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.
 - (6) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or improved services.
- (b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:
- (1) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under 2 Cal. Code Regs. section 18705.2(b).

- (2) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.
 - (3) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:
 - (A) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official, or by a person representing either the public official or an economic interest of the public official.
 - (B) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.
 - (C) The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and economic interests of the official are not singled out.
 - (D) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.
- (c) Definitions - General Plans. The definitions below apply to this regulation:
- (1) A decision "solely concerns the adoption or amendment of a general plan" when the decision, in the manner described in Government Code sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement of development policies, maps, diagrams, and texts, or any other component setting forth objectives, principles, standards, and plan proposals, as described in Government Code sections 65302 and 65303.

- (2) “General plan” means “general plan” as used in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 5, sections 65300, et seq.
 - (3) “Specific plan or its equivalent” means a “specific plan” or any equivalent plan adopted by the jurisdiction to meet the purposes described in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 8, sections 65450 et seq.
- (d) Determining the applicable materiality standard.
- (1) If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(a).
 - (2) If a real property interest is not directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(b).

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18704.5. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Economic Interest in Personal Finances.

A public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18705. Standards for Determining Whether a Financial Effect on an Economic Interest is Material.

- (a) In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material:
 - (1) For governmental decisions which affect economic interests in business entities -- apply 2 Cal. Code Regs. section 18705.1;
 - (2) For governmental decisions which affect economic interests in real property -- apply 2 Cal. Code Regs. section 18705.2;

- (3) For governmental decisions which affect economic interests in sources of income -- apply 2 Cal. Code Regs. section 18705.3;
 - (4) For governmental decisions which affect economic interests in sources of gifts -- apply 2 Cal. Code Regs. section 18705.4;
 - (5) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his immediate family (personal financial effect) -- apply 2 Cal. Code Regs. section 18705.5;
- (b) General Rule: Whenever the specific provisions of 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, cannot be applied, the following general rule shall apply: The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official.
- (c) Special Rules. Notwithstanding 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if: Although a conflict of interest would otherwise exist under 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, and 18706, the decision will have no financial effect on the person or business entity who appears before the official, or on the real property in which the official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18705.1. Materiality Standard: Economic Interests in Business Entities.

- (a) Introduction.
 - (1) If a business entity in which a public official has an economic interest is directly involved in a governmental decision (see Regulation 18704.1(a)), use the standards in subdivision (b) of this regulation.
 - (2) If a business entity in which a public official has an economic interest is indirectly involved in a governmental decision (see Regulation 18704.1(b)), use the standards in subdivision (c) of this regulation.
- (b) Directly involved business entities.

- (1) General Rule: Unless the exception in subdivision (b)(2) of this regulation applies, the financial effects of a governmental decision on a business entity which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.
- (2) Exception: If the public official's only economic interest in the business entity is an investment interest (see Section 87103(a)), and the public official's investment in the business entity is worth \$25,000 or less, apply the materiality standards in either of the following provisions, as applicable:
 - (A) Subdivision (c)(1) of this regulation if the business entity is listed in the Fortune 500, or if not listed in the Fortune 500, has revenues that are no less than the revenues of the business entity that ranks 500th in the Fortune 500 list.
 - (B) Subdivision (c)(2) of this regulation if the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had net income of no less than \$2.5 million.
- (c) Indirectly involved business entities. The following materiality standards apply when a business entity in which a public official has an economic interest is indirectly involved in a governmental decision. If more than one of the following subdivisions is applicable to the business entity in question, apply the subdivision with the highest dollar thresholds.
 - (1) If the business entity is listed in the Fortune 500 or, if not listed in the Fortune 500, has revenues that are no less than the revenues of the business entity that ranks 500th in the Fortune 500 list, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
 - (A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year of \$10,000,000 or more; or
 - (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or
 - (C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$10,000,000 or more.

- (2) If the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had net income of no less than \$2.5 million, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
 - (A) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$500,000 or more; or,
 - (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$200,000 or more; or,
 - (C) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$500,000 or more.

- (3) If the business entity is listed on either the NASDAQ or American Stock Exchange, or if not so listed, for its most recent fiscal year had net income of no less than \$750,000, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
 - (A) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$300,000 or more; or,
 - (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more; or,
 - (C) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$300,000 or more.

- (4) If the business entity is not covered by subdivisions (c)(1)-(3), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
 - (A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or,
 - (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,

- (C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.
- (d) Terminology. The accounting terms described below are the same as, or not inconsistent with, terms used in Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. Nothing in this subdivision should be construed to incorporate new items not contemplated under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, nor to exclude any items that might be included in the definitions of these terms under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards.
- (1) Assets. As used in this section, "assets" means all property, real and personal, tangible and intangible, which belongs to any business entity. This includes, but is not limited to, cash, securities, merchandise, raw materials, finished goods, operating supplies, and ordinary maintenance material and parts, accounts receivable and notes and loans receivable, and prepaid expenses (such as prepaid insurance, interests, rents, taxes, advertising, and operating supplies).
- (A) When a business entity holds a claim over collateral (including real property) as security for a loan made by the business entity, such a claim does not make the collateral (including real property) an "asset" of the business entity, unless the business entity has initiated proceedings to foreclose upon, or acquire the asset based on the debtor's failure to repay the loan. The loan or note secured by the collateral is an asset.
- (B) The definition of "assets" also includes intangible assets. Intangible assets, include, but are not limited to, long-lived legal rights and competitive advantages developed or acquired by a business enterprise, patents, copyrights, franchises, trademarks, organizational costs, goodwill, and secret processes.
- (2) Expenses: In general, the term refers to the current costs of carrying on an activity.
- (3) Gross Revenue: Actual or expected inflows of cash or other assets. "Gross Revenue" is the revenue of a business entity before adjustments or deductions are made for returns and allowances and the costs of goods sold, and prior to any deduction for these and any other expenses.
- (4) Liabilities: Obligations of the business entity, liquidation of which is reasonably expected to require the transfer of assets or the creation of other new liabilities. Any financial obligation or cash expenditures that must be

made by the business entity at a specific time to satisfy the contractual terms of such an obligation.

- (5) Net Income: A business entity's total earnings; otherwise defined as revenues adjusted for the costs of doing business, depreciation, interest, taxes, and other expenses. This amount is usually found at the bottom of a business entity's Profit and Loss statement. Also described as Net Profit.
- (e) Financial statements. In complying with this regulation, public officials may rely on the most recent independently audited financial statements of the business entity so long as those statements are reflective of the current condition of the business entity. Financial statements are not considered "reflective of the current condition of the business entity" where:
- (1) The most recent independently audited financial statements of the business entity are for a fiscal year ending more than twenty-four months prior to the date of the governmental decision.
 - (2) The most recent audit of the financial statements resulted in an adverse opinion, was issued with a disclaimer, or was otherwise qualified in such a manner that the statement of assets, liabilities, expenses, or gross revenues is questioned in the audit report, or
 - (3) There has been a subsequent event, intervening between the date that the financial statement was created and the date of the decision of the public official, that makes the statement no longer representative, including, but not limited to, business reorganizations.

Comments: Electronic access to annual reports, quarterly reports, and other financial statements filed with the United States Securities and Exchange Commission ("SEC") may be obtained by accessing the SEC's website and selecting its EDGAR database of statutory filings: <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18705.2. Materiality Standard: Economic Interests in Real Property.

- (a) Directly involved real property.
 - (1) Real property, other than leaseholds. The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

- (2) Real property, leaseholds. The financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following:
 - (A) The termination date of the lease;
 - (B) The amount of rent paid by the lessee for the leased real property, either positively or negatively;
 - (C) The value of the lessee's right to sublease the real property, either positively or negatively;
 - (D) The legally allowable use or the current use of the real property by the lessee; or
 - (E) The use or enjoyment of the leased real property by the lessee.
- (b) Indirectly involved real property interests.
 - (1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:
 - (A) The development potential or income producing potential of the real property in which the official has an economic interest;
 - (B) The use of the real property in which the official has an economic interest;
 - (C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.
 - (2) Real property, leaseholds. The financial effect of a governmental decision on real property in which a public official has a leasehold interest and which is indirectly involved in the governmental decision is presumed not to be

material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the governmental decision will:

- (A) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property;
- (B) Change the lessee's actual use of the real property;
- (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of the leased real property;
- (D) Increase or decrease the amount of rent for the leased real property by 5+ percent during any 12-month period following the decision; or
- (E) Result in a change in the termination date of the lease.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18705.3. Materiality Standard: Economic Interests in Persons Who Are Sources of Income.

- (a) Directly involved sources of income. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.
- (b) Indirectly involved sources of income.
 - (1) Sources of income which are business entities. If the source of income is a business entity, apply the materiality standards stated in Title 2, California Code of Regulations, section 18705.1(c).
 - (2) Sources of income which are non-profit entities, including governmental entities. The effect of a decision is material as to a nonprofit entity which is a source of income to the official if any of the following applies:
 - (A) For an entity whose gross annual receipts are \$400,000,000 or more, the effect of the decision will be any of the following:
 - (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$1,000,000 or more; or

- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$250,000 or more; or
 - (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$1,000,000 or more.
- (B) For an entity whose gross annual receipts are more than \$100,000,000 but less than \$400,000,000, the effect of the decision will be any of the following:
 - (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$400,000 or more; or
 - (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$100,000 or more; or
 - (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$400,000 or more.
- (C) For an entity whose gross annual receipts are more than \$10,000,000, but less than or equal to \$100,000,000 the effect of the decision will be any of the following:
 - (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$200,000 or more.
 - (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$50,000 or more.
 - (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$200,000 or more.
- (D) For an entity whose gross annual receipts are more than \$1,000,000, but less than or equal to \$10,000,000 the effect of the decision will be any of the following:

- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$100,000 or more.
 - (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$25,000 or more.
 - (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$100,000 or more.
- (E) For an entity whose gross annual receipts are more than \$100,000 but less than or equal to \$1,000,000 the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$50,000 or more.
 - (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.
 - (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$50,000 or more.
- (F) For an entity whose gross annual receipts are \$100,000 or less, the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$10,000 or more.
 - (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$2,500 or more.
 - (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$10,000 or more.

- (3) Sources of income who are individuals. The effect of a decision is material as to an individual who is a source of income to an official if any of the following applies:
 - (A) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or
 - (B) The decision will affect the individual's real property interest in a manner that is considered material under Title 2, California Code of Regulations, sections 18705.2(b).
- (c) Nexus. Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8, and 87103, Government Code.

Section 18705.4. Materiality Standard: Economic Interests in Persons Who Are Sources of Gifts.

- (a) Directly involved sources of gifts. Any reasonably foreseeable financial effect on a person who is a source of a gift to a public official, and which person is directly involved in a decision before the official's agency, is deemed material.
- (b) Indirectly involved sources of gifts.
 - (1) Sources of gifts which are indirectly involved business entities. If the source of a gift is a business entity, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.1(c).
 - (2) Sources of gifts which are indirectly involved nonprofit entities or government agencies. If the source of a gift is a nonprofit entity or a government agency, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.3(b)(2).
 - (3) Sources of gifts who are indirectly involved individuals. If the source of a gift is an individual, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.3(b)(3).

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18705.5. Materiality Standard: Economic Interest in Personal Finances.

