Petaluma Animal Services Advisory Committee Handbook

July 2020

1. **Petaluma Resolution 2013-038 N.C.S.:** ***Repealing and Updating Enabling Legislation for the Animal Services Advisory Committee***

2. ***AB 1234 Training Materials on Public Official Ethics and Government Transparency*** **– Eric Danly, City Attorney**

3. **Petaluma Resolution 2018-159 N.C.S.:** ***City of Petaluma Conflict of Interest Code***

Resolution No. 2013-038 N.C.S.
of the City of Petaluma, California

REPEALING AND UPDATING ENABLING LEGISLATION FOR THE ANIMAL SERVICES ADVISORY COMMITTEE

WHEREAS, the City Council created the Animal Services Advisory Committee ("the Committee") on June 22, 1998, by adopting Resolution 98-126 N.C.S.; and,

WHEREAS, from time to time the City Council has identified the responsibilities of the Committee and appointed members to the Committee, including a member of the City Council as Council liaison and voting member to the Committee; and,

WHEREAS, the City Council most recently updated the enabling legislation for the Committee on August 6, 2007 by Resolution No. 2007-143 N.C. S.; and,

WHEREAS, the City Council, on July 2, 2012, by Resolution 2012-106 N.C.S., approved a professional services agreement with the Petaluma Animal Services Foundation (PASF) to provide animal control and shelter services for the City of Petaluma; and,

WHEREAS, the City Council wishes to confirm the mission; amend the composition, responsibilities, and procedures, of the Committee; and clarify the administrative support responsibilities of the PASF as they relate to the Committee.

NOW THEREFORE, BE IT RESOLVED that:

1. **Repeal.** All previous resolutions relating to the City's Animal Services Advisory Committee ("the Committee") are repealed and superseded by this resolution or to the extent that they contain provisions that conflict with this resolution.

2. **Continuance of Current Terms**. Subject to the provisions of this resolution, all current members of the Committee shall continue to serve for the remainder of the terms to which they have been appointed. Current Committee members and the expiration of each term are:

Albertson, Chris, Council Liaison	12/13
Donovan, Mike	6/14
Richardson, Lynn	6/13
Slager, Christina	6/13

3. **Composition.** The Committee shall consist of five members, one of whom shall be a member of the City Council who shall serve as liaison between the Committee and the City Council and who shall be a voting member of the Committee. Members of the Committee shall be residents of the City of Petaluma, or reside within its urban growth boundary. The City Manager, or his or her designee, shall serve as Committee staff and advise the Committee as needed in the performance of its duties.

4. **Mission**. The mission of the Committee is to protect, promote respect for, and enhance the well-being of all animals in the Petaluma Community.

5. **Duties/Authorities**. The Committee's duties shall include education and public relations related to the welfare of animals in the Petaluma Community, and particularly as it relates to those animals taken into and housed at the Animal Shelter. The Committee shall also periodically review the activities of the PASF as it carries out its contracted responsibilities, and provide advice to the City Council when appropriate on that, or on any other subject or matter related to animal welfare as may be prescribed by the City Council by ordinance, resolution, rule, or direction of the Council. Matters for review shall include reports required of PASF pursuant to contractual agreement, and concerns raised by the public at Animal Services Advisory Committee meeting that are within the Committee's purview, and may include new or revised fees and charges associated with: animal licensing; fees for service; penalties and fines, and other charges that may be imposed or revised by the City Council from time-to-time. The Committee duties do not include oversight of PASF staff or operations, finances or accounting, or administration of the services contract. The Committee has no authority to employ any person or incur any expense or obligation without approval of the City Council. The Committee shall have the right to establish such procedures and regulations as it deems appropriate for the conduct of its meetings, the selection of its officers, and the performance of its functions, consistent with applicable law including all applicable City ordinances, regulations rules, and/or direction of the City Council.

6. **Terms.** The term of office of each member, other than the Council liaison shall be three years, and shall commence on July 1st of the year appointed. Members appointed after July 1st shall serve the remainder of the term they were appointed to fill. No member shall serve more than three consecutive terms. The Council liaison shall be appointed annually in January by the City Council. The members' terms shall be staggered such that the terms of no more than three members, not including the City Council liaison, shall expire in any given year. Notwithstanding the expiration of a member's term pursuant to this provision, and subject to provision 7, members shall serve until a successor is appointed by the City Council.

7. **Resignation/Removal.** The City Council may declare the office of a member vacant: upon the resignation, death, disability that results in the inability of a member to perform his/her duties, loss of residency or other status required for the member to be eligible to serve, or unexcused absence of a member from three consecutive regular meetings. The City Council may also remove any member of the Committee, with or without cause, in the sole discretion of the City Council. Such removal shall require the affirmative vote of at least four members of the City Council.

8. **Vacancies.** Upon declaring a Committee office vacant for any reason, the City Council shall thereupon appoint a qualified person to fill the vacancy for the unexpired term.

9. **Meetings.** Meetings shall be held quarterly, and/or at other times, as necessary at a time and date convenient to the majority of the members. Meetings shall be subject to all applicable requirements of the Ralph M. Brown Act ("the Brown Act", California Government Code Section 54950 *et seq*).

10. **Quorum/Action.** A quorum of three members is required to meet and conduct business. Fewer than three members, or if no members are present, staff to Committee, may adjourn the meetings of the Committee in accordance with all applicable requirement of the Brown Act. All actions or recommendations of the Committee shall be made at a meeting at which a quorum of the Committee is present and shall be made by majority vote of the members present. A tie vote shall constitute no action on the motion, proposed action, or recommendation.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE: I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 15th day of April, 2013, by the following vote:

Approved as to form:

City Attorney

AYES: Vice Mayor Albertson, Barrett, Harris, Healy, Kearney, Miller

NOES: None

ABSENT: Mayor Glass

ABSTAIN: None

ATTEST:

City Clerk

Vice Mayor

CITY OF PETALUMA, CALIFORNIA
MEMORANDUM

Office of the City Clerk, 11 English Street, Petaluma, California 94952
Telephone 707 •778 • 4360 *Fax 707 • 778 • 4554* *E-mail: cityclerk@ci.petaluma.ca.us*

DATE: July 2, 2019

TO: Members of Boards, Commissions and Committees

FROM: Claire Cooper, City Clerk

SUBJECT: Conflict of Interest

The Fair Political Practices Commission (FPPC) regulates campaign financing, conflicts of interest, lobbying and governmental ethics. The FPPC's objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process, to promote transparency in government, and to foster public trust in the political system.

The information provided to you in this packet is useful in identifying potential situations that may give rise to a conflict of interest. Please review the following materials carefully.

If you have any questions, feel free to contact the City Attorney's office at (707) 778-4362, cityatty@ci.petaluma.ca.us, or the City Clerk's office at (707) 778-4360, cityclerk@ci.petaluma.ca.us.

AB 1234
TRAINING MATERIALS ON PUBLIC OFFICIAL ETHICS & GOVERNMENT TRANSPARENCY

Eric Danly
City Attorney

City of Petaluma
11 English Street, Rm. 10
Petaluma, CA 94952
Tel: 707.778.4362

Revised 8.25.14

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INTRODUCTION

On October 7, 2005, Assembly Bill No. 1234 was signed into law. AB 1234 requires that local agency officials obtain at least two hours of ethics training at least once every two years if they receive compensation, a salary or stipend, and/or reimbursement for expenses. This handout provides an overview and discussion of the various ethics laws local agency officials are required to cover in accordance with AB 1234. Although review of this handout and participation in the accompanying presentation satisfies your obligations under AB 1234, local agency officials are encouraged to further review the individual statutes and regulations discussed below for themselves, as well as the various ethics-related resources that are made available by the Fair Political Practices Commission, the Attorney General's Office, and the Institute for Local Self Government. You are also welcome to contact us if you have any questions regarding this training program, or if you want assistance obtaining any other ethics training resources.

PROHIBITION AGAINST PERSONAL GAIN

I. POLITICAL REFORM ACT

The Political Reform Act of 1974 was adopted by initiative as a response to the "Watergate" scandals and is contained in Government Code Sections 81000 *et seq.* It is the primary source of statutory law in California regarding conflicts. The Political Reform Act regulates disqualification of government officials due to conflicts of interest. In addition, it also regulates reporting and disclosure of economic interests; gift and honoraria limits; and, to a limited extent, campaign contributions. The Political Reform Act establishes the Fair Political Practices Commission ("the FPPC") as the State agency charged with its enforcement. FPPC regulations implementing the Political Reform Act are found at 2 Cal. Code of Regulations ("CCR") §18110 *et seq.*

A. GENERAL RULE REGARDING CONFLICTS OF INTEREST

No public official at any level of government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, he or she has a financial interest. (Gov. Code § 87100.) The purpose of the Political Reform Act is to ensure officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the interests of persons who have supported them.

B. CONFLICTS OF INTEREST UNDER THE POLITICAL REFORM ACT

An official has a conflict of interest under the Political Reform Act when it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official or a member of his or her immediate family.

C. COMPONENTS OF A POLITICAL REFORM ACT CONFLICT OF INTEREST

FPPC regulations establish an 8 step process for determining whether or not a conflict of interest exists in any given case. (2 Cal. Code Regs. § 18700 *et seq*.) A public official seeking to determine whether or not he or she has a conflict of interest should make the following determinations:

Step One: Is the individual involved is a "public official" with the meaning of the PRA?

The disclosure and disqualification provisions of the Political Reform Act apply to "public officials." The Political Reform Act defines that term to include every natural person who is a member, official, employee, or consultant of a public agency. (Gov. Code § 82048; 2 Cal. Code Regs. § 18701(a).)

PRACTICE TIP: Your agency's consultant agreements should contain a determination as to whether or not a particular consultant will be deemed to be a public official for purposes of the Political Reform Act. If a consultant is deemed to be a public official, he or she may not only be subject to the Political Reform Act disqualification provisions, but may also be subject to the economic interest disclosure provisions requiring the filing of FPPC Form 700.

If the person undertaking the conflict analysis is not a "public official" as defined in the Political Reform Act, he or she does not have a conflict of interest.

Step Two: Is the public official making or attempting to influence a governmental decision?

A public official may not make, participate in making, or attempt to influence a governmental decision. (Gov. Code § 87100.) Hence, the prohibition is much broader than simply abstaining from the final vote regarding a matter. A public official is prohibited from advising or making recommendations regarding the decision, or participating in the debate leading up to the ultimate decision. (2 Cal. Code Regs. §§ 18702.1, 18702.2.)

However, a public official may appear in the same manner as any other member of the public before an agency solely to represent himself or herself on a matter related to his or her personal interests, and may communicate with the general public or the press regarding a matter. (2 Cal. Code Regs. § 18702.4(b).)

PRACTICE TIP: Because "participation" is broader than merely the final vote on a matter, it is important for public officials to not become involved in the preliminary stages of a decision on which their board or commission may ultimately have the final vote.

If the public official is not "making a decision" as defined in the Political Reform Act, then he or she does not have a conflict of interest.

Step Three: Identify the public official's economic interests.

The Political Reform Act forbids conflicts of interest that relate to what it terms "economic interests." In order to determine whether a public official making a decision has a conflict of interest, the official must determine if he or she has one or more of the following 6 types of economic interests:

Business Investments: A public official has an economic interest in a *business entity*, operated for profit, in which he or she has a direct or indirect investment of $2,000 or more.