- (a) A reasonably foreseeable financial effect on a public official's or his or her immediate family's personal finances is material if it is at least \$250 in any 12-month period. When determining whether a governmental decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered.
- (b) The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her 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 public official's immediate family is the only person in the job classification or position.
- (c) Notwithstanding subsection (b), pursuant to Section 82030(b)(2) and Regulation 18232, a public official may make, participate in making, or use his or her official position to influence or attempt to influence, a government decision where all of the following conditions are satisfied:
 - (1) The decision is on his or her appointment as an officer of the body of which he or she is a member (e.g., mayor or deputy mayor), or to a committee, board, or commission of a public agency, a special district, a joint powers agency or authority, a joint powers insurance agency or authority, or a metropolitan planning organization.
 - (2) The appointment is to a standing or ad hoc committee of the public agency which the public official is a member or one required to be made by the body of which the official is a member pursuant to either state law, local law, or a joint powers agreement.
 - (3) The body making the appointment referred to in paragraph (1) adopts and posts on its website, on a form provided by the Commission, a list that sets forth each appointed position for which compensation is paid, the salary or stipend for each appointed position, the name of the public official who has

been appointed to the position and the name of the public official, if any, who has been appointed as an alternate, and the term of the position.

COMMENT: Cross-references: For the definition of “immediate family,” see Government Code section 82029.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18706. Determining Whether a Material Financial Effect is Reasonably Foreseeable.

Note: On September 12, 2012, the FPPC amended this section but delayed the effective date of the new regulation pending adoption of further amendments as part of a comprehensive reorganization of the FPPC’s conflict of interest regulations. As of this Handbook’s date of publication, the amendment is not effective. The following is the text of the existing regulation. The text of the new regulation follows afterward.

- (a) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§ 18704, 18705) applicable to that economic interest will be met as a result of the governmental decision.
- (b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:
 - (1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;
 - (2) The market share held by the official or the official's source of income in the jurisdiction;
 - (3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;
 - (4) The scope of the governmental decision in question; and
 - (5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental

decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

- (c) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18706. Determining Whether a Material Financial Effect Is Reasonably Foreseeable.

Note: This is the text of the September 12, 2012 amendment to Section 18706. The FPPC delayed the effective date of the new regulation pending adoption of further amendments as part of a comprehensive reorganization of the FPPC's conflict of interest regulations. As of this Handbook's date of publication, the amendment is not effective. The following is the text of the amended regulation. The text of the existing regulation is found above.

- (a) Economic Interest Explicitly Involved: A financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. An economic 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 economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18704.2.
- (b) Economic Interest Not Explicitly Involved in Decision: A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and 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. In determining whether a governmental decision will have a reasonably foreseeable financial effect on an economic interest other than an interest described in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:
 - (1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the

official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

- (2) Whether the public official should anticipate a financial effect on his or her economic interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
- (3) Whether the public official has an economic interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental 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 public official has an economic interest.
- (4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's economic interest could compromise the public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.
- (5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's economic interests, including whether the economic interest may be entitled to compete or be eligible for a benefit resulting from the decision.
- (6) Whether the public official has the type of economic interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her economic interest in formulating a position.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18706.1 Real Estate or Professional License.

Note: On September 12, 2012, the FPPC adopted this new Section 18706.1 but delayed its effective date pending adoption of further amendments as part of a comprehensive reorganization of the FPPC's conflict of interest regulations. As of this Handbook's date of publication, this section is not effective. The following is the text of the new regulation.

- (a) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Section 18707. Public Generally.

- (a) Introduction. Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the official can establish that the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally as set forth in 2 Cal. Code Regs. sections 18707.1–18707.10.
- (b) Steps to Determine Application of Public Generally. To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subdivision (a) of this regulation, apply Steps One through Four:
 - (1) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.
 - (2) Step Two: For each person or real property identified in Step One, determine the applicable “significant segment” rule according to the provisions of 2 Cal. Code Regs. section 18707.1(b).
 - (3) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable “significant segment” rule. If the answer is “no,” then the analysis ends because the first prong of a two-part test set forth in 2 Cal. Code Regs. section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is “yes,” proceed to Step Four.
 - (4) Step Four: Following the provisions of 2 Cal. Code Regs. section 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in “substantially the same manner” as other persons or real property in the applicable significant segment. If the answer is “yes” as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is “no” as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in 2 Cal. Code Regs. sections 18707.2 through 18707.10 applies to each person or real property triggering the conflict of interest.

- (c) For purposes of Government Code section 87102.5 (Members of the Legislature) and Government Code section 87102.8 (elected state officers), Government Code section 87102.6(b)(2) applies.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.1. Public Generally. General Rule.

- (a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.
- (b) Significant Segments and Indistinguishable Effects.
- (1) Significant Segment. The governmental decision will affect a "significant segment" of the public generally if any of the following are affected as set forth below:
- (A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:
- (i) Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents; or
- (ii) 5,000 individuals who are residents of the jurisdiction.
- (B) Real Property. For decisions that affect a public official's interest in real property, the decision also affects:
- (i) Ten percent or more of all property owners or all residential property owners in the jurisdiction of the official's agency or the district the official represents; or
- (ii) 5,000 property owners or residential property owners in the jurisdiction of the official's agency.
- (iii) While the public official must identify ten percent or more of residential property owners or 5,000 residential property owners as provided above, and not residential properties, for

- purposes of subdivision (b)(1)(B) the official may choose to count each residential property affected as being owned by one property owner if, and only if, the official counts himself or herself as the sole owner of the public official's residential property regardless of his or her actual ownership interest.
- (iv) For purposes of this subdivision, residential property means any real property that contains a single family home, or a multi-family structure of four units or fewer, on a single lot, or a condominium unit.
- (C) **Business Entities.** For decisions that affect a business entity in which a public official has an economic interest, the decision also affects either 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.
- (D) **Governmental Entities.** For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity.
- (E) **Exceptional Circumstances.** The decision will affect a segment of the population which does not meet any of the standards in subsections (b)(1)(A) through (b)(1)(D), however, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally.
- (2) **Substantially the Same Manner:** The governmental decision will financially affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation. The financial effect need not be identical for the official's economic interest to be considered "financially affected" in "substantially the same manner."
- (A) **Comparing Financial Effects on Real Property:** For a decision that affects a public official's economic interest in his or her real property, financial effects are measured in terms of the overall dollar amount of the increase or decrease in the value of the property and not by a percentage increase or decrease affecting property values as a whole. Factors to be considered in determining the financial effect on the

official's property in comparison with the financial effect on the public generally include, but are not limited to, the following:

- (i) The magnitude of the financial effect of the governmental decision on the official's property as compared with other properties contained within the significant segment;
- (ii) The lot size of the official's property compared with other properties contained within the significant segment (e.g., one acre versus 10 acres);
- (iii) The square footage of the building space of the property compared with the square footage of the building space of other properties contained within the significant segment;
- (iv) The proximity of the official's property to the property that is the subject of the governmental decision compared with the proximity of other properties contained within the significant segment;
- (v) The number of units/parcels owned by the official compared to others in the significant segment;
- (vi) The physical characteristics or permitted use of the property (i.e., historical, commercial, residential) as compared to other properties in the significant segment;
- (vii) The location of the official's property compared with the location of other properties contained within the significant segment;
- (viii) The neighborhood in which the official's property is located is comparable to the neighborhoods in which other properties contained within the significant segment are located;
- (ix) The quality of the structure contained on the official's property compared with the quality of other structures contained on properties within the significant segment;
- (x) The current fair market value of the property as compared to other properties in the significant segment;
- (xi) Improvements made to the official's property as compared with other properties contained within the significant segment;

- (xii) The developmental potential or income producing potential of the real property in which the official has an economic interest compared with other properties contained within the significant segment; and
- (xiii) The character of the effects on the neighborhood of the property in which the official has an economic interest including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood compared with the neighborhoods of other properties contained within the significant segment.

COMMENT: The term “affect all members of the public” as used in subdivision (b)(1)(D) above, is intended to cover decisions affecting the public in general but to exclude decisions that uniquely benefit a public official.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.2. Special Rule for Rates, Assessments, and Similar Decisions.

The financial effect of a governmental decision on the official’s economic interest is indistinguishable from the decision’s effect on the public generally if any of the following apply:

- (a) The decision is to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions which are applied on a proportional basis on the official’s economic interest and on a significant segment of the jurisdiction, as defined in 2 Cal. Code of Regulations, section 18707.1(b).
- (b) The decision is made by the governing board of a landowner voting district and affects the official’s economic interests and ten percent of the landowners or water users subject to the jurisdiction of the district in proportion to their real property interests or by the same percentage or on an “across-the-board” basis for all classes.
- (c) The decision is made by the governing board of a water, irrigation, or similar district to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions, such as the allocation of services, which are applied on a proportional or “across-the-board” basis on the official’s economic interests and ten percent of the property owners or other persons receiving services from the official’s agency.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.4. Public Generally: Appointed Members of Boards and Commissions.

- (a) For the purposes of Government Code section 87103, the “public generally” exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in section 87103(a) through (d), if all of the following apply:
- (1) The statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.
 - (2) The member is required to have the economic interest the member represents.
 - (3) The board’s or commission’s decision does not have a reasonably foreseeable material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.
 - (4) The decision of the board or commission will financially affect the member’s economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent. For purposes of this regulation, a significant segment constitutes fifty percent of the persons the member was appointed to represent.
- (b) In the absence of an express finding and declaration or requirement of the types described in 2 Cal. Code Regs. section 18707.4(a)(1) and (2), the “public generally” exception only applies if such a finding and declaration or requirement is implicit, taking into account the language of the statute, ordinance, or other provision of law creating or authorizing the creation of the board or commission, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.5. Sources of Income to Owners of Retail Business Entities.

(a) Significant Segment Test

- (1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the retail customers constitute a significant segment of the public generally if either of the following applies:
 - (A) The retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction; or
 - (B) The retail customers of the business entity during the preceding 12 months number at least 10,000.
- (2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, the retail customers constitute a significant segment of the public generally if the retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction.
- (3) For purposes of this subdivision, a customer of a retail business entity is each separate and distinct purchaser of goods or services, whether an individual, household, business or other entity. If records are not maintained by customer name, a good faith estimate shall be made to determine what percentage of sales transactions represent multiple transactions by repeat customers. The total number of sales transactions shall then be reduced by the estimated percentage of repeat customers to yield the number of customers for purposes of applying this subdivision.

(b) Indistinguishable Income Test

- (1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the amount of income received from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question is less than one-tenth of one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.

- (2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, the amount of income received from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question does not exceed one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.
- (c) For purposes of Government Code section 87100, an official who owns 10 percent or more of a retail business entity, whose retail customers meet the criteria in either subdivision (a)(1)(A), (a)(1)(B) or (a)(2), does not “have reason to know” that a decision will affect a source of income to the retail business entity when either of the following applies:
 - (1) If all of the following are true:
 - (A) The customer does not have a charge account or open book account with the retail business;
 - (B) The retail business does not maintain records for noncharge customer transactions by customer name or other method for tracking transactions which would provide the customer name; and
 - (C) The fact that the person is a customer is not personally known to the official; or
 - (2) If all of the following are true:
 - (A) The accounts and books of the retail business entity are maintained by someone other than the official or a member of the official’s immediate family; and
 - (B) The fact that the person is a customer is not personally known to the official.
- (d) For purposes of subdivision (c), a credit card transaction utilizing a credit card not issued by the retail business entity is considered a “noncharge customer transaction.”
- (e) Subdivision (c) shall not be utilized in determining whether an official “knows” of a financial interest in a decision within the meaning of Government Code section 87100. When such knowledge exists, or the fact that a person is a source of income is brought to the attention of the official prior to the governmental decision,

the provisions of subdivision (c) shall have no effect on the official's duty to disqualify.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87103 and 87103.5, Government Code.

Section 18707.6. States of Emergency.

Notwithstanding Title 2, California Code of Regulations, sections 18707 through 18707.5, inclusive, the financial effect of a governmental decision on an official is indistinguishable from its financial effect on the public generally if both of the following apply:

- (a) The decision will affect an economic interest of the official, other than an economic interest as defined in section 87103(e), in substantially the same manner as other persons subject to a state of emergency, proclaimed by the Governor pursuant to Government Code section 8625, or proclaimed by the governing body of a city or county.
- (b) The decision is required to mitigate against the effects directly arising out of the emergency, and strict adherence to the Act will prevent, hinder, or delay the mitigation of the effects of the emergency.

NOTE: Authority: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.7. Public Generally. Industries, Trades, or Professions.

Where a decision will affect an industry, trade, or profession in substantially the same manner as the decision will affect an official's economic interest, the industry, trade, or profession constitutes a "significant segment" of the jurisdiction only as set forth below:

- (a) In the case of an elected state officer, an industry, trade, or profession constitutes a significant segment of the public generally, as set forth in section 87102.6 of the Government Code.
- (b) In the case of any other official, an industry, trade, or profession constitutes a significant segment of the public generally if that industry, trade, or profession is a predominant industry, trade, or profession in the official's jurisdiction or in the district represented by the official. An industry, trade, or profession that constitutes fifty percent or more of business entities in the jurisdiction of the official's agency or the district the official represents is a "predominant" industry, trade, or profession for purposes of this regulation. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.9. Public Generally. Residential Properties.

- (a) For purposes of this regulation, the effect of a governmental decision on a public official's real property interests is indistinguishable from the effect on the public generally if 5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents are affected by the decision and the official owns three or fewer residential property units. A public official's principal residence does not count as one of these residential property units.
- (b) The effect of a governmental decision on any of a public official's economic interests (including real property and business interests) is indistinguishable from the effect on the public generally if all of the following apply:
 - (1) The decision is to establish, eliminate, amend, or otherwise affect the respective rights or liabilities of tenants and owners of residential property pursuant to a resolution, rule, ordinance, or other law of general application;
 - (2) No economic interest of the public official other than one created by ownership of residential real property, or the rental of that property, is analyzed under this regulation;
 - (3) The official's economic interests are not directly involved in the decision (as provided in 2 Cal. Code Regs. sections 18704.1, 18704.2(a), and 18705.1);
 - (4) The decision affects at least ten percent of the residential property units in the jurisdiction of the public official or district he or she represents; and
 - (5) The decision will affect the official's economic interests in substantially the same manner as it will affect other residential property owners or owners of residential rental property. A public official will be affected in substantially the same manner for purposes of this subdivision if the decision will be applied on a proportional or "across-the-board" basis on the official's economic interests as on other residential property owners or other owners of residential rental property affected by the decision.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18707.10. Public Generally. Small Jurisdictions; Effects on Official's Domicile.

- (a) The effect of a governmental decision on the residential real property that is the domicile of a public official is not distinguishable from the effect on the public generally if all of the following conditions are met:
- (1) The jurisdiction of the public official's agency has a population of 30,000 or less and covers a geographic area of ten square miles or less;
 - (2) The public official is required to live within the jurisdiction;
 - (3) The public official, if elected, has been elected in an at-large jurisdiction;
 - (4) The official's property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;
 - (5) The official's property is located on a lot not more than one-quarter acre in size or not larger than 125 percent of the median residential lot size for the jurisdiction; and
 - (6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value.
- (b) For purposes of this regulation, "domicile" means the real property upon which the official makes his or her true, fixed, and permanent residence and the place to which he or she has the intention of returning after any absence. A person may have more than one residence but only one domicile. With respect to an ownership interest in any real estate containing the official's domicile where portions of the real estate are designated for separate ownership and portions are designated for common ownership solely by the owners of the separate portions, the official's domicile is the unit, area, or space in which the official has a separate ownership interest.
- (c) Nothing contained in this regulation shall preclude the application of the public generally provisions of regulation 18707.1 or any other regulations not applicable solely to small jurisdictions.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87103, Government Code.

Section 18708. Legally Required Participation.

- (a) A public official who has a financial interest in a decision may establish that he or she is legally required to make or to participate in the making of a governmental

decision within the meaning of Government Code section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

- (b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall state the existence of the potential conflict as follows:
 - (1) The public official shall disclose the existence of the conflict and describe with particularity the nature of the economic interest. "Particularity" as used in this regulation shall be satisfied if the official discloses:
 - (A) whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans or gifts;
 - (B) if the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact. For income, loans or gifts, the official shall disclose the person or entity that is the source.
 - (2) The public official or another officer or employee of the agency shall give a summary description of the circumstances under which he or she believes the conflict may arise.
 - (3) Either the public official or another officer or employee of the agency shall disclose the legal basis for concluding that there is no alternative source of decision.
 - (4) The disclosures required by this regulation shall be made in the following manner:
 - (A) If the governmental decision is made during an open session of a public meeting, the disclosures shall be made orally before the decision is made, by either the public official or by another officer or employee of the agency. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

- (B) If the governmental decision is made during a closed session of a public meeting, the disclosures shall be made orally during the open session either before the body goes into closed session or immediately after the closed session. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or
 - (C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s) shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision.
- (c) This regulation shall be construed narrowly, and shall:
- (1) Not be construed to permit an official, who is otherwise disqualified under Government Code section 87100, to vote to break a tie.
 - (2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code section 87100, whether or not such other members are actually present at the time of the disqualification.
 - (3) Require participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, he or she is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.
- (d) For purposes of this section, a "quorum" shall constitute the minimum number of members required to conduct business and when the vote of a supermajority is

required to adopt an item, the “quorum” shall be that minimum number of members needed for that adoption.

COMMENT: Nothing in the provisions of subsection (b)(4)(B) is intended to cause an agency or public official to reveal the confidences of a closed session contemplated by law. For example, under the Brown Act (Government Code sections 54950 et seq.) a city council may enter a closed session to discuss personnel matters and need not publicly disclose the name of the employee who is the subject of the meeting. (Government Code section 54957.) This regulation does not require a city council person who is legally required to participate in that closed session to disclose that employee’s name when the council member makes the record required by this regulation.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 81002, 81003 and 87101, Government Code.

Section 18709. Governmental Decision: Segmentation.

- (a) An agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all of the following conditions apply:
 - (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
 - (2) The decision in which the official has a financial interest is segmented from the other decisions;
 - (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official’s participation in any way; and
 - (4) Once the decision in which the official has a financial interest has been made, the disqualified public official’s participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.
- (b) For purposes of this regulation, decisions are “inextricably interrelated” when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.
- (c) Budget Decisions and General Plan Adoption or Amendment Decisions Affecting an Entire Jurisdiction: Once all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may

participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan.

COMMENT: This regulation implements the segmentation principle outlined in the Commission's opinion In re Owen (1976) 2 FPPC Ops. 77.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87100 and 87103, Government Code.

CHAPTER 7. CONFLICTS OF INTEREST
ARTICLE 2.5. POST-EMPLOYMENT LAWS

Section 18746.3. Revolving Door; Local Officials.

- (a) The prohibitions of Section 87406.3 apply to a public official who, on or after July 1, 2006, holds any of the following positions:
- (1) Local elected official.
 - (2) Chief administrative officer of a county.
 - (3) City manager, including the chief administrator of a city.
 - (4) General manager or chief administrator of a special district who holds a position with a local government agency as defined by Section 82041, including the general manager or chief administrator of an air pollution control district or air quality management district.
- (b) A public official covered by subdivision (a) of this regulation is prohibited from making any appearance or communication if all of the following apply:
- (1) The official has permanently left, as defined in Regulation 18746.4(b), any particular office or employment specified in subdivision (a) of this regulation.
 - (2) The appearance or communication is made within 12 months after leaving that office or employment.
 - (3) The public official is compensated, or promised compensation, for the appearance or communication. For purposes of Section 87406.3, a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not considered compensation.

- (4) The appearance or communication is made on behalf of any person as an agent, attorney, or representative of that person. An appearance or communication made by a public official to represent his or her personal interests, as defined in subdivision (b)(1) of Regulation 18702.4, is not prohibited or limited by this section unless the appearance or communication is made in a quasi-judicial proceeding, as defined in subdivision (b)(5)(C) of this regulation, in which the official participated while serving as a local government employee or officer.
- (5) The appearance or communication is made for the purpose of influencing, as defined in Regulation 18746.2, any legislative or administrative action, or any discretionary act involving the issuance, amending, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Notwithstanding Sections 82002 and 82037, for purposes of Section 87406.3, the following definitions apply:
- (A) “Administrative action,” as defined in Section 87406.3(d)(1), means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding including a ratemaking proceeding, whether quasi-legislative or quasi-judicial. “Administrative action” does not include any action that is solely ministerial.
- (B) “Quasi-legislative” means any proceeding involving the adoption of rules of general applicability, including but not limited to annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises.
- (C) “Quasi-judicial” means any proceeding that determines the rights of specific parties, or applies existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits.
- (D) “Legislative action,” as defined in Section 87406.3(d)(2), means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.

- (6) The appearance or communication is made before any officer or employee of any of the following:
 - (A) The local government agency, including any officer or employee of any committee, subcommittee, or present member of that local government agency, that the public official worked for or represented as specified in subdivision (a) of this regulation. An employee loaned to a local government agency is deemed to have worked for or represented that agency.
 - (B) Any local government agency whose budget, personnel, and other operations are subject to the direction and control of any agency described in subdivision (b)(6)(A) of this regulation.
 - (C) The prohibitions of Section 87406.3 and this regulation do not apply to any individual who, at the time of the appearance or communication, was a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87406.3, Government Code.

Section 18747. Influencing Prospective Employment.

- (a) No public official shall “make,” “participate in making,” or “use his or her official position to influence” any governmental decision, as defined in 2 Cal. Code Regs., sections 18702.1, 18702.2, 18702.3, 18702.4, if the decision directly relates to a prospective employer.
- (b) A governmental decision “directly relates” to a prospective employer if the public official knows or has reason to know:
 - (1) The prospective employer is “directly involved” in the decision, as defined in 2 Cal. Code Regs. section 18704.1(a); or
 - (2) It is reasonably foreseeable that the financial effect of a decision on a prospective employer is material as follows:
 - (A) For a business entity, the same as set forth in 2 Cal. Code Regs. section 18705.1(c);
 - (B) For a nonprofit entity, the same as set forth in 2 Cal. Code Regs. section 18705.3(b)(2); or

- (C) For an individual, the same as set forth in 2 Cal. Code Regs. section 18705.3(b)(3).
- (c) A person is a “prospective employer” of a public official if the official, either personally or through an agent, is “negotiating” or has an “arrangement” concerning prospective employment with that person.
- (1) A public official is “negotiating” employment when he or she interviews or discusses an offer of employment with an employer or his or her agent.
 - (2) A public official has an “arrangement” concerning prospective employment when he or she accepts an employer’s offer of employment.
 - (3) A public official is not “negotiating” or does not have an “arrangement” concerning prospective employment if he or she rejects or is rejected for employment.
- (d) Notwithstanding subdivision (a), the prohibitions of Government Code section 87407 do not apply if:
- (1) The governmental decision will affect the prospective employer in substantially the same manner as it will affect a “significant segment,” as set forth in 2 Cal. Code Regs. section 18707.1(b)(1), of the public generally;
 - (2) The public official is legally required to make or participate in the making of the governmental decision within the meaning of Government Code section 87101 and 2 Cal. Code Regs. section 18708; or
 - (3) The prospective employer is a state, local, or federal governmental agency.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 87407, Government Code.