Business Management Positions: A public official has an economic interest in any business entity, operated for profit, in which he or she holds a position as a director, official, partner, trustee or any position of management.

Real Property: A public official has an interest in real property when the official, spouse or dependent children have a direct or indirect equity, option or leasehold interest of $2,000 or more in a parcel of property located in, or within two miles of, the geographical jurisdiction of the official's agency.

Sources of Income: A public official has an economic interest in any person or entity from whom he/she has received income aggregating $500 within 12 months prior to the time when the relevant governmental decision is made. 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. (Gov. Code § 87103).

PRACTICE TIP: The Political Reform Act does not include income received from government entities as "income". As a consequence, a public official usually has no conflict of interest under the Political Reform Act even when the decision affects his or her government employer, unless another economic interest is also involved. WARNING: Government Code Section 1090 does <u>not</u> exclude government salaries from its definition of "financial interest".

Sources of Gifts: 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 <u>$420</u> 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.

PRACTICE TIP: The gift limitation amount is adjusted by the FPPC every two years.

Personal Financial Effects: A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, and those of his or her immediate family.

With respect to both economic interests in real property and business entities, a public official may have such an economic interest by virtue of an indirect investment. Any investment or interest owned by a spouse or dependent child, or held by a business entity or trust in which the public official, the official's spouse or dependent children own 10% or more, is deemed to be held by the official him or herself. (Gov. Code § 87103.)

PRACTICE TIP: The most important thing you can do as a public official to comply with the Political Reform Act is to learn to recognize the economic interests from which a conflict of interest might arise. As a public official, it is critical that you are also aware of any economic interests held by your spouse or dependent children, since such interests may result in a conflict of interest in the same fashion as interests held directly by you.

Step Four: Determine if each of the affected economic interests is directly or indirectly involved in the governmental decision.

For each type of economic interest potentially affected by a government decision, the FPPC regulations provide a different standard to determine whether the interest is *directly involved.* Generally speaking, any economic interest that is not directly involved will be considered to be *indirectly involved.* (2 Cal. Code Regs. § 18704 *et seq*.)

Business entities; management position; sources of income or gifts: If the economic interest is a business entity, a management position in a business entity, a source of income, or a source of gifts, when, (i) the economic interest initiated the proceeding or the need for the decision; (ii) the economic interest is the subject of the proceeding or the decision; or (iii) the proceeding or decision involves a permit, entitlement, or contract with the economic interest, then the economic interest is *directly involved*.

Real Property: If the economic interest is real property, when, (i) the decision affects the zoning, annexation, sale, lease, inclusion or exclusion from a governmental district or subdivision of the property, (ii) the decision involves issuance, denial, modification or revocation of a license, permit, or other land use entitlement for the property, (iii) the decision affects taxes or fees imposed on the property, (iv) the decision is whether to adopt a redevelopment plan or designate a plan area, form a project committee, or certify an EIR for a plan that would include the property, or (v) the property is within 500 feet of the subject of the decision, then the economic interest is *directly involved*.

Personal Financial Effect: If the decision will have any effect on the public official's personal assets or liabilities, then the economic interest is *directly involved.*

Step Five: For each economic interest, determine the correct "materiality standard":

"Materiality" is a measure of whether or not the potential conflict is of sufficient concern to warrant disqualification. Materiality depends upon both the type of economic interest affected, and whether that economic interest is directly or indirectly affected. (2 Cal. Code Regs. § 18705 *et seq.*)

For any "directly involved" economic interest, any foreseeable economic impact will be deemed to be material, no matter how small. For any "indirectly involved" economic interest, the rules vary by the type of economic interest involved:

Indirectly Involved Business Entities: Given the following sizes of business entities, an effect of at least the following amounts on gross annual revenue, expenses or the value of assets or liabilities would be material:

SIZE OF BUSINESS	EFFECT ON GROSS ANNUAL REVENUE (increase or decrease)	EFFECT ON GROSS ANNUAL EXPENSES (increase or decrease)	EFFECT ON VALUE OF ASSETS OR LIABILITIES (increase or decrease)
Listed on Fortune 500	$10,000,000	$2,500,000	$10,000,000
Listed on NYSE or $2,500,000 pretax earnings	$500,000	$200,000	$500,000
Listed on NASDAQ or AMEX or $750,000 pretax earnings	$300,000	$100,000	$300,000
Other	$20,000	$5,000	$20,000

Indirectly Involved Real Property – not including leasehold interests: The decision is material if it would (i) affect the development potential or income producing potential of the property; (ii) affect the use of the property; or (iii) affect the character of the neighborhood, including effects on traffic, view, privacy, intensity of use, noise, or air pollution.

Indirectly Involved Real Property – leasehold interests: The decision is material if the decision would (i) change the allowable uses of the leasehold interest, (ii) change the actual use of the leasehold interest, (iii) change the lessee's use or enjoyment of the lease, (iv) change the amount of rent by 5% (either increase or decrease) during the 12 months following the decision, or (v) change the termination date of the lease.

Indirectly Involved For-Profit Business Sources of Income or Gifts: If the source of gifts or income is a for-profit business entity, the same materiality rules apply as for investments in business entities.

Indirectly Involved Non-profit Sources of Income or Gifts: If the economic interest is a non-profit source of income or gifts that is indirectly involved, then materiality depends on the size of the non-profit, and whether the decision in question would affect the non-profits gross annual receipts, gross annual expenses or the value of its assets or liabilities.

SIZE OF NON-PROFIT MEASURED IN ANNUAL GROSS RECEIPTS	EFFECT ON GROSS ANNUAL RECEIPTS (increase or decrease)	EFFECT ON GROSS ANNUAL EXPENSES (increase or decrease)	EFFECT ON VALUE OF ASSETS OR LIABILITIES (increase or decrease)
More than $400,000,000	$1,000,000	$250,000	$1,000,000

SIZE OF NON-PROFIT MEASURED IN ANNUAL GROSS RECEIPTS	EFFECT ON GROSS ANNUAL RECEIPTS (increase or decrease)	EFFECT ON GROSS ANNUAL EXPENSES (increase or decrease)	EFFECT ON VALUE OF ASSETS OR LIABILITIES (increase or decrease)
$100,000,001-- $400,000,000	$400,000	$100,000	$400,000
$10,000,001-- $100,000,000	$200,000	$50,000	$200,000
$1,000,001-- $10,000,000	$100,000	$25,000	$100,000
$100,001-- $1,000,000	$50,000	$12,500	$50,000
$100,000 or less	$10,000	$2,500	$10,000

Indirectly Involved Individual (non-entity) Sources of Gifts or Income: If the source of income or gifts is an individual that is indirectly involved, the decision is material as to that source of income if (i) the decision affects that individual's income, investments, assets or liabilities by $1,000 or more, or (ii) if the individual's real property would be affected as described in the "indirectly involved" standards for real property.

Step Six: Determine if it is reasonably foreseeable that the decision could materially affect the official's economic interest.

The FPPC regulations require that it be "reasonably foreseeable" that a decision will have a material financial impact on an economic interest in order that a conflict of interest will exist. Reasonably foreseeable does not require certainty, but does require that an impact be more than merely speculative. "An effect is considered reasonably foreseeable if there is a substantial likelihood it will occur." (2 Cal. Code Regs. § 18706; *In re Thorner,* 1 FPPC Op. 198 (1975), *emphasis added*.)

Step Seven: Determine if the effect of the decision on the official's interest is distinguishable from its effect on the public generally.

Even if a decision maker has a conflict of interest, he or she may participate in a governmental decision if the decision impacts the decision maker in the same way that it impacts the public generally. In order for this exception to apply, the decision must affect a "significant segment" of the public in "substantially the same manner" as the decision will affect the decision maker's interests. (2 Cal. Code Regs. § 18707.1(a).) If the exception applies, there is no conflict. (2 Cal. Code Regs. § 18707(a).)

The regulations clarify this exemption by providing the following four-step roadmap to determine if the "public generally" exception applies:

1. Step One: Identify the economic interest that is materially affected by the governmental decision.

2. Step Two: For each economic interest identified, determine the applicable "significant segment" rule provided below.

3. Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the "significant segment" rule. If the answer is "no," then the analysis ends and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.

4. Step Four: Determine if the economic interest identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the significant segment according to the factors below. If the answer is "yes," the public official may participate in the governmental decision. If the answer is "no," the public official cannot participate in the governmental decision. (2 Cal. Code Regs. § 18707(b).)

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:

1. If the economic interest affected is real property, and the decision also affects 5,000 residential property owners or 10% or more of all residential property owners within the jurisdiction of the official's agency, in the same manner.

2. If the economic interest affected is a business entity, and the decision also affects 2,000 businesses or 25% of all businesses within the jurisdiction, as long as the effect is on businesses that are not all in the same industry, trade or profession, in the same manner.

3. If the economic interest affected is a source of income or gifts, or the personal expenses, assets or income of the public official or his or her immediate family, and the decision affects 5,000 residents or 10% or more of the residents within the jurisdiction of the official's agency, in the same manner.

4. If the economic interest affected is a federal, state, or local government entity, and the decision affects all members of the public under the jurisdiction of that governmental entity, in the same manner.

5. If the decision will affect a segment of the population which does not meet any of the standards set forth in numbers 1-4 above, and due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally. (2 Cal. Code Regs. § 18707.1(b)(1).)

Substantially the Same Manner. The governmental decision must financially affect a public official's economic interest in "substantially the same manner" as it will affect the significant segment. (2 Cal. Code Regs. § 18707.1(b)(2).) With regard to comparing financial effects on the public official's property to the financial effect on the public's property, the following factors must be considered:

1. The magnitude of the financial effect of the governmental decision on the property;

2. The lot size;

3. The square footage of the building space on the property;

4. The proximity of the property to the subject of the governmental decision;

5. The number of units/parcels owned by the official;

6. The physical characteristics or permitted use of the property (i.e. historical, commercial, residential);

7. The location of the property;

8. The neighborhood in which the property is located;

9. The quality of the structure contained on the property;

10. The current fair market value of the property;

11. Improvements made to the property;

12. The developmental potential or income producing potential of the property; and

13. The character of the effects on the neighborhood of the property, including traffic, view, privacy, intensity of use, noise levels, air emissions, etc. (2 Cal. Code Regs. § 18707.1(b)(2)(A).)

A special public generally rule applies within small jurisdictions if the economic effect is on the public official's domicile. The effect of a governmental decision on residential property that is the domicile of the public official is not distinguishable from its effect on the public generally if all of the following conditions are met:

1. The jurisdiction has a population of 30,000 or less and a geographic area of 10 square miles or less;

2. The official is required to live in the jurisdiction;

3. The official, if elected, was elected in an at-large election;

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 ¼ acre in size or not larger than 125% of the median size of residential lots; and

6. There are at least 20 other properties under separate ownership within 500 feet of the boundaries of the subject property. (2 CCR § 18707.10.)

Step Eight: "The Rule of Necessity:" Determine whether or not the public official's participation is legally required.

The Political Reform Act permits a public official to participate in a governmental decision, despite a reasonably foreseeable, material financial effect on an economic interest, if the public official is legally required to participate. The fact that the official's vote is needed to break a tie does not make participation "necessary." (Gov. Code § 87101; 2 Cal. Code Regs. § 18708; (*See Kunec v. Brea Redevelopment Agency,* 55 Cal.App.4th 511 (1997)).) This exception:

1. May not be used if other members who do not have a conflict are absent from meeting or when lack of quorum caused by a vacancy.