CHAPTER 9. INCUMBENCY

Section 18901. Mass Mailings Sent at Public Expense.

- (a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:
- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

- (2) The item sent either:
 - (A) Features an elected officer affiliated with the agency which produces or sends the mailing, or
 - (B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.
 - (3)
 - (A) Any of the costs of distribution is paid for with public moneys; or
 - (B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.
 - (4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).
- (b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by section 89001:
- (1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.
 - (2) A press release sent to members of the media.
 - (3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.
 - (4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.
 - (5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office,

title, or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.

- (6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.
- (7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.
- (8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.
- (9)
 - (A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.
 1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.
 2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.
 - (B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include

only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

- (10) An agenda or other writing that is required to be made available pursuant to sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.
 - (11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.
- (c) The following definitions shall govern the interpretation of this regulation:
- (1) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.
 - (2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.
 - (3) "Substantially similar" is defined as follows:
 - (A) Two items are "substantially similar" if any of the following applies:
 1. The items are identical, except for changes necessary to identify the recipient and his or her address.
 2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.
 3. Both of the following apply to the items mailed:
 - a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

- b. Most of the information contained in one item is contained in the other.
- (B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are “substantially similar.” Such informational materials may not include the elected officer’s name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this regulation.
- (4) “Unsolicited request” is defined as follows:
 - (A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.
 - (B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.
 - (C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his or her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

“The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so.”

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

- (D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his or her issuance of a press release, shall be considered an unsolicited request.
- (E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82041.5 and 89001, Government Code.

Section 18901.1. Campaign Related Mailings Sent at Public Expense.

- (a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:
 - (1) The item sent is a tangible item, such as a written document, videotape, record, or button and is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box.
 - (2) The item sent either:
 - (A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Regulation 18225(b)(1).
 - (B) When taken as a whole and in context, unambiguously urges a particular result in an election.
 - (3) Public moneys are paid for either of the following:
 - (A) The costs of distributing the item.
 - (B) Costs, exceeding \$50, that are reasonably related to designing, producing, printing, or formulating the content of, the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants, and the costs are paid by the agency with the intent of sending the item other than as permitted by this regulation.
 - (4) More than two hundred substantially similar items are sent during the course of an election, including items sent during the qualification drive or in

anticipation of an upcoming election, but excluding any item described in subdivision (b).

- (b) Notwithstanding subdivision (a), a mailing of the following items is not prohibited by Section 89001:
 - (1) An agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request.
 - (2) A written argument sent to a voter in the voter information pamphlet.
 - (3) A communication clearly and unambiguously authorized by law.
- (c) For the purposes of subdivision (a)(2)(B), an item unambiguously urges a particular result in an election if it meets either of the following criteria:
 - (1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.
 - (2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.
- (d) For purposes of subdivision (a)(4), an item is "substantially similar" to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.
- (e) For purposes of subdivision (c)(2), when considering the style, tenor, timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following:
 - (1) Funded from a special appropriation related to the measure as opposed to a general appropriation.
 - (2) Is consistent with the normal communication pattern for the agency.
 - (3) Is consistent with the style of other communications issued by the agency.
 - (4) Uses inflammatory or argumentative language.
- (f) A mailing sent at public expense that features, or includes the name, office, photograph, or other reference to, an elected officer affiliated with the agency which produces or sends the mailing may also be prohibited under Section 89001 as provided in Regulation 18901.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82041.5 and 89001, Government Code.

CHAPTER 9.5. ETHICS

Section 18940. Guide to the Gift Regulations.

- (a) **Basic Rule.** A gift is a payment made by any person of any thing of value, whether tangible or intangible, real or personal property, a good or service that provides a personal benefit to an official when the official does not provide full consideration for the value of the benefit received. A gift includes the forgiveness of a debt or obligation and a rebate or a discount in the price of anything of value unless the rebate or discount is offered in the ordinary course of business without regard to official status. (See Sections 82028, 82044, and 82047.) A gift may be reportable by the official under Sections 87200, 87202, 87203, and 87204 or Sections 87300 and 87302; subject to limits under Sections 89503 and 86203 and Regulation 18940.2; result in a disqualifying conflict of interest for the official under Sections 87100 and 87103 and Regulation 18703.4; and/or require the filing of an activity expense report by a lobbyist, lobbying firm, or lobbyist employer, or person who directly or indirectly makes payments to influence legislative or administrative action of \$5,000 or more in any calendar quarter as defined in Section 86111.
- (b) **Exceptions.** Certain payments that otherwise meet the Act's definition of gift, are excepted from the definition of gift as provided by statute and these regulations. (See Section 82028(b) and Regulation 18942.) These payments are neither a gift nor income. Certain payments that do not meet the Act's definition of gift may be considered income.
- (c) **Valuation.** Generally, the value of a gift is determined by its fair market value. (Regulation 18946, exceptions are provided in Regulations 18946.1 through 18946.6.) An official must report gifts received from a source subject to disclosure if the cumulative value is \$50 or more within a reporting period. (Section 87207(a)(1).) With certain exceptions (See Wedding Gifts, Regulation 18946.3; Travel Payments, Section 89506) if a gift is reportable under the Act, it is prohibited if the value is more than the amount specified in the gift limits identified in Regulation 18940.2 (Section 89503(c) or Section 86203.) Whether or not a gift is reportable, if an official receives any gift(s) from one source with a cumulative value that meets the amount specified in Regulation 18940.2 within 12 months before the making or participating in the making of a governmental decision, the official has an economic interest in that source pursuant to Regulation 18703.4, and the official may have a conflict of interest with respect to that source under the Act's conflict of interest provisions (Sections 87100, 87103)(e.)

- (d) Disclosure. For officials required to disclose under Section 87200 of the Act (“statutory filers”), any gift, or combination of gifts, received from any source is reportable by the official if the value of the gift, or the cumulative value of multiple gifts, received from the source in the reporting period is \$50 or more. For officials required to disclose under an agency conflict of interest code (“code filers”) the gift, or combination of gifts valued at \$50 or more is only reportable by the official if received from a source identified in the disclosure category under which the official files pursuant to the official’s agency conflict of interest code. For those making gifts required to be disclosed under Section 86113 (Lobbyists), 86114 (Lobbying Firms), and 86116 (Lobbyist Employers), and \$5,000 filers, any gift, or combination of gifts, of any amount must be disclosed by the donor to the extent required under Section 86111.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 82030, 87100, 87103, 87207, 87302, and 89501-89506, Government Code.

Section 18940.1. General Definitions.

In addition to the definition provided in the Act, for purposes of the gift regulations (Regulations 18940 through 18946.6), the following definitions apply:

- (a) (1) Reportable Gift. A “gift” is reportable only if it is received from a source that the official is required to identify pursuant to the official’s filing obligations under the Act.
- (b) Official. For purposes of these regulations, “official” means any individual who holds a position designated in Section 87200 or 87201, or a position that is involved in the making or participation in the making of governmental decisions that may foreseeably have a material effect on any of the official’s financial interests as provided in Section 87302, or who is otherwise required to file a statement of economic interests. “Official” includes a public official, agency official, candidate, judge, court commissioner, and state or local public employee who is designated, or is required to be designated under Section 87302, in the official’s agency’s conflict of interest code. (See Sections 82007 and 82048.)
- (c) Official’s Filing Obligations. “Filing obligations” means the financial interest disclosure requirements imposed on an official by Sections 87200 and 87201 or the official’s conflict of interest code adopted pursuant to Article 3 of Chapter 7 of the Act beginning with Section 87300.

- (d) Official Status/Official Position. “Official status” or “official position” means the official’s status or position as a public official, candidate, judge, court commissioner, or any position for which filing obligations are imposed.
- (e) Rebate or Discount. A “rebate or discount” as set forth in Section 82028 is not “made in the regular course of business to members of the public without regard to official status” if the rebate or discount is made solely to the official or to a select group of specific officials, such as one agency or one department or unit within an agency. A group consisting of all state, all local officials without regard to jurisdiction, or all officials in a specified local jurisdiction or jurisdictions with more than 1,000 officials is not considered “a select group of specific officials” so long as the benefit is available to all officials in that jurisdiction or jurisdictions.
- (f) Food. “Food” includes food and beverages.
- (g) Specific definitions applicable to certain exceptions provided in Regulation 18942 are listed in Regulation 18942.1, 18942.2, and 18942.3.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 82048, 87200, 87300, and 87302, Government Code.

Section 18940.2. Gift Limit Amount.

- (a) For purposes of Section 89503, the adjusted annual gift limit amount in effect for the period January 1, 2013, to December 31, 2014, is \$440.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 87103(e), 89503, and 89506, Government Code.

Section 18941. Receipt, Promise, Acceptance and Return of Gift.

- (a) Receipt or Acceptance of a Gift. Except as otherwise provided in subdivision (c), a gift is both “received” and “accepted” when the official, or the official’s family member pursuant to Regulation 18943, knowingly takes actual possession of the gift or is provided the benefit of the gift, or takes any action exercising direction or control over the gift.

A gift of a rebate or discount is both “received” and “accepted” under subdivision (a) when the official knows that the rebate or discount given to the official is not made in the regular course of business to members of the public without regard to official status. An official who receives a rebate or discount has the burden of showing that the rebate or discount was made in the regular course of business to members of the public without regard to official status.

- (b) **Promise of a Gift.** For the purposes of Sections 87100 and 87103(e), a gift is “promised” on the date it is offered to the official provided he or she thereafter obtains actual possession of the gift or takes any action exercising direction or control over the gift or, with respect to family members under Regulation 18943, on the date the official becomes aware of a promise of a gift to a family member provided that the family member obtains actual possession of the gift or takes any action exercising direction or control over the gift.
- (c) **General Rule for Return, Donation, or Reimbursement of a Gift.** A gift is neither accepted nor received if, within 30 days:
- (1) The gift is returned to the donor, the donor’s agent, or the donor’s intermediary from whom the item was received, unused and without receiving anything of value in exchange for the returned payment or;
 - (2) The gift is donated, unused, to a 501(c)(3) charitable organization with which the official, or a member of the official’s immediate family, holds no position, or to a state, local, or federal government agency, without being claimed as a deduction for tax purposes or;
 - (3) The official reimburses the donor, donor’s agent, or the donor’s intermediary from whom the payment was received, in full, or for a portion thereof. If the donor is not reimbursed for the full value of the payment, the value of the gift the official has received is reduced by the amount of the reimbursement.
- (d) **Relief from Disqualification.** In order to relieve the official of an otherwise disqualifying financial interest under Section 87100 the return, donation, or reimbursement of the gift pursuant to subdivision (c) above:
- (1) Must occur within 30 days of receipt and before the date the official makes, participates in making, or uses his or her official position to influence the governmental decision in question; or
 - (2) If the return, donation, or reimbursement has not been made before the decision, and the gift would otherwise cause the official to be disqualified from participating in a governmental decision, the official must publicly disclose the receipt of the gift on the public record, disclose its value, and declare that the return, donation, or reimbursement will occur within two working days following the decision. The subsequent return, donation, or reimbursement of the gift must be made within two working days, and within 30 days after receipt or acceptance, and it must be documented in the public record.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028(b)(2), 87100, 87103, 87207, 87302 and 89503, Government Code.

Section 18942. Exceptions to Gift and Exceptions to Gift Limits.