2. May not be used to break a tie.

3. Requires member to disclose financial interest and why no alternate source exists.

4. Re-qualifies only the minimum number needed by random selection.

D. DISQUALIFICATION IF CONFLICT EXISTS

If, after following the process outlined above, a conflict is found to exist, the public official is disqualified from participating in making the decision. An official who is disqualified from an item on the agenda for a closed session may not attend the closed session or obtain the materials distributed for the closed session.

If a conflict exists and the disqualified member is not required to participate by the rule of necessity, then the member must:

1. Publicly identify the financial interest that gives rise to the conflict in detail sufficient for a layperson to understand the conflict.

2. Recuse himself/herself from attempting to influence, participating in, discussing or voting on the matter.

3. Leave the room where the discussion or consideration of the matter is occurring, unless the matter is listed on the consent calendar of the public agency.

Notwithstanding the conflict, however, an official may appear in the same manner as a member of the general public before his or her agency solely to represent himself in a matter related to his or her own personal interests. This includes where decisions would affect real property or a business entity that is solely owned by the official or the official's immediate family. In such cases, the official must still identify the conflict and leave the dais, but he or she may address the agency from the same position as the public and may listen to the public discussion of the item. (2 CCR § 18702.4.)

The public agency may also be able to "segment" the decision under consideration, so that the official may participate in portions, but not all, of the decision. This may occur provided that: (2) the decision can be broken down into separate decisions that are not "inextricably interrelated" to the decision in which the official has a conflict; (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 on that segment is reached by the agency without any participation by the official; and (4) participation by the official in the remaining segments does not result in a reopening of, or otherwise financially affect, the segment from which the official was disqualified. (2 CCR § 18709.)

E. PENALTIES FOR VIOLATION OF THE POLITICAL REFORM ACT

1. Administrative Fine

The administrative fine is $5,000 fine per violation imposed by FPPC.

2. Civil Remedy

If official derived economic benefit from decision, fine could amount to 3 times the benefit received.

3. Criminal Sanctions

If the official knowingly or willingly violated the law: misdemeanor conviction, fine of $10,000 or 3 times value of benefit conferred (whichever is greater and the official may not be a candidate for public office for 4 years).

F. HOW TO OBTAIN ADVICE

If you think you may have a conflict, contact your agency's attorney who may be able to provide general guidance. The FPPC will also provide free advice.

1. Unofficial

You may request *unofficial* advice from the FPPC by calling 1-866-ASK-FPPC (1-866-275-3772), or you can get general guidance and information from the FPPC website at "*www.fppc.ca.org*."

2. FPPC Advice Letter

Only a public official or his or her authorized representative can seek advice concerning his/her duties. The FPPC does not provide third party advice. However, written FPPC advice conveys immunity even if the advice is incorrect as long as the advice is followed. The FPPC does not provide advice for past conduct.

PRACTICE TIP: If uncertain regarding the existence of a conflict, always ask for advice first in order to obtain the immunity. Advice may take several months, therefore ask early. If the FPPC is unclear on the facts as described in your request, it may respond with a letter that generally describes the applicable standards, but does not answer the specific question and does not provide immunity. WARNING: No FPPC advice or immunity is available for Government Code Section 1090 questions. (The FPPC has been studying the possibility of expanding FPPC jurisdiction to include Section 1090, but it has not been approved by the Legislature.)

II. CONFLICTS OF INTEREST AND CAMPAIGN CONTRIBUTIONS

The Political Reform Act regulates campaign contributions to certain classes of public officials as a potential conflict of interest requiring disqualification of the official.

A. DISCLOSURE – REPORTING OF CONTRIBUTIONS

In general, ethics rules concerning campaign contributions focus on disclosure rather than disqualification. Rules pertaining to disclosure are set forth in both State statute (*see* Gov. Code §§ 84100 *et seq*.) and the regulations of the FPPC (*see* 2 California Code of Regulations §§18401 *et seq*.). Candidates are required to file semi-annual campaign statements. (Gov. Code §84200.) Campaign statements must, among other things, list the name, address and occupation of individuals donating or loaning $100 or more. (Gov. Code §84211.)

B. PERSONS COVERED

The Political Reform Act's prohibition on conflicts of interest with regard to campaign contributions applies to state and local agency heads and members of boards and commissions. However, the prohibition does not extend to members of local governmental agencies whose members are directly elected by the voters. (Gov. Code § 84308.) Therefore, members of city councils, county board of supervisors and Board of directors for special districts are exempt from conflicts of interest regarding campaign contributions. However, these officials are not exempt from coverage when they sit as appointed members of other boards or bodies such as joint powers agencies or regional governments.

C. PROCEEDINGS COVERED

The prohibition extends to all proceedings that involve a license, permit, or other entitlement for use. (Gov. Code § 84308.) These terms include all business, professional, trade, and land use licenses and permits, and all other entitlements for use, including entitlements for land use, contracts and franchises. However, the Political Reform Act expressly exempts contracts that are competitively bid, relate to labor matters, or relate to personal employment from the campaign contribution requirements.

D. DISQUALIFICATION REQUIRED

Covered officials may not receive more than $250 in contributions from a party to a covered proceeding within the 12 months preceding the decision. (Gov. Code § 84308, 2 CCR § 18438.8.) Parties to covered proceedings are required to list all contributions more than $250 to covered officials involved in the proceedings. If a covered official has received more than $250 within the prior year, he or she must disqualify himself or herself from participating in the proceeding. However, if an official returns the part of the contribution that exceeds $250 within 30 days of discovering the contribution and the proceeding, then disqualification is not required.

Covered officials are also prohibited from soliciting or receiving contributions of more than $250 from parties who they know are financially interested in the outcome of a proceeding. Interested parties may not make contributions of more than $250 to covered officials while proceedings are pending and for a period of time of three months thereafter.

III. CONFLICTS OF INTEREST WHEN LEAVING OFFICE

Prior to leaving government office or employment, the Political Reform Act prohibits all public officials from making, participating in the making or using their official position to influence the making of government decisions directly relating to any person with whom they are negotiating, or have any arrangement, concerning prospective employment. (Gov. Code § 87407.) This requirement was amended in 2003 to include local government officials as well as State officials.

A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency shall not, for a period of one year after leaving that office or employment, act as agent or attorney for any other person by making any formal or informal appearance before or by making any oral or written communication to that local government agency, or any committee, subcommittee, or present member, officer, or employee of that local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. (Gov. Code § 87406.3(a).) This prohibition will not apply if the former official is an officer or employee of, and appearing on behalf of, another public agency. (Gov. Code § 87406.3(b).)

IV. SPECIAL RULES FOR REDEVELOPMENT SUCCESSOR AGENCY

A. CONFLICTS OF INTEREST AND THE GENERAL PROHIBITION

Although redevelopment agencies were dissolved as of February 1, 2011, pursuant to ABx1 26 (the "Dissolution Law"), Health and Safety Code section 34173(b) provides that except for provisions of the California Community Redevelopment Law that were repealed, restricted or revised pursuant to the Dissolution Law, all duties and obligations previously vested with former redevelopment agencies vested in redevelopment successor agencies. Under ABx1 26, as modified by AB 1484, redevelopment successor agencies are charged with overseeing the unwinding of redevelopment, which may include decisions affecting the acquisition, retention, development and disposition of real property. Thus, not only are successor agency board members, officials and employees subject to and governed by the conflict of interest provisions of the Political Reform Act of 1974 ("PRA") (Gov. Code § 81000 et seq.), they are subject to Community Redevelopment Law conflict of interest restrictions that are different from and in

addition to the PRA. Neither redevelopment plans nor redevelopment project areas were extinguished by the Dissolution Law. Board members, officers or employees are generally prohibited from owning or leasing property in a redevelopment project area. This general rule is found in Health and Safety Code section 33130:

> "No agency or community officer or employee who in the course of his or her duties is required to participate in the formulation of, or to approve plans or policies for, the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in property included within a project area, that officer or employee shall immediately make a written disclosure of that financial interest to the agency and the legislative body and the disclosure shall be entered on the minutes of the agency and the legislative body. Failure to make the disclosure required by this subdivision constitutes misconduct in office."

Those persons who own or have any direct or indirect financial interest in any property within the redevelopment project area must immediately disclose the interest in writing to the Successor Agency Board of Directors and enter the disclosure into the minutes of the legislative body. Failure to disclose existing property interests, whether direct or indirect,[1] *constitutes misconduct in office*.[2]

B. EXCEPTION FOR ACQUISITION OF PROPERTY FOR OWNER PARTICIPATION AND RE-ENTERING BUSINESS

An officer, employee, consultant, or agent of the Successor Agency is not prohibited from acquiring a property interest in a redevelopment project area if ***all*** of the following apply:

1. The purpose of acquiring the property interest is either (i) to participate in the project area as a property owner, or (ii) reenter into business as the Community Redevelopment Law permits; and

2. The officer or employee has owned, (i) for at least three years before the project area is selected (ii) a financial interest substantially equal to the one being acquired.

This exception authorizes officers, employees, consultants, or agents of the Successor Agency to acquire property interests within the project area when a substantially equal interest has been held for the three years immediately preceding the selection of the project area. Individuals who qualify for this exception and acquire certain property within the project area must disclose their interest to the Board of Directors.

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[1] Direct and indirect financial interests for purposes of Section 33130 may include any property interest acquired by board members, certain employees, and property interests acquired by the spouses and dependent children of affected persons.

[2] Misconduct in office is not defined for purposes of Section 33130. However, other laws suggest that the sanction may include removal from office, disqualification for future public office and potential fines or imprisonment. See California Constitution Article IV §18 regarding the impeachment of state officials and sanctions for violations of Government Code §1090.

C. EXCEPTION FOR RENTAL AND/OR LEASEHOLD INTERESTS

An officer, employee, consultant, or agent of the Successor Agency is not prohibited from entering into a rental agreement and acquiring a leasehold interest if the agreement meets the statutory requirements of section 33130(c). To qualify for this exception, the rental agreement or lease must meet ***all*** of the following conditions:

1. The agreement must contain terms that are substantially equivalent to the rental or lease terms available to the general public for comparable project area property;

2. The agreement must prohibit subleasing the property for a higher rate than the one set in the original agreement;

3. The property in question must be used "in the pursuit of the principal business, occupation, or profession of the officer or employee"; and

4. The officer or employee who obtains a rental or lease agreement must immediately disclose the agreement in writing to the agency board.

D. EXCEPTION FOR PERSONAL RESIDENTIAL USE

An officer, employee, consultant, or agent of the Successor Agency may purchase or lease property in a project area for personal residential use subject to the following restrictions:

1. The Successor Agency must first certify that either (i) the improvements to be built or other work to be done on the property has been completed, or (ii) that no improvements need to be constructed, and no work needs to be done on the property.

2. The person who purchases or leases the property must immediately disclose that fact in writing to the Successor Agency, and the disclosure must be entered into the minutes of the legislative body.

3. The person who purchases or leases the property in the redevelopment project area is thereafter disqualified from voting on any matters directly affecting the purchase, lease or residency.

4. A failure to disclose the interest constitutes misconduct in office.

This exception would likely apply to the personal residences of Successor Agency officers, employees, consultants, and agents. Again, it is important to note that public disclosure of the property interest is required by the California Community Redevelopment Law.