- (a) For purposes of Sections 82028, 82030, and the gift regulations, except as otherwise indicated, the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income:
- (1) Informational material as defined by Regulation 18942.1. (Section 82028(b)(1).)
 - (2) A payment that is not used and that, pursuant to Regulation 18941 is returned, donated, or for which reimbursement is paid. (Section 82028(b)(2).)
 - (3) A payment from: the official's spouse or former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph. (Section 82028(b)(3).)
 - (4) A campaign contribution required to be reported under Chapter 4 of the Act (commencing with Section 84100). (Section 82028(b)(4).)
 - (5) Any devise or inheritance. (Section 82028(b)(5).)
 - (6) A personalized plaque or trophy valued at less than \$250. (Section 82028(b)(6).)
 - (7) (A) The cost of home hospitality, as defined in Regulation 18942.2, provided to an official by an individual in the individual's home when the individual is present, unless one of the following provisions applies:
 - (i) Any part of the cost of the hospitality provided by the host is paid directly or reimbursed by another person.
 - (ii) Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.

- (iii) There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home.
 - (B) In determining the applicability of subparagraph (A), the following apply:
 - (i) The cost of providing hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.
 - (ii) An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.
- (8)
 - (A) Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on a holiday, birthday, or other occasions, including reciprocal exchanges as identified in subparagraph (B) below where benefits are commonly exchanged, to the extent that the value of the benefits exchanged is not substantially disproportionate and includes food, entertainment, and nominal benefits provided to guests at an event, by an honoree or another individual, other than a lobbyist, hosting the event.
 - (B) Reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment

that is equal to or greater than the amount specified in Regulation 18940.2.

- (9) Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position except for donations of cash.
- (10) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.
- (11) Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in Regulation 18950 (b)(2)) is not a "payment" as defined in Section 82044 so long as the admission is provided by the person who organizes the event. For purpose of this subdivision, nominal means an insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.
- (12) Payments for campaign activities as specified in Regulation 18950.3.
- (13) A ticket provided to an official and one guest of the official for his or her admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a ceremonial role on behalf of his or her agency, as defined in Regulation 18942.3, so long as the official's agency complies with the posting provisions set forth in Regulation 18944.1, subdivision (d). Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event.
- (14) A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery.
- (15) Benefits received as a guest attending a wedding or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.

- (16) Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.
- (17) Acts of Neighborliness. A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances.
- (18)
 - (A) Bona Fide Date or Dating Relationship. Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act's conflict of interest provisions if the value meets the amount specified in Regulation 18940.2.
 - (B) Acts of Human Compassion. Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.
 - (C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.
 - (D) The limitations placed on the exceptions contained within this paragraph (17) apply to the following persons:

- (i) A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.
 - (ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.
 - (iii) A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.
- (19) Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.
- (b) The following gifts are exempt from the limitations on gifts described in Section 89503:
- (1) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Section 89506.
 - (2) Wedding gifts.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 86113, 86203, 87100, 87103, 87207, 87302 and 89503, Government Code.

Section 18942.1. Definition of “Informational Material.”

“Informational material” means any goods or service that serves primarily to convey information and that is provided to the official for the purpose of assisting him or her in the performance of his or her official duties or the duties of the elective office he or she seeks. Informational material may include:

- (a) Books, reports, pamphlets, calendars, periodicals, photographs, audio and video recordings, flash drives, CD-ROMS, or DVD ROMS or other similar recordings, or free or discounted admission to informational conferences or seminars.
- (b) Scale models, pictorial representations, maps, and other such items, provided that when the item has a fair market value in excess of the gift limit amount specified in Regulation 18940.2, the burden shall be on the recipient to demonstrate that the item is informational material.
- (c) On-site demonstrations, tours, or inspections. Transportation provided to or in connection with an on-site demonstration, tour, or inspection is also considered “informational material” when any of the following apply:
 - (1) The transportation serves as the means by which the information is conveyed and is integral to the conveyance of the information, such as an aerial tour over an area.
 - (2) The transportation is provided solely at the site of a demonstration, tour, or inspection, including to and from an area of that site that is legally inaccessible to the public.
 - (3) The transportation is to or from a site when there is no reasonable, publicly-available commercial transportation available to that site and the transportation provided is limited to the segment for which public transportation is not available.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87103(e), 87207 and 89503, Government Code.

Section 18942.2. Definition of Home Hospitality.

Home Hospitality. “Home hospitality” means any benefit received by the official, and the official’s spouse and family members when accompanying the official, consisting of food, typical home entertainment, or occasional overnight lodging provided by an individual with whom the official has a relationship, connection, or association unrelated to the official’s position and the hospitality is provided as part of that relationship, connection, or association in the individual’s home when the individual is present. Home hospitality

includes any food provided by other guests at the event and benefits received by the official when the official serves as the host. “Home” includes a vacation home owned, rented, or leased, by the individual for use as his or her residence, including a timeshare with deeded ownership or a continual right-to-use ownership benefit, and a motor home or boat owned, rented, or leased by the individual for use as his or her residence. “Home” also includes any facility in which the individual has a right-to-use benefit by his or her home residency, such as a community clubhouse. Any benefit received, other than the use of the premises, by any guests of the official other than the official’s spouse and family members who are present at the request of the official or the official’s agent are gifts to the official.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207 and 89503, Government Code.

Section 18942.3. Definition of Ceremonial Role.

A “ceremonial role” is an act performed at an event by the official as a representative of the official’s agency at the request of the holder of the event or function where, for a period of time, the focus of the event is on the act performed by the official. Examples of a ceremonial role include: throwing out the first pitch at a baseball game; cutting a ribbon at an opening; making a presentation of a certificate, proclamation, award, or other item, such as the key to the city. The filing officer of a local jurisdiction may adopt specific policies under this definition that either limit or expand the permissible ceremonial roles for an official in the local jurisdiction. If the local jurisdiction’s filing officer does not have policy-making authority, the legislative body may adopt a specific policy. If a separate agency policy is adopted, the policy shall be forwarded to the Commission for posting on the Commission’s website.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207 and 89503, Government Code.

Section 18943. Gift to Official Through Family Member.

- (a) Scope of Regulation. This regulation determines when a payment will be treated as if it were a gift to the official even though the payment is made to the official’s family member.
- (b) For purposes of this regulation, the term “family member” means any of the following individuals:
 - (1) The official’s spouse as defined in Regulation 18229.
 - (2) A “dependent child” of the official as defined in Regulation 18229.1.

- (3) The official's child (including an adoptive child or stepchild) who meets all of the following criteria:
 - (A) Is at least 18 but no more than 23 years old and is a full-time or part-time student.
 - (B) Has the same principal place of residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school, is not the child's "principal place of residence."
 - (C) Does not provide over one-half of his or her own support.

- (c) Absent an exception under Regulation 18942, a payment provided to or for the use of a family member is a gift to the official under either of the following conditions:
 - (1) There is no established working, social, or similar relationship between the donor and the family member that would suggest an association between the donor and the family member suitable or appropriate for making the type of payment provided to the family member.
 - (2) There is evidence to suggest the donor had a purpose to influence the official. Evidence to suggest the donor had a purpose to influence the official exists in any of the following circumstances:
 - (A) The payment is made to a family member of a state agency official by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.
 - (B) The payment is made to a family member of a state or local government agency official by a donor, or the donor's agent, if the donor is involved in an action or decision before the official's agency, in which the official will reasonably foreseeably participate or in an action or decision in which he or she has participated within the last 12 months.
 - (C) The payment is made to a family member by a person who has a contract with the official's agency or by a person who engages in a business that regularly seeks contracts with or comes before the agency for the purpose of receiving a license, permit, or other entitlement and the official may reasonably foreseeably make or participate in a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.), related to the

person, or has participated in any decision related to the person within 12 months of the time the gift is made. For purposes of this subparagraph, a person who “has a contract with the official’s agency” or who “engages in a business that regularly seeks contracts with or comes before the agency” does not include any individual who has less than a ten percent interest in the business contracting with or appearing before the agency.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 82028, Government Code.

Section 18944. Payments Made to an Agency for Use by Agency Officials.

- (a) Applicability. Except as limited below, this regulation identifies when a payment that is made to a state or local government agency, or any subdivision, department division, bureau, office board, or commission of the foregoing and used for official agency business is not a gift or income to any official of that agency. This regulation does not apply to a pass or ticket as described in Regulation 18944.1, which shall be governed by that regulation, or for travel expenses as described in Regulation 18950.1, which are governed by that regulation.
- (b) Definitions.
 - (1) “Payment” means a payment as defined in Section 82044, including the payment for, or provision of, fees, goods or services to an agency where the person providing the payment has no legal obligation to do so.
 - (2) “Agency head” means the individual who has the ultimate legal authority for the agency, or the individual the agency authorizes to determine how the agency uses the payment as provided in paragraph (c)(1).
- (c) Payment to an Agency. A payment to an agency, as described in subdivision (a), is not a gift or income to the official who receives the use of the payment if it meets all of the following requirements:
 - (1) Official Agency Business. The payment is used for official agency business.
 - (2) Agency Head Controls Use of Payment. The agency head determines and controls the agency’s use of the payment including the selection of the agency official who will use the payment. The agency head may not select himself or herself as the individual who will use the payment unless payment is for an item that provides for general use by agency officials and the agency head is one of those officials who will have access to such use.

- (3) Agency Reports the Payment. The agency reports the payment on a form prescribed by the Commission and maintained pursuant to the provisions of subdivision (d) below, that includes the following information:
 - (A) A description of the payment, the date it was received, the intended purpose and the amount of the payment (or the actual or estimated fair market value of the goods or services provided, if the amount is unknown).
 - (B) The name and address of the donor. If the donor is not an individual, the report must also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from another person for the specific purpose of making the payment to the agency, the report must contain the name of each person and the amount given by each person.
 - (C) The agency's use of the payment, and the name, title, and department of the agency official who used the payment.
 - (D) The signature of the agency head.
- (d) The form must be maintained by the agency as a public record and pursuant to the provisions of Section 81008(a). Additionally, for any quarter year period in which payments aggregating to \$2,500.00 or more since the last filing are received by an agency, the agency must report the payment as follows:
 - (1) A state agency must submit a copy of the form(s) or a summary of the information on the form to the Commission (or, in the case of the Commission, the office of the Attorney General), within 30 days after the close of the quarter. If the state agency maintains a website, the state agency shall also post a copy of the form(s) or a summary of the information on the form(s) on its website in a prominent fashion within 30 days after the close of any quarter in which the agency receives payments aggregating to \$2,500 or more since the last filing. The Commission shall post a copy of the form(s), or a summary of the information on the form(s), on its website. A local jurisdiction may require additional filing or website posting.
 - (2) A local agency must submit a copy of the form(s) or a detailed summary of the information on the form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after the close of the quarter. The filing officer shall post a copy of the form or the information in the form on its website, in a prominent fashion within 30 days after the close of any quarter in which the agency receives payments aggregating to \$2,500.00 or more since the last filing or if it does not

maintain a website, shall provide a copy of the form to the Commission, which shall post the information on its website.

- (e) Public Colleges and University Research Projects. Notwithstanding the above provisions, a payment to a California public college or university for a specific research project that is received consistent with the requirements of Regulation 18702.4(c) or a meal received in the course of the college's or university's official fundraising activity, which qualifies under federal and state law for a deduction as a charitable contribution for educational purposes, is not a gift or income to the official of the college or university who uses the payment.

COMMENTS: Acceptance of a pass or discount from a transportation company by a public officer, other than a Public Utilities Commissioner, may result in forfeiture of the official's office pursuant to Article XII, Section 7 of the California Constitution.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501-89506, Government Code

Section 18944.1. Gifts: Agency Provided Tickets or Passes.

For purposes of this regulation the terms "ticket" and "pass," as defined in Regulation 18946, apply solely to an admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose provided by an agency to, or at the behest of, an official of that agency, other than an admission provided to a school, college or university district official, coach, athletic director, or employee to attend an amateur event performed by students of that school, college, or university district or an admission identified in Regulation 18942(a)(12).

- (a) (1) A ticket or pass is not subject to the provisions of this regulation, if the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income to the official in compliance with the reporting provisions of subdivision (d) below.
- (2) Any ticket or pass acquired by the agency under subdivision (b)(2) and distributed to an official, other than an elected official or member of the legislative or governing body of the agency, for the official's personal use, to support general employee morale, retention, or to reward public service is deemed to serve a public purpose, and any tickets distributed to an official for such purpose shall be reported as described under subdivision (d)(3). For purposes of this paragraph, "personal use" means use by the official, his or her family, or no more than one guest.

- (b) The official will meet the burden under Section 82028 that equal or greater value has been provided in exchange for the ticket or pass if the official reimburses the agency for the ticket or if all of the following requirements are met:
 - (1) For a ticket or pass the agency receives from an outside source, other than as provided in subdivision (b)(2):
 - (A) The ticket or pass is not earmarked by the outside source for use by the agency official who uses the ticket or pass;
 - (B) The agency determines, in its sole discretion, who uses the ticket or pass.
 - (C) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency that incorporates all of the provisions of subdivision (c) below.
 - (2) For a ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) by purchase at fair market value, the distribution of the ticket or pass is made in accordance with a policy adopted by the agency that incorporates all of the provisions of subdivision (c) below.
- (c) Agency Ticket/Pass Distribution Policy. Any distribution of a ticket or pass under this regulation to, or at the behest of, an agency official must be made pursuant to a written agency ticket distribution policy, duly adopted by the legislative or governing body of the agency or, if none, the agency head that contains, at a minimum, all of the following:
 - (1) A provision setting forth the public purposes of the agency for which tickets or passes may be distributed.
 - (2) A provision requiring that the distribution of any ticket or pass to, or at the behest of, an agency official accomplish a stated public purpose of the agency.
 - (3) A provision prohibiting the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event.
- (d) Public Posting. A record of a ticket or pass distributed pursuant to this regulation must be completed on a form provided by the Commission. The form must be maintained as a public record, be subject to inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website.

- (1) Except as provided in paragraphs (2) and (3) below, the information must include the following:
 - (A) The name of the person receiving the ticket or pass;
 - (B) A description of the event;
 - (C) The date of the event;
 - (D) The face value of the ticket or pass;
 - (E) The number of tickets or passes provided to each person;
 - (F) If the ticket or pass is behested, the name of the official who behested the ticket; and
 - (G) A description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.
- (2) If the ticket or pass is distributed to an organization outside the agency, the agency shall post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization as otherwise required in paragraph (1) above;
- (3) If the ticket or pass is distributed pursuant to subdivision (b) the agency may post the name of the department or other unit of the agency and the number of tickets or passes provided to the department or other unit in lieu of posting the name of the individual employee as otherwise required in paragraph (1) above;
- (e) The Commission recognizes the discretion of the legislative or governing body of an agency or, if none, the agency head to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.
- (f) The provisions of this regulation apply only to the benefits the official receives that are provided to all members of the public with the same class of ticket.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 82028, Government Code.

Section 18944.2. Agency Raffles and Exchanges of Presents.

- (a) Applicability. This regulation identifies when a payment made by a state or local government agency of an item awarded to an agency official in a raffle open to all employees of the agency, or the unit of the agency holding the raffle, or received in an exchange of presents among agency employees, will be treated as a gift to the official.
- (b) Agency Raffles.
 - (1) When an agency holds an employee raffle and the item awarded in the raffle has been received by the agency from a source other than an agency employee and the agency did not purchase the item from its funds, the item is a gift from the source who provided the item to the agency to the official who wins the item, and the agency is the intermediary of the gift. The value of the gift is the fair market value less any consideration that the official paid to participate in the raffle. If the value of the gift is \$50 or more, the agency and the official shall comply with Section 87210 or Section 87313 if applicable.
 - (2) When an agency holds an employee raffle and the item awarded in the raffle has been obtained with agency funds or is otherwise an asset of the agency and not donated to the agency by a non-agency source, the provisions of Regulation 18944.3 apply.
 - (3) When an agency holds an employee raffle and the item awarded in the raffle has been received by the agency from an agency employee who is not acting as an intermediary for another donor, the item is not a gift to the employee who wins the raffle.
- (c) Exchanges of Presents Among Agency Employees. When an employee of an agency receives a present in an exchange of presents, where all participants in the exchange are agency employees, any present received by the official in the exchange is not a gift so long as the present received is provided by another employee of the agency and is not substantially disproportionate in value from the item provided by the official.
- (d) This regulation does not apply to a ticket or pass of the type described in Regulation 18944.1, which shall be governed by that regulation, if the ticket or pass is provided from a source other than an agency employee.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 82028, Government Code.

Section 18944.3. Gifts from a Government Agency to Officials in That Agency.

Except as provided in Regulations 18944 and 18944.1, a payment by a government agency from that agency's assets that provides food, beverage, entertainment, goods, or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Section 82028, Government Code.

Section 18945. Source of Gifts.

- (a) The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions:
 - (1) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift;
 - (2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or
 - (3) the person receives a payment from a source after the payment was solicited by the official or the official's agent for the purpose of making a gift to the official.
- (b) Under any of the conditions identified in subdivision (a)(1)-(3), the source of the payment is the source of the gift.
- (c) If a public official's pro-rata share of the cost of the benefit provided at an event constitutes a gift to the official, the person hosting the event, unless the admission to the event was provided by someone other than the host, shall be deemed the source of the gift so long as the event is widely attended by persons other than governmental officials.
- (d) **Presumption of Source by Official.** Notwithstanding subdivision (a) an official may presume that the person delivering the gift or, if the gift is offered but has not been delivered, the person offering the gift to him or her is the source of the gift unless it is clear from the surrounding circumstances at the time the gift is delivered or offered that the person delivering or offering the gift is not the actual source of the gift.

- (e) **Presumption of Source by Intermediaries.** A person that qualifies as an intermediary as a result of a payment solicited from an official pursuant to subdivision (a)(3) may presume that he, she, or it is the source of the gift unless the person does not know or have reason to know of the official's solicitation.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 86111, 86201, 86203, 87100, 87103, 87207, 87210, 87302, 87313 and 89503, Government Code.

Section 18945.1. Aggregation of Gifts; "Single" Source.

For purposes of the gift limits in Sections 86203 and 89503, and the Act's reporting requirements, separate gifts from two or more sources are aggregated as being from a single source in any of the following circumstances:

- (a) The separate gifts are from an individual and an entity in which the individual has an ownership interest of more than 50 percent unless the individual did not direct and control the gift from the entity. An individual who has an ownership interest of more than 50 percent is presumed to direct and control the gift from the entity. This presumption may be rebutted if the payment is made by another individual who, in fact, directed and controlled the payment.
- (b) The separate gifts are from an individual and an entity and the individual in fact directed and controlled the decision of the entity to make the gift.
- (c) The gifts are from two or more entities and the same person or a majority of the same persons directed and controlled the decisions of the entities to make the gifts to the official.
- (d) Business entities in a parent-subsidary relationship, or business entities with the same controlling (more than 50 percent) owner, shall be considered a single source unless the business entities acted independently in their decisions to make the gifts. For purposes of this regulation, a parent-subsidary relationship exists when one business entity owns more than 50 percent of another business entity.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 89501 through 89506, Government Code.

Section 18946. Valuation of Gifts.

- (a) **General Gifts.** Except as specified in subdivisions (b) and (c), a gift is valued at fair market value as of the date of receipt. Sections 18946.1 through 18946.5 provide for the valuation of specific types of gifts in the following situations:

Ticketed Events — See Regulation 18946.1

Invitation-Only Events — See Regulation 18946.2

Wedding Gifts — See Regulation 18946.3

Tickets to Nonprofit and Political Fundraisers — See Regulation 18946.4

Air Transportation — See Regulation 18946.5

- (b) Unique Gifts. Whenever the fair market value of a gift cannot be determined because the gift is unique or unusual, the official must make a reasonable approximation. In making such an approximation, the official must take into account the price of similar items. If similar items are not available as a guide, a good faith estimate shall be utilized.
- (c) Except as specified in Regulation 18946.1(a) and (b), the value of a gift is its full value even if unused, partially used, discarded, or transferred to another person.
- (d) Definitions: For purposes of this regulation and Regulations 18946.1 through 18946.5 and Regulation 18640, the following definitions apply:
 - (1) “Face Value.” “Face value” means the price as offered for sale to the general public indicated on the ticket or pass, or if that price is not indicated, the price at which the ticket or pass would otherwise be offered for sale to the general public by the operator of the venue or host of the event who offers the ticket for public sale.
 - (2) “Ticket.” A “ticket” is anything that provides access, entry, or admission to a specific future event or function and for which similar tickets are sold to the public to view, listen to, or otherwise take advantage of the attraction or activity for which the ticket is sold and includes any benefits that the ticket provides.
 - (3) “Pass.” A “pass” is a ticket that provides repeated access, entry, or admission to a facility or series of events and for which similar passes are sold to the public.
 - (4) “Invitation.” An “invitation” means a request to attend an event or function by the host, sponsor, or organizer of the event or function, where admission to the event is provided by the invitation only and not by a ticket or pass as defined above.

- (5) “Invitation Only Event.” An “invitation only event” is a gathering of individuals, who attend by invitation and where costs are incurred to hold the event beyond the costs of providing food.
- (6) “Specific Item.” “Specific item” means a tangible item the official receives at an event that is included among the non-cash nominal items presented to all attendees at the event.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207, 87302, and 89503, Government Code.

Section 18946.1. Exception — Valuation of Gifts: Passes and Tickets.

- (a) Unless otherwise indicated herein, the value of a ticket is the face value of the ticket. A ticket has no reportable value unless it is ultimately used or transferred to another person.
- (b) The value of a pass is determined as follows:
 - (1) For purposes of disclosure and the gift limits, the value of a pass is equal to the face value of an individual one-time admission multiplied by the actual use of the pass by the official and any other individuals who are admitted with the pass up to the face value of the pass.
 - (2) For purposes of disqualification, the value of a pass is the face value. If the official returns the pass before the decision, the value is the actual use of the pass made prior to the decision, as provided in subdivision (b)(1).
 - (3) A pass has no reportable value unless it is ultimately used or transferred to another person.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207 and 87302, Government Code.

Section 18946.2. Exception — Valuation of Gifts: Attendance at Invitation-Only Events.

- (a) The valuation of attendance at an invitation-only event under this regulation applies to the official and one guest of the official attending the event.
- (b) Invitation-Only Events. Except as provided in subdivisions (d) through (f) of this regulation, and in Regulation 18946.4, the admission value of the benefit received by an official and one guest who attend an invitation-only event, is the official’s and the guest’s pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending

the event. Any other specific benefit provided to the official and guest at the event, such as golf green fees, is valued at fair market value.