V. CONTRACTING WITH ONE'S OWN AGENCY

A. INTRODUCTION

California Government Code Section 1090 ("Section 1090") codifies the common law prohibition against self-dealing specifically as it pertains to contracts. Section 1090 prohibits an official or employee of

a public agency from participating in the making of a contract in which he or she has a financial interest:

> Members of the Legislature, state, county, district, judicial district, and city officials 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 officials or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

1. Compare Political Reform Act

Unlike conflicts which arise under the Political Reform Act, "stepping down" will not prevent a violation where the official or employee has a direct financial interest in the contract. In fact, the official or employee will be *presumed* to have made any contract executed by the agency—even if he or she disqualified himself or herself from all participation in the making of the contract. Since contracts made in violation of Section 1090 are void and unenforceable, the presence of a Section 1090 conflict can affect the entire governing body, not just the person with the financial interest which creates the conflict. When Section 1090 is applicable to one member of the governing body of a public agency, the prohibition cannot be avoided by having the interested member abstain—the entire governing body is precluded from entering into the contract.

However, as discussed below, in some specific circumstances where there is only a remote financial interest, the agency may still make the contract, provided the official or employee with the remote interest abstains. Additional exceptions, discussed below, if applicable, may even permit participation in making the contract.

(Note: Even if participation in the making of a contract does not present a conflict under Section 1090 (e.g., if there is no financial interest or if an exception to Section 1090 applies), there may still be a conflict under the Political Reform Act.)

2. Consequences of Section 1090 Violation

Section 1090 presents a strong disincentive for public agencies and the parties they contract against entering into contracts in violation of Section 1090. Because contracts made in violation of Section 1090 are *void and unenforceable,* payments made to the contracting party pursuant to a contract made in violation of Section 1090 must be returned to the public agency. Further, no claim for future payments under the illegal contract may be made, even though the public agency is entitled to retain any benefits it received. After an affidavit alleging a Section 1090 violation is filed, the agency may withhold payment of funds under the contract pending adjudication of the violation.

If a violation is established, in addition to voiding the contract, Section 1090 provides for serious consequences for an individual official who acts in violation of Section 1090. Government Code Section 1097 provides that willful violations of Section 1090 are punishable by fine, imprisonment, and permanent disqualification from holding any office in California. The statute of limitations for Section 1090 prosecutions is three years after the *discovery* of the violation, as opposed to three years after the *making* of the contract. So a Section 1090 problem, if not caught and properly dealt with before it ripens into a violation can be a slow-ticking time bomb. (*Note: If the prohibited contract is never executed, there is no violation of Section 1090.)*

B. PERSONS COVERED

"Public officials" subject to the prohibition of Section 1090 have been defined broadly by case law to include almost all State and local government board or council members, officials, employees, and even consultants. Members of advisory bodies may also be subject to Section 1090 if in that capacity they participate in the making of a contract. Except where a distinction must be made, all covered persons including covered employees will be referred to herein as "public officials" or "officials."

C. CONTRACT DEFINED

Determining whether a transaction is a contract subject to Section 1090 rests primarily on general contract principles. For example, a development agreement between a city and a developer was determined to be a contract under Section 1090 because it contained the essential elements of a contract as statutorily defined: "A contract is an agreement to do or not to do a certain thing." (Civil Code § 1549.) "It is essential to a contract that there should be: (1) Parties capable of contracting; (2) Their consent; (3) A lawful object; and, (4) A sufficient cause or consideration." (Civil Code § 1550.)

Consistent with the policy of strictly enforcing Section 1090, contracts are defined broadly. In one case, approval of the payment of travel expenses for a board member's spouse to attend a conference was determined to be a contract under Section 1090. (75 Ops.Cal.Atty.Gen. 20 (1992).)

(Note: Section 1090 is not limited to initial making of a contract. Participating in a decision to modify, extend or renegotiate a contract also falls within the purview of Section 1090.)

D. FINANCIAL INTEREST DEFINED

The term "financial interest" has been liberally interpreted to include both direct and indirect interests. The obvious case of a direct interest is one in which an official, in his or her personal capacity, is a party to a contract with the official's agency. However, Section 1090 violations do not require such a clear and direct financial interest. In general, the determination of whether there is a prohibited interest will be based on the connection between the contract and the official's interest, and will be guided by the policy that public officials may not exploit their public positions for private benefit.

Section 1090 prohibits a public official with a financial interest from participating in his or her official capacity in the making of a contract. This includes preliminary discussions, negotiations, compromises, reasoning, planning, and drawing of plans and specifications and solicitation for bids. If an official is a member of a board, council or commission which executes a contract, he or she is *conclusively presumed* to have participated in the making of the contract. In one case, the court held that a council member who had been involved in the preliminary planning and negotiation, but had resigned before a vote was taken on the contract, had been involved in the making of the contract. (*Finnegan v. Schrader,* 91 Cal.App.4th 572 (2001).)

When an employee, as opposed to a member of a governing body, has a financial interest in a contract, Section 1090 prohibits the agency from making the contract only if the employee was actually involved in making the contract.

E. APPLICABLE EXCEPTIONS

There are three main exceptions to Section 1090's general prohibition. An interest may be statutorily excluded as a "remote interest" or a "non-interest." In addition to these statutory exceptions, in some narrowly limited cases the court-created rule of necessity may apply.

1. Remote Interests

The "remote interest" exceptions are set forth in Section 1091 of the Government Code. Section 1091(a) provides:

> An official shall not be deemed to be interested in a contract entered into by a body or board of which the official is a member . . . if the official 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 official 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 official or member with the remote interest.*

Section 1091(b) lists statutorily defined financial relationships which are considered remote interests, summarized[3] as follows:

a. Official or employee of a nonprofit corporation.

b. Employee or agent of a private contracting party for three years prior to assuming office.

c. Employee of contractor—certain publicly bid contracts.

d. Parent—earnings of minor child for personal services.

e. Landlord or tenant of contracting party.

f. Attorney, broker, agent—no compensation from contract and own 10% or more of practice or firm.

g. Member of nonprofit corporation formed under Agriculture Code.

h. Supplier of goods and services—for at least five years prior to official's election or appointment to office.

i. Party to a land conservation contract—Land Conservation Act of 1965.

j. Director or 10% or more owner of bank or savings and loan--contract party is borrower, depositor, debtor or creditor.

[3]The following list is intended only as a general information summary. Each statutory exception is very specific as to scope and application, and many include exceptions to the exception. If you have a potential conflict, you should consult a legal advisor for advice.

k. Engineer, geologist, architect—if not an official, director, or primary management of firm.

l. Housing assistance contracts—contract in existence before assuming office.

m. A person receiving salary, per diem, or reimbursement for expenses from a government entity.

n. Party to litigation involving the body or board of which the officer is a member in connection with an agreement that meets the requirements of Government Code Section 1091(b)(15)(a)-(c).

o. A person who is an officer or employee of an investor-owned utility regulated by the Public Utilities Commission with respect to certain contracts.

Although these remote interest categories are characterized as an exception to the general prohibition, they are available as an exception only if the official's interest fits clearly into the category and the official complies with the disclosure and disqualification requirements.

A public official whose interest falls into one of the "remote interest" categories must do two things *before* action is taken on a contract. First, the official must *disclose* the interest to the entity. Second, the official must have the interest noted in the official records of the entity. While failure to disclose prior to the entity's taking action on the contract subjects the official to Section 1090 sanctions, such a violation would not void the contract unless the party contracting with the entity had notice of the official's remote interest while making the contract. Finally, the official with the remote interest must *disqualify* himself or herself, *i.e.*, not participate in making the contract. If an official fails to disqualify himself or herself, or attempts to influence the agency regarding the matter, the remote interest exception is unavailable. The governing body may take action on a contract where a member has disclosed a remote interest, provided the members of the governing body act in good faith, and the vote to ratify the contract passes without counting the vote of the official with the remote interest.

2. Noninterests

The "noninterest" exceptions are set forth in Section 1091.5 of the Government Code. Section 1091.5(a) provides that an official or employee shall not be deemed to be interested in a contract if his or her interest falls within one of the "noninterest" categories, which are summarized[4] as follows:

a. Corporate ownership of less than 3 % (provided corporate income or asset value do not exceed 5 % of annual income).

b. Reimbursement for an official's actual and necessary expenses incurred in the performance of official duty.

[4] The following list is intended only as a general information summary. Each statutory exception is very specific as to its scope and application, and many include exceptions to the exception. If you have a potential conflict, you should consult a legal advisor for advice.

c. Receipt of public services generally provided by his or her agency or board.

d. Landlords or tenants of the local, State, or Federal government unless the subject matter of the contract is the property in which he or she is either the landlord or tenant.

e. Public housing tenant regarding that housing if he or she is serving as a member of the board of commissioners overseeing it.

f. Noninterest in the spouse's officeholding if it has existed for at least one year prior to his or her election or appointment.

g. Nonsalaried member of a nonprofit corporation—interest is disclosed and noted in official records.

h. Noncompensated official of a nonprofit, tax exempt corporation which supports the functions of the public body or board, or to which the public body has a legal obligation to give particular consideration.

i. Public agency employee, unless contract directly involves the employee's department—disclosure and documentation required.

j. Attorney, broker, agent—no compensation from contract and less than 10% owner of practice or firm.

k. Official or employee, or owner of less than 10 % of a bank or savings and loan—contract party is a borrower, depositor, debtor or creditor.

l. Nonprofit corporation with primary purposes of conservation, preservation, or restoration of parks, natural lands or historical resources for public benefit.

m. Officer, employee or member of the Board of the California Housing Finance Agency with respect to a loan product or program, if that person participated in the planning, discussions, development, or approval of the loan product or program provided that the conditions in Government Code Section 1091.5(13)(A)-(B) are met.

3. Rule of Necessity

The Attorney General's office and the courts have applied a rule of necessity as a limited exception to the application of Section 1090, as follows:

> "With respect to contractual conflicts of interest the 'rule of necessity' may be said to have two facets. The first, . . . to permit a governmental agency to acquire an essential supply or service despite a conflict of interest. The contracting official, or a public board upon which he serves, would be the sole source of supply of such

> essential supply or service, and also would be the only official or board permitted by law to execute the contract. Public policy would authorize the contract despite this conflict of interest. The second . . . arises in nonprocurement situations and permits a public official to carry out the essential duties of his or her office despite a conflict of interest where he is the only one who may legally act. It ensures that essential governmental functions are performed even where a conflict of interest exists.

(Fn. omitted.)" (69 Ops.Cal.Atty.Gen. 102, 109 (1986).)

The first "facet" of the rule of necessity concerns contracts for essential services when no non-conflict source is available. For example, a city was allowed, under this rule, to obtain nighttime service from a service station owned by a member of the city council, where the town was isolated and the council member's station was the only one open.

The second facet of the rule of necessity concerns the performance of essential official duties. For example, a school board was allowed, under this exception, to enter into a memorandum of understanding with a teachers' association even though a member of the school district board was married to a tenured teacher.

Application of the rule of necessity is very narrow and very fact specific. An official or agency should consult with a legal advisor or the Attorney General's office before relying on the availability of this exception. When the rule of necessity is invoked to permit a governing body to take action, the member with the conflict must not participate in the decision. By contrast, when the rule of necessity is invoked to permit an individual official or employee to carry out his or her duties, that individual may participate in making the contract.