- (c) “Pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official.” The term “pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest” means the cost of all food, catering services, entertainment, and any specific item presented to all attendees as part of the event, divided by the number of acceptances or the number of attendees.
- (d) Official or Ceremonial Functions. When an official performs an official or ceremonial function at an invitation-only event, as set forth in subdivision (b) of this regulation, in which the official is invited to participate by the event’s sponsor or organizer to perform an official or ceremonial function, the value received is the pro rata cost of any meal provided to the official and guest plus the value of any specific item that is presented to the official and his or her guest at the event.
- (e) Drop-In Visit. Except as provided in subdivision (f) of this regulation, if an official attends an invitation-only event and does not consume any meal or stay for any entertainment and consumes only minimal appetizers and drinks, the value of the gift received is the value of any specific item, other than food, presented to the official and guest accompanying the official at the event.
- (f) Lobbyists, Lobbying Firms, and Lobbyists Employers. When an official attends an invitation-only event sponsored by any person required to file a periodic statement under Article 1 of Chapter 6 of the Act, the value of the gift is determined pursuant to the provisions of Regulation 18640.

For purposes of this regulation, “entertainment” means a feature show or performance intended for an audience, and does not include music provided for background ambiance.

NOTE: Authority cited: Section 83112, Government Code.

Reference: Sections 82028, 86201, 86203, 87103, 87207, 87302 and 89501 through 89506, Government Code.

Section 18946.3. Exception — Valuation of Gifts: Wedding Gifts.

Notwithstanding the provisions of Regulation 18943, the value to the official of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift’s total value.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207 and 87302, Government Code.

Section 18946.4. Exception — Valuation of Gifts: Attendance at Nonprofit or Political Organization Fundraising Event.

This regulation establishes the value of a ticket, or admission by invitation, when the ticket or invitation to attend is to a fundraising event for a nonprofit or political organization.

- (a) Nonprofit Fundraiser. Except as provided in subdivision (b), the value of a ticket or admission by invitation, to a fundraising event for a non-profit, tax-exempt organization that is not a committee covered by subdivision (c) is determined as follows:
 - (1) When the ticket clearly states that a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price that constitutes the donation, the value of the ticket is the nondeductible portion of the admission.
 - (2) If there is no ticket, or other official information provided by the organization, indicating the value of the nondeductible portion of the admission, the value of the admission is the pro-rata share of the cost of any food, catering services, entertainment, and any other item provided to the official that is available to all guests attending the event, as determined under Regulation 18946.2 for invitation-only events. Any other specific benefit provided to the official at the event, such as golf green fees, is valued at fair market value.
- (b) 501(c)(3) Organization Fundraiser. When the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the organization may provide two tickets or invitations per event to an official that shall be deemed to have no value. Additional tickets or admissions by invitation provided to or controlled by the official and any tickets not provided directly by the 501(c)(3) organization to the official are valued under subdivision (a) above.
- (c) Political Fundraiser. For a ticket or invitation to attend a fundraising event for a committee defined in Section 82013(a), or a comparable committee regulated under federal law or the laws of another state, the committee or candidate may provide two tickets or invitations per event to an official that shall be deemed to have no value. Additional tickets or admissions by invitation provided to or controlled by the official and any tickets not provided directly by the committee or candidate to the official are valued under subdivision (a) above.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207 and 89503, Government Code.

Section 18946.5. Exception — Valuation of Gifts: Air Transportation.

Air transportation is valued as follows:

- (a) The value of transportation on a “commercial flight,” is the price the carrier charges the public for the same class seat on the flight provided to the official. For purposes of this regulation, “commercial flight,” means a flight where individual seats are sold to the public in the general course of business.
- (b) The value of all other air transportation is the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of passengers aboard the flight.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 87207, 87302 and 89501-89506, Government Code.

Section 18950. Travel Payments.

- (a) A payment for travel made pursuant to the provisions of Section 89506(a) is a gift and shall be reported pursuant to the provisions of that section. A payment for travel made pursuant to an exception provided under Regulations 18950.1 through 18950.3 is not a gift or honorarium and is subject to reporting only as specified in those regulations.
- (b) For purposes of Section 89506 and Regulations 18950.1 through 18950.3, the following definitions apply:
 - (1) “Payment for travel” means any payment that provides transportation to an official from one location to another location as well as a payment for lodging and food connected with the travel.
 - (2) “Speech” means making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event.
- (c) Exceptions: In addition to the exceptions to the definition of gift set forth in Regulations 18940 through 18946.6, the following gift exceptions apply to travel payments:
 - (1) A payment for travel that satisfies Regulation 18950.1, 18950.2, or 18950.3 does not provide a personal benefit to the official under Section 82028 and is therefore not a gift under the Act.
 - (2) Any payment for travel received from a state, local, or federal government agency and related per diem expenses for education, training, or other inter-

agency programs or purposes, is not a gift or income to the official who uses the payment.

- (3) Transportation provided to an official in a vehicle or aircraft owned by another official or agency when each official is traveling to or from the same location for an event as a representative of their respective offices is not a “payment” as defined in Section 82044.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82015, 82028, 86111, 87207, 87302 and 89501 through 89506, Government Code.

Section 18950.1. Exception: Payments for Travel Made in Conjunction with Official Agency Business.

This regulation identifies certain travel payments that do not confer a personal benefit on an official and sets forth the terms under which these travel payments, when made by a source other than a source identified in Regulation 18950(c)(2), are for the purpose of facilitating the public’s business and are therefore not gifts or income because the payment is made for an official agency purpose in lieu of a payment using agency funds. For purposes of this regulation, “government employer” means the state agency as defined in Section 82049 or any local government agency, or any subdivision, department, division, bureau, office board, or commission of the foregoing as defined in Section 82041, who directs the employee in the performance of his or her governmental duties.

- (a) This regulation applies solely to a travel payment that meets all of the following requirements:
 - (1) The payment is made directly to or coordinated with the government employer as set forth in subdivision (b) below and not made to the employee using the travel.
 - (2) The payment is used for official agency business as specified in subdivision (c) below.
 - (3) The government employer determines the official who will make use of the payment as provided in subdivision (d) below.
 - (4) The payment provides no personal benefit to the official who makes use of the payment provided in subdivision (e) below.
 - (5) The duration of the travel is limited to that necessary to accomplish the purposes for which the travel was provided as determined by the

governmental employer using the same standards imposed for travel paid with government funds.

- (6) The government employer reports the payment as provided in subdivision (f) below.
- (b) The payment must be made directly to the government employer or by arranging with the government employer any payments for transportation and lodging that are made directly to the provider of those services. Food may be accepted for attendance at an event where food is provided as part of the admission to the event. All other payments for food must be made to the government employer pursuant to the employer's per diem travel policy.
 - (c) The payment is used for official agency business when made under any of the following circumstances:
 - (1) The payment is made pursuant to a provision in a contract that requires the contracting party to pay any expenses associated with any required governmental travel resulting from the governmental agency's participation in the contract and the payment is used for that purpose.
 - (2) The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform.
 - (3) The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members.
 - (4) The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event.
 - (5) The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official's job duties and the payment is provided by an organization that commonly provides such training.
 - (6) The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his or her officially assigned job

duties and the agency is authorized to provide an official to attend the meeting.

- (7) The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase the product pursuant to the jurisdictional authority of the official's governmental employer.
- (d) The governmental employer shall select the official who will make use of the payment. If the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental employer provides training, or discuss policy and direction in implementing the functions of the governmental employer, the donor may request the official who is most qualified to make the presentation.
- (e) A payment made under any of the provisions of this regulation does not provide a personal benefit and is not a gift to the official who uses the payment, provided the payment complies with the following provisions:
 - (1) The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties.
 - (2) Except as provided in subdivisions (b) and (g), the travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense.
- (f) The payment is reported on a form prescribed by the Commission and maintained by the governmental employer as a public record subject to inspection and copying under Section 81008(a) and signed by the authorizing official. Additionally, within 30 days after the end of a quarter year in which aggregated travel payment received by the governmental employer since the last required filing total \$2,500 or more, a copy of the form(s) or a summary of the information must be filed with the Commission (or, in the case of the Commission, the office of the Attorney General). If the governmental employer maintains a website, it shall also post a copy of the form or a summary of the information on the form on its website in a prominent fashion. A local jurisdiction may require additional filing at the local level for agencies within its jurisdiction. The form, or summary of information, must include the following information:

- (1) A date the travel occurred and an itemized breakdown of the amount paid for transportation, lodging, and food.
 - (2) The name of the transportation provider, the type of transportation, and the name of the business where the lodging was provided.
 - (3) The location of the travel.
 - (4) The name and address of the donor. If the donor is not an individual, the report must also describe the business activity, or the nature and interests of the donor. If the donor raised funds from another person for the specific purpose of making the payment to the agency, the report must contain the name of each person and the amount given by each person.
 - (5) The purpose of the travel, and department and position or title the official who used the payment and the name of any elected or appointed official who uses the payment.
- (g) Nothing contained herein shall restrict a payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees.
- (h) Limitations on Application of this Regulation. The exception for a travel payment provided under this regulation does not apply if the payment is made for travel by:
- (1) A state or local elected officer as defined in Section 82020, or an official specified in Section 87200, unless the transportation, lodging, and food is directly related to the official's public duties, is for a purpose that would otherwise be paid for with the agency's funds, is authorized in the same manner as transportation, lodging, and food using the agency's own funds, and otherwise meets the requirements of subdivision (a) of this regulation.
 - (2) Acceptance of a pass or discount from a transportation company by a public official prohibited under Article XII, Section 7 of the California Constitution.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501-89506, Government Code.

Section 18950.3. Exception: Payments for Travel in Connection with Campaign Activities.

- (a) A payment made to an official, who is a candidate for his or her transportation, lodging, or food in connection with his or her campaign activities is a contribution to the campaign committee of that official.
- (b) A payment made to an official by or at the behest of a “committee,” as defined in Section 82013(a) (including a “controlled committee,” or a comparable committee regulated under federal law or the laws of another state) for the official’s actual travel expenses (including food and lodging) or for other actual and allowable campaign expenses of the committee is neither income nor a gift to the official so long as the expenditures are reportable by the committee in accordance with the provisions of Sections 84100, et seq. or applicable federal law or the laws of the state in which the committee exists.
- (c) Any other payment for travel from a committee to an official not covered by subdivision (a) or (b) above, is income or a gift under the Act.

NOTE: Authority cited: Section 83112, Government Code.

REFERENCE: Sections 82015, 82028 and 82030, Government Code.

Appendix B

Government Code Sections 1090-1099

GOVERNMENT CODE SECTIONS 1090-1099

Section 1090. Contracts, sales, and purchases made in official capacity.

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

Section 1090.1. Commission for placement of insurance.

No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

Section 1091. “Remote interest” in contract; Disclosure of interest; Penalty for willful failure to disclose.

- (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.
- (b) As used in this article, “remote interest” means any of the following:
 - (1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.
 - (2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an

officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the “real or ultimate ownership” of the contracting party.

- (3) That of an employee or agent of the contracting party, if all of the following conditions are met:
 - (A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.
 - (B) The contract is competitively bid and is not for personal services.
 - (C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.
 - (D) The contracting party has 10 or more other employees.
 - (E) The employee or agent did not directly participate in formulating the bid of the contracting party.
 - (F) The contracting party is the lowest responsible bidder.
- (4) That of a parent in the earnings of his or her minor child for personal services.
- (5) That of a landlord or tenant of the contracting party.
- (6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest

of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

- (7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.
- (8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.
- (9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.
- (10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.
- (11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.
- (12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.
- (13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.
- (14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.
- (15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

- (A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.
 - (B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.
 - (C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.
- (16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:
- (A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.
 - (B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.
 - (C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.
 - (D) The contract implements a program authorized by the Public Utilities Commission.
- (c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.
- (d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

Section 1091.1. Right of public officer to subdivide land in which he has interest.

The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

Section 1091.2. When financial interests affect local workforce investment board member's voting rights.