VI. PROHIBITION AGAINST BRIBERY

Penal Code Section 165 provides that a member of any city or town council, board of supervisors, or board of trustees of any local public agency who receives, or offers or agrees to receive any bribe upon any understanding that his or her official vote, opinion, judgment, or action shall be influenced thereby, may be imprisoned for up to four years and forever disqualified from holding any public office or trust.

Penal Code Section 7 defines a "bribe" for the purposes of the Penal Code as "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."

As far as the bribe-taker is concerned, the crime of bribery consists of three elements: (1) the person charged must be a member of one of the bodies specified in section 165, which basically consists of all cities, counties, and other local public agencies; (2) that person must ask for, receive, or agree to receive something of "value or advantage," present or prospective; and (3) the request, receipt or agreement to receive must be upon an understanding that his or her opinion, judgment or action upon any official matter on which he or she may be required to act will be influenced.

PRACTICE TIP: While the common perception of a bribe is a large sum of money passed under the table, the fact is that a bribe can take virtually any form. A public official should be careful not to accept anything of value that might influence his or her official decision.

CLAIMING THE PERQUISITES OF OFFICE

I. INTRODUCTION

Both the California Constitution and State law regulate the "perks" that officials may receive through their public service. The California Constitution prohibits the use of public funds for private purposes and also prohibits public officials from receiving free or discounted transportation by transportation companies. The Political Reform Act ("Act") and the regulations promulgated pursuant to the Act restrict receipt of gifts, travel payments and prohibit receipt of honoraria by public officials and certain employees of local government agencies. In addition, the Act prevents elected officials from sending mailings at public expense. State law also prohibits the use of public resources for personal or political purposes.

II. FREE OR DISCOUNTED TRANSPORTATION BY TRANSPORTATION COMPANIES

The constitutional prohibition on the acceptance of passes or discounts from transportation companies by public officials currently is contained in Article XII, Section 7 of the California Constitution. It provides:

> "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 official, 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. (Cal. Const., art. XII, § 7.)"

The ban is violated when a transportation company makes a gift of transportation or discounts the price of transportation to a public official. The ban applies to interstate and foreign carriers, as well as domestic carriers, and to transportation received outside of California. This interpretation applies irrespective of whether the interstate carrier in question does business in California and therefore applies to airline carriers or other companies over which the official has no jurisdiction. However, the ban only applies to gifts made by transportation companies. An airline ticket or rail pass provided by the airline or railroad to officials would be covered by the ban. The ban does not apply when a ticket or pass is donated to a charity for a door prize and an official wins the prize.

The prohibition applies to public officials, both elected and non-elected, but does not apply to employees. It can be difficult to distinguish between officials and employees, although the Attorney General's office has provided guidance. The Attorney General's office has stated that if a particular individual actually sets or makes policy, he or she is an official, if he or she merely advises policy makers, he or she is probably not an official.

The issue of public versus private business is generally not viewed as relevant to the application of the prohibition. Except for Public Utility Commissioners who are specifically authorized to accept free transportation in connection with the performance of official duties, the prohibition against the acceptance of free passes or discounts for transportation applies equally to acceptance of transportation in connection with one's official duties as it does in connection with one's personal business. Although the focus may be somewhat different, interpreters of the prohibition have concluded that the purpose of guarding against corruption and undue influence from transportation companies can result from the acceptance of free or discounted transportation in either context.

The penalty for violation of the provision is severe, and transportation companies are often not aware of the consequences for public officials. The Constitution specifically provides that an official can be removed from office for accepting a pass or discount from a transportation company. The Attorney General has regularly authorized quo warranto lawsuit to remove offending public officials from duty.

III. GIFT RESTRICTIONS

Public officials may not accept gifts from any single source totaling more than $420 in a calendar year. A "gift" includes any payment or other benefit conferring a personal benefit for which the public official does not provide goods or services of equal or greater value. (Gov. Code § 82028). A single gift given to both a public official and a member of the official's family is a gift to the official of the full value of the gift. A rebate or discount not regularly available to members of the public is also considered a gift. A gift has been received or accepted when the official takes actual possession of the gift or exercises direction or control over the gift, including discarding the gift or turning it over to another person.

Gifts aggregating $420 or more could disqualify the official with respect to a decision affecting the party who made the gift. Gifts aggregating $50 or more must be disclosed on a Form 700.

Note: An agency's conflict of interest code may require certain categories of employees to disclose specific sources of gifts which then become subject to the $420 gift limit.

A. EXCEPTIONS TO GIFT RESTRICTIONS

The following gifts are not subject to gift limits and are not required to be disclosed:

1. Gifts returned unused or for which the donor is reimbursed.

2. Gifts donated unused to a 501(c)(3) non-profit, tax-exempt organization or another government agency within 30 days of receipt (without claiming a deduction for tax purposes).

3. Gifts from a family member, defined to include those individuals listed in Government Code Section 82028(b)(3) and 2 Cal Code Regs. § 18942(a)(3), unless the family member is an intermediary for a third party who is the true source of the gift.

4. Home hospitality, as defined by 2 Cal Code Regs § 18942.2, provided to an official by an individual in the individual's home with the individual is present, unless the cost of hospitality is paid or reimbursed by another person, the cost of the

hospitality is deducted on any person's government tax return, or there is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person include a portion to be utilized to provide gifts of hospitality in the individuals home.

5. Gifts approximately equal in value exchanged between the official and another individual, who is not a lobbyist registered to lobby the official's agency, on holidays, birthdays, or similar occasions, including reciprocal exchanges, to the extent that the value of the benefits received is not substantially disproportionate and no single payment exceeds $420.

6. Informational material provided to assist the official in the performance of official duties, including books, reports, periodicals, videotapes, or free or discounted admission to informational conferences or seminars. Informational material may also include scale models, pictorial representations, and maps. However, if the market value of an item is more than $420, the public official has the burden of establishing that the item is informational, and not a gift.

7. A bequest or inheritance.

8. Campaign contributions, although these must be reported pursuant to the campaign disclosure provisions of the Act.

9. A personalized plaque or trophy with a commercial value less than $250.

10. Two tickets from event sponsors, candidates or campaign committees for fundraisers for campaign committees, other candidates or 501(c)(3) non-profit, tax-exempt organizations. Additional tickets must be disclosed at face value minus stated donation portion of the tickets.

11. Gifts to members of the public official's family unless the official receives a direct benefit from the gift or exercises discretion and control over the use or disposition of the gift.

12. Gifts to the official's agency, which confer a personal benefit on a public official will be considered a gift to the agency provided that the conditions in 2 Cal. Code Regs. 18944 have been met.

13. Tickets or passes provided to an official by the official's agency, provided that the requirements contained in 2 Cal. Code Regs. 18944.1 have been complied with.

14. Food, shelter, or similar assistance received from a governmental agency or 501(c)(3) non-profit, tax-exempt charity. These items must be available to the general public in connection with a disaster relief program.

15. Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with an emergency leave program established by the official's employer and available to all employees in the same job classification or

position.

16. A ticket or pass 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 as ceremonial role on behalf of his or her agency, as defined in 2 Cal. Code Regs. 18942.3, so long as the official's agency complies with the posting requirements set forth in 2 Cal. Code Regs. 18944.1.

17. A prize or award received in a manner not related to the official's status in a contest or competition. However, a prize or award that is not reported as a gift must be reported as income, unless the prize or award is received as a winning from the California State Lottery.

18. Benefits received as a guest attending a wedding or civil union as long as the benefits are substantially the same as the benefits received by other guests attending the event.

19. Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling other relative of the official.

20. "Acts of Neighborliness", including a service performed, loan of an item, assistance with a repair or similar acts or ordinary assistance consistent with polite behavior in a civilized society.

21. Personal benefits commonly exchanged between people on a date in a dating relationship, unless the exceptions provided in 2 Cal. Code Regs. 18942(17)(D) apply.

22. 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 with private assistance because of an accident, illness, employment loss, death in the family, other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the conditions provided in 2 Cal. Code Regs. 18942(17)(B) are met, and the exceptions contained in 2 Cal. Code Regs. 18942(17)(D) do not apply.

23. 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 in 2 Cal. Code Regs. 18942(17)(D).

24. Any other payment that would otherwise meet the definition of a 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 make 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.

The following exceptions are not subject to dollar limits, but may still be subject to reporting requirements, and may require disqualification:

1. Transportation within California and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or similar service, are also exempt.

2. Wedding gifts.

Gift to a Public Agency. A gift to a public agency which confers a personal benefit on a public official will be considered a gift to the agency, and not count against the $420 gift limit, if all of the following requirements are met:

1. Agency Controls Use of the Gift. The agency head or his or her designee controls and determines the use of the gift by the agency and which official or employee will benefit. The donor may identify a purpose for the gift, but the donor may not designate by name, title, classification or otherwise the official or type of official who will use the gift. The agency head or designee who controls the use of the gift may not select himself or herself as the individual who will use the gift.

2. Official Agency Business. The gift must be used for official agency business.

3. Reported on Form 801. Within 30 days after the use of the gift, the agency must report the gift on Form 801. That form, among other things, indicates who gave the gift, the amount of the gift, and how the gift was used. The form is a public record and must be posted on the agency's web site. (If the agency has no web site, the form must be provided to the FPPC and posted on the FPPC's website.) A log of these forms must be kept under both the name of the agency and the name of the official benefiting. That log and the forms are to be kept for a period of 4 years. (2 Cal. Code Regs. § 18944.2(c).)

This exception does not apply to the following gifts:

1. A gift of travel for a state or local elected official as defined in Government Code §82020, or any official specified in Government Code §87200. This includes costs of transportation, meals or lodging.

2. A gift of travel that exceeds any agency-approved reimbursement rates for travel or, if the agency does not have a standard or policy for reimbursement, any State or Federal reimbursement rate limits for travel.

3. A gift of travel that the agency head has not pre-approved in writing in advance of the date of the trip.

4. Passes or tickets as described in 2 CCR §18944.1. (2 Cal. Code Regs. § 18944.2(d).)

A grant, reimbursement, or funding received by a government agency from the Federal government for education, training or other inter-agency programs, will not be considered a gift to the public official receiving the benefit. (2 Cal. Code Regs. § 18944.2(f).) (Additional information is also available at the FPPC's website at: http://www.fppc.ca.gov/index.html?id=512)

Public Agency Provided Tickets or Passes. A ticket or pass distributed to a public official by a public agency will meet the burden under Government Code 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 that the agency receives from an outside source:

    a. The ticket or pass must not be earmarked by the outside source for use by the agency official who uses the ticket or pass;

    b. The agency must determine, in its sole discretion, who may use the ticket or pass;

    c. The distribution of the ticket or pass must be made in accordance with a policy adopted by the agency as further described 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, or (iii) by purchase at fair market value, the distribution of the ticket or pass shall be made in accordance with a policy adopted by the agency as described below.

The distribution of a ticket or pass by a public agency to or at the behest of any agency official must be made pursuant to a written agency ticket distribution policy, which has been adopted by the legislative body and contains all of the following:

1. A provision setting forth the public purposes of the agency for which the 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.

A ticket or pass distributed in accordance with the above, must be reported by the agency on a Form 802 in accordance with the requirements of 2 Cal. Code Regs. 18944.2. The Form 802 must be maintained as a public record, be subject to inspect and copying, and be forwarded to the Commission for posting on its website.

A ticket or pass is not subject to 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 official on a Form 802.

IV. GIFTS OF TRAVEL

Certain travel payments may be subject to gift limit restrictions and/or may be reportable. Travel payments include payments, advances, or reimbursements for travel, including actual transportation as well as related lodging and subsistence.

A. The following categories of travel payments are not subject to any limit and are not reportable:

1. Travel payments provided by the official's government agency or by any State, local, or Federal government agency which would be considered income and not a gift.

2. Reimbursements for travel expenses provided by a 501(c)(3) non-profit, tax-exempt entity for which the official provides equal or greater consideration.

3. Travel payments provided directly in connection with campaign activities. Note: Such payments must be reported in accordance with the campaign disclosure provisions of the Act.

4. Travel payments excluded from the definition of "gift" as described above.

B. The following travel payments are not subject to the gift limit, but may be reportable:

1. Travel which is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses.

2. Where the public official is provided with travel payments in connection with an event at which the official gives a speech, participates on a panel or seminar or similar activity, the following travel payments are exempt:

   a. Transportation provided to the recipient directly for an event in California.

   b. Lodging, meals and beverages provided directly to the recipient. Lodging, meals and beverages are limited to those provided on the day before, the day of, and the day after the activity.

   c. Free admission, refreshments, and similar non-cash items.

3. Travel not in connection with giving a speech, participating on a panel, a seminar, or similar activity, but which is reasonably related to either a legislative/governmental purpose or an issue of State, national, or international public policy and which is provided by one of the following:

a. A government, governmental agency, foreign government, or government authority;

b. A bona fide educational institution;

c. A 501(c)(3) non-profit tax-exempt organization; or

d. A foreign organization that substantially satisfies the 501(c) (3) requirements for tax-exempt status.

V. HONORARIA BAN

Generally, public officials may not accept honoraria payments. An "honorarium" is any payment for any speech given, article published, or attendance at any conference, convention, meeting, social event, meal, etc. A "speech" given includes a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate. "Article published" means a nonfiction written work written in connection with any activity other than the practice of a bona fide business, trade, or profession, and that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. "Attendance" means being present during, making an appearance at, or serving as a host or master of ceremonies for any conference, convention, meeting, social event, meal, or the like.

A. EXCEPTIONS NOT REPORTABLE

The following payments are <u>not</u> prohibited and are <u>not</u> required to be disclosed on a Form 700:

1. An honorarium that the official returns to the donor within 30 days.

2. An honorarium which the official delivers to his or her government agency within 30 days for donation to the agency's general fund, and for which the official does not claim a deduction for income tax purposes.

3. A payment received from a family member.

4. An honorarium made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization. However, the official may not make the donation a condition for the speech, article, or attendance. Second, the official may not claim the donation as a deduction for income tax purposes. Third, the official may not be identified to the non-profit organization in connection with the donation. Finally, the donation may have no reasonably foreseeable financial effect on the official or the official's immediate family.

5. Campaign contributions. *<u>Note</u>: Must be reported in accordance with the campaign disclosure provisions of the Act and may be subject to other limitations imposed by the Act.*

6. Personalized plaques and trophies with a commercial value less than $250.

7. Transportation within California, and any necessary lodging and subsistence

provided directly in connection with an official giving a speech, participating in a panel or seminar, or providing a similar service.

B. EXCEPTIONS WHICH MAY BE REPORTABLE

While the following payments are not considered "honoraria," they may be reportable:

1. Payments received for a performance (comedy routine, dramatic acting, singing engagement, etc.) and payments received for the publication of books, plays, or screenplays. These payments are reportable as income.

2. Income earned for personal services if the services are typically provided in connection with the recipient's business or profession. Earned income must be reported.

3. Free admission, food, beverages, and other non-cash nominal benefits provided at a conference, convention, meeting, or social event, whether or not the recipient participates. These items may be reportable as gifts and thus subject to the gift limit.

4. Certain payments for transportation, lodging, and subsistence, although not considered honoraria, may be reportable and subject to the gift limit.

VI. PROHIBITION AGAINST USE OF PUBLIC RESOURCES FOR PERSONAL OR POLITICAL PURPOSES

Local officials and employees may not use public resources for personal purposes, including political activity. (*See Stanson v. Mott*, 17 Cal.3d 206 (1970); Penal Code § 424; Gov. Code § 8314.) The term "public funds" includes money as well as equipment, supplies, compensated staff time, and use of telephone, computers and fax machines. For example, where a city commissioner used official government discounts to buy items for him or herself and others, he or she misused public funds, even though his or her personal funds paid for the items. If the misuse of public funds is more than incidental or minimal, it may be prosecuted as a felony crime and violators may be barred from holding office. (Pen. Code § 424.)

Local agencies are also prohibited from expending any funds to support or oppose a ballot measure, as well as the election or defeat of a candidate, by the voters. (Gov. Code § 54964.) However, State law does not prohibit the expenditure of public funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the city, as long as the information constitutes an accurate fair and impartial presentation of the relevant facts to aid the voters in reaching an informed judgment.

VII. MASS MAILING RESTRICTIONS

Section 89001 of the Political Reform Act provides that "[n]o newsletter or other mass mailing shall be sent at public expense." In order to avoid the absurd result of literally prohibiting any and all mass mailings created or distributed with public funds, regardless of their content or purpose, the Fair Political Practices Commission adopted regulation 18901, clarifying which mailings were permissible and which

were not. The chief purpose of the regulation is to prevent incumbent elected officials from taking advantage of public funds to increase the official's exposure to the public.

Under Regulation 18901, a mass mailing is defined as more than 200 substantially similar tangible items delivered in a month, by any means, to recipients at their residence, place of employment, business, or post office box. Such items, if prepared and mailed at public expense, may not feature an elected official or include the name, office, photograph, or other reference to an elected official affiliated with the agency if the elected official helps to prepare or approves the mailing.

Regulation 18901 includes many exceptions to the prohibition against mass mailing:

1. Any item in which the elected official's name appears only in the letterhead or the envelope of the agency sending the mailing, or in a roster listing containing the names of all elected officials of the agency.

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 official to another governmental entity or official.

4. Any intra-agency communication sent in the normal course of business to employees, officials, 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 official's name, office, title, or signature is necessary to the payment or collection of the funds.

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.

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 official's name, office, title, or signature is necessary in the notice or other mailing.

8. A telephone directory, organization chart, or similar listing or roster which includes the names of elected officials as well as other individuals in the agency sending the mailing.

9. An announcement sent to an elected official's constituents concerning a public meeting which is directly related to the elected official's incumbent governmental duties, which is to be held by the elected official, and which the elected official intends to attend or 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.

10. An agenda or other writing that is required to be made available pursuant to the Brown Act.

11. A business card that does not contain the elected official's photograph or more than one mention of the elected official's name.

VIII. GIFTS OF PUBLIC FUNDS

The California Constitution prohibits a legislative body from approving a gift of public funds to a private person or group. An expenditure is a "gift" if it does not serve a substantial public purpose. What constitutes a "public purpose" is left to the discretion of the agency's board. A court reviewing a challenged expenditure should uphold the board's decision as long as the board had a reasonable basis for concluding that the expenditure served a substantial public purpose. The mere fact the expenditure also benefits a private party does not necessarily mean that the expenditure is not also serving a substantial public purpose.

Neither the Legislature nor the courts have provided a bright line definition of what constitutes a "substantial public purpose." However, it is clear that an expenditure made solely on moral grounds does not serve a substantial public purpose. Further, if the expenditure does not provide the agency making the expenditure with a direct, substantial benefit, the expenditure would not serve substantial public purpose. In approving an expenditure that may potentially raise a gift of public funds issue, a board can help its legal position by adopting a resolution with findings that set forth its basis for concluding the expenditure serves substantial public purpose.

GOVERNMENT TRANSPARENCY LAWS

I. FORM 700 (STATEMENT OF ECONOMIC INTEREST)

The Political Reform Act requires certain public officials to disclose their personal financial holdings and income which could be materially affected by their actions in office.

A. REQUIREMENTS

Form 700 ("Statement of Economic Interests") are printed by the Fair Political Practices Commission ("FPPC"). The statements are usually referred to as "Form 700s" or "conflict-of-interest statements." They include information about the personal financial interests of local officials and must be signed on penalty of perjury. Public officials must file Form 700s upon assuming office, leaving office, and annually; and also must file amendments of previous statements if warranted.

Government Code Section 87200 lists specific categories of officials to whom the disclosure requirements apply. The listed persons are subject to the Act's disclosure requirements, as well as the Act's gift restriction, travel expense limitation, and honoraria prohibition. Other categories of officials and employees of local government agencies not listed in Government Code Section 87200 are still nevertheless regulated by the Political Reform Act if the agency's conflict of interest code requires employees in that category to file a Form 700. Additionally, if a new position is created, or the job responsibilities of an existing position are amended such that the position's responsibilities include making

or participating in making certain decisions, employees holding those positions must file a Form 700 even if the position has not yet been added to the conflict of interest code.

B. PURPOSE

The purpose of the Form 700 is to remind public officials about their own economic interests and potential areas of conflict in relation to their duties, and provide information to members of the public so that they can monitor official actions for any conflicts. The FPPC may impose penalties when a Statement of Economic Interests is not filed on time.

C. FILING

Most of the time, you should file your Form 700 with your agency's filing official. In the case of candidates for public office, the form may have to be filed with the election office or local clerk's office. In some cases, the form will be copied by the agency and kept in its files, with an original going to the FPPC.

II. BROWN ACT

A. GENERAL RULE

The Brown Act is codified in the Government Code Sections 54950-54960 and is California's open public meeting law. First enacted in 1953, the Brown Act requires that "all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency except as otherwise provided by this Chapter." (Gov. Code § 54953(a).) AB-1464, which was approved June 27, 2012, suspends portions of the Brown Act requiring: posting agendas 72 hours before a regular meeting; including in agendas a description of closed session items; disclosing in open session closed session items prior to the closed session; requiring reporting in open session the closed session action and the vote; and providing to the public certain closed session documents. SB-1006, approved the same day as AB-1464, provides that the AB-1464 suspensions will last through 2014/2015. The legislature suspended these provisions to avoid the need to reimburse local agencies for the cost of complying with these state mandates. As a result, local agencies cannot be held liable for failure to comply with the suspended provisions, and they cannot serve as a basis for invalidating agency actions. However, most jurisdictions intend to continue to comply with the suspended provisions.

B. PERSONS COVERED

1. City Council.

2. Any standing committee of City Council; boards and commissions, including the Planning Commission.

3. Non-profit corporations created by City to exercise delegated authority.

4. Non-profit corporations that receive funding from City and to the board of which the City appoints at least one member.

C. MEETING DEFINED

A "meeting" is any congregation of a majority of members of a legislative body (or other entity covered in Section B above) at the same time and place to hear, discuss or deliberate on any item that is within the subject matter jurisdiction of the legislative body *or* the local agency to which it pertains.

D. NOTICE OF MEETINGS REQUIRED

To ensure that meetings are "open and public," all government entities are required to publish/post notice of meetings and provide copies of a printed agenda to the public. Notice of regular meetings must be posted 72 hours in advance. Notice of special meetings must be published at least 24 hours ahead of time.

The agenda must describe each agenda item with adequate specificity as to inform interested members of the public about what is under consideration so that the public can determine whether it wishes to participate in the meeting.