Section 1090 shall not apply to any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except where both of the following conditions are met:

- (a) The contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents.
- (b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

Section 1091.3. Inapplicability of Section 1090 as relating to contract or grant made by county children and families commission.

Section 1090 shall not apply to any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 (Division 108 (commencing with Section 130100) of the Health and Safety Code), except where both of the following conditions are met:

- (a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents.
- (b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

Section 1091.4. “Remote interest” to include persons with financial interest in contract under specified conditions; Burden of proof.

- (a) As used in Section 1091, “remote interest” also includes a person who has a financial interest in a contract, if all of the following conditions are met:
 - (1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.
 - (2) The contract is for either of the following:
 - (A) The maintenance or repair of the district’s property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.
 - (B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.
 - (3) The person did not participate in the formulation of the contract on behalf of the district.
 - (4) At a public meeting, the governing body of the district, after review of written documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price and that the contract is in the best interests of the district, and adopts a resolution stating why the contract is necessary and in the best interests of the district.
- (b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.

Section 1091.5. Interest in contract; Quantity and quality of interest; Relation to contracting party.

- (a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

- (1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.
- (2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.
- (3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.
- (4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.
- (5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.
- (6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.
- (7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.
- (8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular

consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

- (9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.
- (10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- (11) Except as provided in subdivision (b), that of an officer or employee of, or a person having less than a 10-percent ownership interest in, a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower, depositor, debtor, or creditor.
- (12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, “agreement” includes contracts and grants, and “park,” “natural lands,” and “historical resources” shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any

activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

- (13) That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:
 - (A) The loan product or program is or may be originated by any lender approved by the agency.
 - (B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.
 - (14) That of a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the board of which the officer or employee is a member, on the same terms and conditions as if he or she were not a member of the body or board. For purposes of this paragraph, “public services” includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.
- (b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

Section 1091.6. Abstention from vote if interest in property.

An officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain shall not vote on any matter affecting that organization.

Section 1092. Avoidance of prohibited contract; Time for commencing action.

- (a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the

contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.

- (b) An action under this section shall be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation described in subdivision (a).

Section 1092.5. Rights of good faith third party.

Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

Section 1093. Purchase, sale, or dealing in warrants or other evidence of public indebtedness.

The State Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any State, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof. This section does not apply to evidences of indebtedness issued to or held by such an officer, deputy or clerk for services rendered by them, nor to evidences of the funded indebtedness of the State, county, or city.

Section 1094. Affidavit of nonviolation required before allowing accounts.

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who willfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

Section 1095. Payment of warrants or other evidence of indebtedness.

Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

Section 1096. Suspension of settlement or payment.

Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed.

Section 1097. Penalties.

Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

Section 1097.1. Jurisdiction to commence administrative or civil action; Applicability of Commission's duties and authority to specified sections; Admissibility of decisions in other proceedings; Adoption of regulations; "Commission"

- (a) The Commission shall have the jurisdiction to commence an administrative action, or a civil action, as set forth within the limitations of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, against an officer or person prohibited by Section 1090 from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who violates any provision of those laws or who causes any other person to violate any provision of those laws.
- (b) The Commission shall not have jurisdiction to commence an administrative or civil action or an investigation that might lead to an administrative or civil action pursuant to subdivision (a) against a person except upon written authorization from the district attorney of the county in which the alleged violation occurred. A civil action alleging a violation of Section 1090 shall not be filed against a person pursuant to this section if the Attorney General or a district attorney is pursuing a criminal prosecution of that person pursuant to Section 1097.
- (c) (1) The Commission's duties and authority under the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) to issue opinions or advice shall not be applicable to Sections 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, 1091.6, or 1097, except as provided in this subdivision.

- (2) A person subject to Section 1090 may request the Commission to issue an opinion or advice with respect to his or her duties under Section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, and 1091.6. The Commission shall decline to issue an opinion or advice relating to past conduct.
 - (3) The Commission shall forward a copy of the request for an opinion or advice to the Attorney General's office and the local district attorney prior to proceeding with the advice or opinion.
 - (4) When issuing the advice or opinion, the Commission shall either provide to the person who made the request a copy of any written communications submitted by the Attorney General or a local district attorney regarding the opinion or advice, or shall advise the person that no written communications were submitted. The failure of the Attorney General or a local district attorney to submit a written communication pursuant to this paragraph shall not give rise to an inference that the Attorney General or local district attorney agrees with the opinion or advice.
 - (5) The opinion or advice, when issued, may be offered as evidence of good faith conduct by the requester in an enforcement proceeding, if the requester truthfully disclosed all material facts and committed the acts complained of in reliance on the opinion or advice. Any opinion or advice of the Commission issued pursuant to this subdivision shall not be admissible by any person other than the requester in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any opinion or advice that it issues pursuant to this subdivision a statement that the opinion or advice is not admissible in a criminal proceeding against any individual other than the requester.
- (d) Any decision issued by the Commission pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) shall not be admissible in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any decision it issues pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) a statement that the decision applies only to proceedings brought by the Commission.
- (e) The Commission may adopt, amend, and rescind regulations to govern the procedures of the Commission consistent with the requirements of this section and Sections 1097.2, 1097.3, 1097.4 and 1097.5. These regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

- (f) For purposes of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, “Commission” means the Fair Political Practices Commission.

Section 1097.2. Administrative action; Investigation of violations; Notice; Findings; Hearing; Subpoenas; limitations on actions.

- (a) Upon the sworn complaint of a person or on its own initiative, the Commission shall investigate possible violations of Section 1090, as provided in Section 1097.1. After complying with subdivision (b) of Section 1097.1, the Commission shall provide a written notification to the person filing a complaint in the manner described in Section 83115.
- (b) The Commission shall not make a finding of probable cause to believe Section 1090 has been violated unless the Commission has notified the person who is alleged to have violated Section 1090 in the manner described in Section 83115.5.
- (c) If the Commission determines there is probable cause to believe Section 1090 has been violated, it may hold a hearing to determine if a violation has occurred, subject to the requirements of subdivision (b) of Section 1097.1 and in the manner described in Section 83116.
- (d) If the Commission rejects the decision of an administrative law judge made pursuant to Section 11517, the Commission shall state the reasons in writing for rejecting the decision, as required by Section 83116.3.
- (e) The Commission shall have all of the subpoena powers provided in Section 83118 to assist in the performance of the Commission’s duties under this section.
- (f) The Commission may refuse to excuse any person from testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Commission notwithstanding an objection that the testimony or evidence required of the person may tend to incriminate the person. A person who is compelled, after having claimed the privilege against self-incrimination, to testify or produce testimonial evidence, shall not have that testimony or the testimonial evidence the person produced used against that person in a separate and subsequent prosecution. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The Commission shall not compel any person to testify or produce testimonial evidence after the person has claimed the privilege against self-incrimination unless the Commission has obtained written authorization from the Attorney General and the district attorney of the county in which the alleged violation occurred.
- (g) The Commission shall not commence an administrative action pursuant to this section against a person who is subject to Section 1090 alleging a violation of that section if the Commission has commenced a civil action pursuant to Section 1097.3

against that person for the same violation. For purposes of this subdivision, the commencement of the administrative action shall be the date of the service of the probable cause hearing notice, as required by subdivision (b), upon the person alleged to have violated Section 1090.

- (h) An administrative action brought pursuant to this section shall be subject to the requirements of Section 91000.5.

Section 1097.3. Civil action; Penalties; Time limitation.

- (a) Subject to the requirements of Section 1097.1, the Commission may file a civil action for an alleged violation of Section 1090. A person held liable for such a violation shall be subject to a civil fine payable to the Commission for deposit in the General Fund of the state in an amount not to exceed the greater of ten thousand dollars (\$10,000) or three times the value of the financial benefit received by the defendant for each violation.
- (b) The Commission shall not commence a civil action pursuant to this section alleging a violation of Section 1090 if the Commission has commenced an administrative action pursuant to Section 1097.1 against the person for the same violation.
- (c) A civil action brought by the Commission pursuant to this section shall not be filed more than four years after the date the violation occurred.

Section 1097.4. Unpaid fees or penalties.

In addition to any other remedies available, the Commission may obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to Section 1097.1, 1097.2, or 1097.3. Penalties shall be collected in accordance with Section 91013.5.

Section 1097.5. Application to collect penalties.

- (a) If the time for judicial review of a final Commission order or decision issued pursuant to Section 1097.2 has lapsed, or if all means of judicial review of the order or decision have been exhausted, the Commission may apply to the clerk of the superior court for a judgment to collect the penalties imposed by the order or decision, or the order as modified in accordance with a decision on judicial review.
 - (1) The application, which shall include a certified copy of the order or decision, or the order as modified in accordance with a decision on judicial review, and proof of service of the order or decision, constitutes a sufficient showing to warrant issuance of the judgment to collect the penalties. The clerk of the court shall enter the judgment immediately in conformity with the application.

- (2) An application made pursuant to this section shall be made to the clerk of the superior court in the county where the monetary penalties, fees, or civil penalties were imposed by the Commission.
 - (3) A judgment entered in accordance with this section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.
 - (4) The Commission may bring an application pursuant to this section only within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.
- (b) The remedy available under this section is in addition to those available under Section 1097.4 or any other law.

Section 1098. Disclosure or use of confidential information for pecuniary gain.

- (a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.
- (b) As used in this section:
- (1) “Confidential information” means information to which all of the following apply:
 - (A) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the Public Records Act.
 - (B) At the time of the use or disclosure of the information, the disclosure is prohibited by (i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; (ii) the statement of incompatible activities adopted pursuant to Section 19990 by the agency in which the officer or employee serves; or (iii) a provision in a document similar to a statement of incompatible activities if the agency in which the officer or employee serves is a local agency.
 - (C) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information

or acquires within 90 days following the use or disclosure of the information.

- (2) For purposes of paragraph (1):
 - (A) “Interest in real property” has the definition prescribed by Section 82033.
 - (B) “Investment” has the definition prescribed by Section 82034.
 - (C) “Material financial effect” has the definition prescribed by Sections 18702 and 18702.2 of Title 2 of the California Administrative Code, as those sections read on September 1, 1987.
- (3) “Pecuniary gain” does not include salary or other similar compensation from the officer’s or the employee’s agency.
- (c) This section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to Sections 10542 and 10543.
- (d) This section is not intended to supersede, amend, or add to subdivision (b) of Section 8920 regarding prohibited conduct of Members of the Legislature.

Section 1099. Simultaneous holding of offices prohibited; Forfeit of first upon accession to second office; Exceptions to applicability of section.

- (a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
 - (1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
 - (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
 - (3) Public policy considerations make it improper for one person to hold both offices.
- (b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.

- (c) This section does not apply to a position of employment, including a civil service position.
- (d) This section shall not apply to a governmental body that has only advisory powers.
- (e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.
- (f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.



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LOS ANGELES OFFICE

355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Telephone: 213.626.8484
Facsimile: 213.626.0078
e-mail: la@rwglaw.com

SAN FRANCISCO OFFICE

44 Montgomery Street, Suite 3800
San Francisco, California 94104-4811
Telephone: 415.421.8484
Facsimile: 415.421.8486
e-mail: sf@rwglaw.com

ORANGE COUNTY OFFICE

1 Civic Center Circle, PO Box 1059
Brea, California 92822-1059
Telephone: 714.990.0901
Facsimile: 714.990.6230
e-mail: oc@rwglaw.com

TEMECULA OFFICE

41000 Main Street, Suite 309
Temecula, California 92589-9033
Telephone: 951.695.2373
Facsimile: 951.695.2372
e-mail: tem@rwglaw.com

www.rwglaw.com