Any writings relating to matters on the agenda distributed to a majority of the members of the legislative body less than 72 hours before the start of the meeting must be made available to the public for inspection at the same time it is distributed to a majority of the members of the legislative body. Also, the agency must list the address of the location where the writings will be available on the agenda for all meetings of the legislative body.

E. CONTENT OF MEETINGS LIMITED TO AGENDIZED ITEMS

Meetings are limited to the items listed on the published agenda, with a few narrow exceptions. Nevertheless, because the public has the right to speak on matters not listed on the agenda, non-agendized issues may arise. The members of the body holding the meeting may ask questions and direct staff to take action, including placing the issue on a future agenda, but may not generally discuss or take action on an issue raised by a member of the public at the meeting.

F. MEETINGS NOT SUBJECT TO THE BROWN ACT'S OPEN MEETING REQUIREMENTS

1. Individual Contacts

The Act allows individual contacts or conversations between a member of a body and any other person, including other members of the entity, city staff, and constituents. However, members of a legislative body cannot use this exception to conduct a "daisy chain" meeting, as described below.

2. Conferences

Members of a legislative body may attend conferences, but a majority of members must not discuss among themselves, other than as a part of the scheduled program, specific matters within the jurisdiction of the entity.

3. Community Meetings

A majority of members may attend a community meeting to address a topic of local concern. However, the meeting must have been organized by another agency and the members must not discuss among themselves, other than as part of the scheduled program, specific matters within the jurisdiction of the agency.

4. Meetings of Other Bodies

A majority of the members of the body may attend an open and noticed meeting of another body of the agency, as well as an open and noticed meeting of another local agency, with the same limitations as noted above.

5. Social or Ceremonial Occasions

A majority of members may attend, though with same limitation as above

6. Standing Committee Meetings

A majority of members may attend an open and public meeting of a standing committee of the body. Those members of the body who are not members of the standing committee must attend only as observers. They may not participate.

G. TYPES OF MEETINGS SUBJECT TO THE BROWN ACT'S OPEN MEETING REQUIREMENTS

1. Collective Briefings

A majority of members cannot meet with staff for a collective briefing prior to a public meeting, unless open meeting requirements are followed.

2. Retreats and Workshops

The Attorney General has stated that retreats are subject to Brown Act's requirements.

3. Serial Meetings

Serial meetings may begin with individual contact but evolve into a meeting subject to the Brown Act. Two common types of serial meetings are:

a. "Daisy Chain." Member A contacts Member B. Member B contacts Member C. Member C then contacts Member D and so on until a quorum is reached and collective concurrence is established.

b. "Hub and Spoke." Staff person telephones members of a body one by one for a decision on a proposed action, or a chief executive briefs board members prior to a formal meeting, and in the process, obtains information about the members' respective views.

A majority of the members of a legislative body shall not, outside of an authorized meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Government Code section 54952.2(b)(1).) However, this "shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body." (Government Code section 54952.2(b)(2).) Therefore, advisory/informational memoranda from staff to all members are not violations.

If a member of a body receives an e-mail from another member regarding an item under consideration, and the member then forwards the e-mail to one or more other members, such that a majority of the members either receive or reply to the e-mail, a serial meeting results since the transmission of the member's ideas could result in a majority of the body reaching a collective concurrence.

This can happen when a member selects "reply to all" on a message sent from staff where that message contains the deliberation, decision or other content leading to a collective concurrence on the issue. Such an email is not only a violation, but creates an electronic record of the transgression. Note also that agency e-mails are subject to the Public Records Act and all communications between Board and Commission members to and from constituents, staff or other members of the agency would have to be disclosed upon request unless exempt.

4. Closed Meetings/Sessions

Closed sessions are authorized only for a specified subject AND must be listed on an agenda as specifically outlined in the Government Code. These sessions are limited to certain matters, including: 1) real property negotiations where agency is a party; 2) pending litigation when discussion in open session would prejudice the position of the agency in litigation; 3) threats to the security of public buildings or to the public's right of access to services or public facilities; 4) labor negotiations; and 5) personnel matters.

H. PENALTIES FOR VIOLATIONS

The Brown Act provides criminal misdemeanor penalties for each member who attends a meeting where action is taken in violation of the Brown Act, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled. Participation in deliberations will not result in criminal penalties. Other, more common, penalties for violations include injunctive and declaratory relief and the nullification of the decision made by the body.

III. CALIFORNIA PUBLIC RECORDS ACT (California Government Code Sections 6250, ***et seq***.)

A. INTRODUCTION

The Public Records Act is a series of statutes that govern the public's access to government records, beginning at California Government Code Section 6250. Enacted in 1968, the Public Records Act

was modeled after the Federal Freedom of Information Act (FOIA). As a result, courts often rely on the federal FOIA when interpreting provisions of the California Public Records Act. The Public Records Act has generated a large body of case law interpreting the Public Records Act.

B. SUMMARY

The Public Records Act makes all non-exempt, state and local government agency records (including reasonably segregable, non-exempt portions of otherwise exempt records) in any form or medium subject to public inspection during office hours or copying upon payment of duplications costs.

C. PURPOSE

The purpose of the Public Records Act is recited in Section 6250 of the Public Records Act:

> "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

The Public Records Act involves the fundamental competing interests of prevention of secrecy in government and the protection of individual privacy. Courts acknowledge that the Public Records Act embodies a strong policy in favor of disclosure of public records, and any refusal to disclose public information must be based on a specific exception to that policy.

D. WHO MUST COMPLY WITH THE PUBLIC RECORDS ACT?

1. State Agencies

Every State office official, department, division, bureau, board, and commission or other state body or agency must comply with the Public Records Act. (Gov. Code § 6252(a).)

2. Local Agencies

The Public Records Act also applies to each county, general law or charter city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, and other local public agency. Some private entities are also included. The Public Records Act includes as "local agencies" any board, commission, committee, or other multimember body that governs a private corporation or other entity that either:

a. Is created by a local government agency's elected legislative body in order to exercise authority that may lawfully be delegated to a private corporation or other entity; or

b. Receives funds from a local government agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency. (Gov. Code §§ 6252(b), 54952(c).)

3. Exclusions

The Act does not apply to the Legislature, the State courts, or the Federal government and its local agencies. (Gov. Code § 6252(a).)

E. WHAT IS A PUBLIC RECORD?

1. Definition

The Public Records Act defines a "public record" as:

a. any writing containing

b. information relating to the conduct of the public's business

c. prepared, owned, used, or retained by any state or local agency

d. regardless of physical form or characteristics. (Gov. Code § 6252(e).)

2. "Any writing"

The definition includes any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Gov. Code § 6252(f).)

3. "Information relating to the conduct of the public's business"

The mere custody of a writing by a public agency does not make it a "public record" under the Public Records Act. But if a record is kept by an official because it is necessary or convenient to the discharge of official duties, it is a "public record."

4. "Prepared, owned, used, or retained by any state or local agency"

The Public Records Act does not apply to records that do not exist, or are not in the public agency's possession.

5. "Regardless of physical form or characteristics"

This includes records stored electronically, such as in a database, or in any other retrievable format.

F. THE REQUEST FOR PUBLIC RECORDS

1. Form of the Request

A member of the public is not required to put in writing a request to inspect or copy public records. Records may be requested orally or by email.

2. Records Sought Must Be Reasonably Identifiable

A request must describe public records clearly enough to at least permit the agency to determine whether writings of the type described in the request are under its control. Requests may describe writings by their content without precise identification of documents sought. A request which requires an agency to search an enormous volume of data for the "needle in the haystack" may be objectionable as unduly burdensome. However, the agency is required to process the request as long as the records can be located with reasonable effort.

3. Assisting the Requester

A person requesting to inspect or obtain copies of records is often at a disadvantage because it is difficult to reasonably describe records that the person has not yet seen. So, public agencies are required to assist requesters in making a focused and effective request that reasonably describes identifiable records, by doing all of the following, to the extent reasonable under the circumstances:

a. Assist the requester to identify records and information that are responsive to the request or to the purpose of the request, if stated.

b. Describe the information technology and physical location in which the records exist.

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

The public agency's duty to assist the requester is deemed satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester. The public agency does not have an obligation to assist the requester in making a more focused and effective request, if the requested records are exempt from disclosure or the agency makes an index of its records available. (Gov. Code § 6253.1.)

G. RESPONDING TO THE REQUEST

1. The Initial Determination

Within 10 days after a public agency receives a request for a copy of records, the agency must determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency *and* promptly notify the requester of the determination and the reasons therefore. (Gov. Code § 6253(c).) Disclosure is not required in 10 days. The agency is only required to notify the requester whether the agency has disclosable records that are responsive to the request within the 10-day period. The agency is not required to actually disclose the records within 10 days of the request.

Time extension. In *unusual circumstances*, the 10-day period for the agency to determine whether it has disclosable records may be extended by up to 14 additional days. To do this, the agency head or their designee must notify the requester in writing of the reasons for the extension and the date on which a determination is expected. For purposes of extending the 10-day period, "unusual circumstances" means the following, but only to the extent reasonably necessary to properly process the request:

a. The need to search for and collect records from field facilities or other establishments that are separate from the office processing the request.

b. The need to search for, collect, and examine a voluminous amount of records that are demanded in a single request.

c. The need for consultation with another agency, or among two or more components of one agency, having substantial interest in the determination of the request.

d. The need to compile data, to write computer programming language, or to construct a computer report to extract data. (Gov. Code § 6253(c).)

2. Time Estimate For Disclosure

If after reviewing the request, the agency determines and notifies the requester that the request seeks disclosable records, the agency must state in the notice the estimated date and time when the records will be made available. (Gov. Code § 6253(c).) However, the agency may not delay or obstruct the inspection or copying of public records. (Gov. Code § 6253(d).)

3. Faster Access

A public agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than required by the minimum standards of the Act. (Gov. Code § 6253(e).)

4. Disclosure of Public Records

Subject to the Public Records Act's limitations, every person has a right to inspect public records that are not exempt from disclosure at all times during the public agency's office hours. Any reasonably segregable portion of a record must be made available for inspection after deletion of the portions that are exempt. (Gov. Code § 6253(a).)

5. Exempt Records

Some types of public records are exempt from disclosure under the Public Records Act. Not all exemptions are listed in the Public Records Act; some appear in other areas of the law. Here are some of the most commonly used exemptions:

a. Preliminary drafts, notes, or interagency or intra-agency memorandums that are not retained by the public agency in the ordinary course of business. However, the public interest in withholding those records must clearly outweigh the public interest in disclosure to deny the request.

b. Records pertaining to claims against the public agency or pending litigation to which the public agency is a party.

c. Personnel, medical, or similar files involving personal privacy.

d. Certain investigatory or security files of law enforcement.

e. Required taxpayer information regarding tax collection that is received in confidence and that, if disclosed, would result in an unfair competitive disadvantage for the person supplying the information.

f. Records exempted from disclosure under federal or state law, including privileged documents under the California Evidence Code. For example:

(i) Trade secrets

(ii) Attorney-client privileged information

(iii) Protected personal health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

g. Personal financial data filed with licensing agencies as required to establish an applicant's qualification for a license, certificate, or permit.

h. Memoranda submitted to a public agency's governing body by its legal counsel relating to pending litigation.

i. Initiative, referendum, and recall petitions.

j. Certain information contained on voter registration cards.

If another express exemption does not apply to justify withholding a record, the agency may still deny disclosure if it can demonstrate that, *on the facts of the particular case,* the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code § 6255(a).) This public interest or "catch-all" exemption requires a case-by-case analysis of each request for records. If the record requested is otherwise subject to disclosure, access to it cannot be denied based upon the purpose for which the record is being requested. (Gov. Code § 6257.5.) In determining whether the public interest in non-disclosure outweighs the public interest in disclosure, it is also irrelevant that the requester is a newspaper or other form of media, because the media has no greater right or access to public records than the general public.

Examples of public interest exempt records include:

a. Applications submitted to the governor by persons seeking appointment to public office are exempt from disclosure under the "catch-all" exemption of Section 6255 of the Public Records Act.

b. Staff evaluations and recommendations to a decisionmaker discussing an applicant's fitness for appointment are exempt from disclosure under the Act under the deliberative process privilege.

c. Telephone numbers appearing in city-reimbursed telephone records of members of a city council are exempt from disclosure under the deliberative process privilege because disclosure would reveal the identity of persons with whom the council members have spoken, as well as the substance or direction of the judgment and mental processes of the city council members. The public interest in protecting the flow of viewpoints and information to decisionmakers clearly outweighs the public interest in disclosing the identity of persons who meet with decisionmakers.

6. Copying Charges

Upon a request for a copy of records that reasonably describes identifiable records in the agency's possession, the public agency must make the records promptly available (unless they are exempt from disclosure) to the requester upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy must be provided unless it is impracticable to do so. (Gov. Code § 6253(b).) "Direct costs" do not include ancillary tasks such as retrieval, inspection, and handling of the file from which the copy is extracted.

7. Electronic Records

Any agency that has disclosable public records in electronic format must make that information available in an electronic format when requested by any person. The agency must:

a. Make the information available in any electronic format in which it holds the information; or

b. Provide a copy of an electronic record in the format requested if the format is one that the agency has used to create copies for its own use or for other agencies. The cost of duplication charged to the requester is limited to the direct cost of producing the copy in an electronic format. However, the requester may be required to pay the cost of producing the copy, including the cost of computer programming, if the request would require the agency to produce a copy that is otherwise produced only at regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record.

The Public Records Act does not require the public agency to reconstruct a record in an electronic format if the agency no longer has it available in an electronic format. The Public Records Act also does not require a public agency to release an electronic record in the electronic form in which it is held if its release would compromise the security or integrity of the original record or of any proprietary software in which it is maintained. (Gov. Code § 6253.9.)

8. Denying Records

A denial of records must be issued within the period allowed for initially determining whether the request seeks disclosable records. The denial should specify what information will not be disclosed, citing applicable exemptions. In addition, a denial of any request for public records must set forth the name and title of each person responsible for denying the request. (Gov. Code § 6253(d).) If the

request for inspection or copies of public records was in written form, the agency's response must also be in writing if it includes a determination that the request is denied, in whole or in part. (Gov. Code § 6255(b).)

H. SPECIAL CONSIDERATIONS

1. Email

Unless exempt, public records stored in a computer, including email, are subject to disclosure. (Gov. Code § 6254.9(d).) Email is a public record if it contains information relating to the conduct of the agency's business and it is prepared, owned, used or retained by the agency. Purely personal email or email unrelated to the agency's business (such as the grocery list) may not constitute public records..

The exemptions applicable to all other forms of public records also apply to email. However, the analysis may vary for email. For example, drafts of emails which can still be retrieved from a computer may be considered to be "retained in the ordinary course of business" and therefore not subject to the exemption for drafts *not* retained in the ordinary course of business.

2. Trade Secrets

Section 6254, subdivision (k) of the Public Records Act provides an exemption from disclosure for public records that are protected pursuant to the provisions of the Evidence Code relating to privilege. Section 1060 of the Evidence Code establishes a privilege for the owner of a "trade secret" to prevent an agency from disclosing the secret contained in a public record, but only if allowance of the privilege will not tend to conceal fraud or otherwise work injustice. A trade secret qualifies for the privilege if it is information, such as a formula, pattern, compilation, program, device, method, technique, or process, that both:

a. Derives independent economic value from not being generally known to the public or other persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

If the owner of a trade secret contained in public records fails to make a reasonable effort to maintain its secrecy (e.g., by submitting it to the agency in a separate envelope marked "Confidential – Trade Secret"), the exemption from disclosure does not apply and the records must be disclosed.

FAIR PROCESS LAWS

I. COMMON LAW BIAS PROHIBITIONS

A. COMMON LAW CONFLICT OF INTEREST CASES

While there are now statutory provisions prohibiting a financial conflict of interest, there are still cases that invoke the old common law doctrine against conflicts of interest. The common law doctrine

against conflicts of interest is the judicial expression of the public policy against public officials using their official positions for private benefit. This doctrine has been primarily applied to require a public official to abstain from participation in cases where the public official's private financial interest may conflict with his or her official duties. But it can also apply to non-financial conflicts as well.

By virtue of holding public office, an elected official is impliedly bound to exercise the powers conferred on him or her with disinterested skill, zeal, and diligence and primarily for the benefit of the public. 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 private interest. (*See Noble v. City of Palo Alto,* 89 Cal.App. 47, 51 (1928).) Violation of the common law duty to avoid conflicts of interest can constitute official misconduct and result in a loss of office. Generally, such conflicts are found only when there is an identifiable financial interest that is affected; however, any potential common law conflict of interest issue should be discussed with your agency's attorney.

II. DUE PROCESS CONSIDERATIONS

A. DUE PROCESS IS A CONSTITUTIONAL RIGHT

The Fourteenth Amendment of the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Similarly, the California Constitution contains provisions guaranteeing the right to due process of law. (Cal. Const., art. I, §§ 7, 15.)

B. LEGISLATIVE VERSUS QUASI-JUDICIAL

Typically, due process protections apply only to quasi-judicial or adjudicative actions—not "legislative actions." The distinction between the two can sometimes be difficult to determine, but generally, an action will generally be considered legislative if it involves the adoption of rules or ordinances of general application on the basis of broad public policy. (*See Nasha L.L.C. v. City of Los Angeles,* 125 Cal.App.4th 470, 482 (2004).) Thus, a city council's adoption of an ordinance on the raising of livestock within city limits would be considered legislative in nature. In contrast, the application of a rule to a specific set of facts that are peculiar to an individual case will be considered adjudicative or quasi-judicial. (*See People ex rel. San Francisco Bay etc. Com. v. Gianulias,* 188 Cal.App.3d 520, 527 (1986).) In the context of land use decisions, variances, use permits, subdivision maps, and similar proceedings have been considered adjudicative. (*See Arnel Development Co. v. City of Costa Mesa,* 28 Cal.3d 511, 519 (1980).)

C. PROCEDURAL DUE PROCESS

One type of right guaranteed by constitutional due process provisions is "procedural due process." Procedural due process protects persons against acts by local government officials in adjudicative or quasi-judicial proceedings which fail to provide adequate notice and an opportunity to be heard by a fair and impartial decision maker. Common grounds for violation include:

1. An objective appearance of bias—not just a party's subjective or unfounded fears of favoritism—may provide sufficient grounds for a procedural due process violation. (*See Haas v. County of San Bernardino,* 27 Cal.4th 1017,1034 (2002).)

2. Procedural due process can also be violated where public officials acting in a quasi-judicial capacity become personally or deeply embroiled with the parties or

events at issue prior to the hearing. (*See Mennig v. City Council,* 86 Cal.App.3d 341, 351 (1978).)

3. A city attorney's or general counsel's office may not act as a legal advocate for one party in a contested hearing in front of a public agency while also serving as a legal adviser for decision makers of that same public agency in a different matter, unless the attorney that acts as a legal adviser can demonstrate that it was screened off from any inappropriate contact with the attorney acting as the advocate. (*See Quintero v. City of Santa Ana,* 114 Cal.App.4th 810, 813 (2003).)

D. SUBSTANTIVE DUE PROCESS

Another type of due process is the constitutional right to be protected from unreasonable or arbitrary legislation or government action. (*See Clark v. City of Hermosa Beach,* 48 Cal.App.4th 1152, 1183 (1996).)

III. INCOMPATIBLE OFFICES

Under the common law, public officials may not hold two public offices if those offices have potentially conflicting duties. This rule has been codified by the Legislature as Government Code Section 1099. The statutory history to this legislation states that the statute is only intended to codify the existing common law on incompatible offices and its interpretations summarized above, and that it will not change any of the preexisting precedents.

In *Chapman v. Rapsey,* 16 Cal.2d 636 (1940), the California Supreme held that: "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. The true test is whether the two offices are incompatible in their natures, in the rights, duties or obligations connected with or flowing from them." (*Id*. 641-42.)

Some examples of incompatible offices are:

1. City council member and county planning commissioner, see 63 Ops.Cal.Atty.Gen. 607 (1980);

2. City council member and school board member, *see* 65 Ops.Cal.Atty.Gen. 606 (1982);

3. City planning commissioner and county planning commissioner, *see* 66 Ops.Cal.Atty.Gen. 293 (1983);

4. Deputy sheriff and county supervisor, *see* 68 Ops.Cal.Atty.Gen. 7 (1985);

5. Water district and city council member, *see* 75 Ops.Cal.Atty.Gen. 10 (1992).

IV. INCOMPATIBLE ACTIVITIES

Government Code Section 1126 provides that a local agency officer and 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 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.

However, in order for the prohibition to take effect, the officer or employee's local agency must promulgate a statement of incompatible activities. See *Mazzola v. City and County of San Francisco*, 112 Cal.App.3d 141 (1980). An officer or employee's outside employment, activity or enterprise may be prohibited if it:

1. involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or,

2. involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee, or

3. involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or

4. involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient. (Gov. Code § 1126(b))

A local agency adopting incompatible activity rules must also adopt rules governing the application of the Section 1126, including provisions regarding notice to employees of the determination of prohibited activities, of disciplinary actions to be taken, and procedures for appeals. (Gov. Code § 1126(c).)

V. DISQUALIFICATION FROM PARTICIPATION IN DECISIONS AFFECTING FAMILY MEMBERS

Public officials should do their best to avoid participation in decisions that will affect the interests of spouses or family members. Depending upon the facts of a particular situation, it may be necessary for the official to disqualify or recuse himself or herself.

For example, under Government Code Section 87100, local government officials cannot make, participate in making or in any way attempt to use their office to influence a governmental decision in which they know or have reason to know that they have a "financial interest." For purposes of Political Reform Act, "An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect…on the official or *a member of his or her immediate family...." (*Gov. Code § 87103.) There is also a possibility of improper actual bias or prejudice arising in quasi-judicial or administrative settings (e.g., a city council's hearing of an administrative appeal

of a business license revocation), if a family member or spouse were to be a party appearing in front of a body made up, in part, of that person's immediate family. Finally, some local agencies have adopted formal policies regarding nepotism.

VI. PUBLIC WORKS BID SOLICITATION AND COMPETITIVE BIDDING LAWS

A. PURPOSE OF COMPETITIVE BIDDING

"The purpose of competitive bidding is to guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent the waste of public funds; and to obtain the best economic result for the public." (*See Graydon v. Pasadena Redevelopment Agency,* 104 Cal.App.3d 631, 636 (1980).)

B. PROCESS

State law requires public projects of over specified amounts to be awarded to the lowest responsive bid from a responsible bidder. (See, e.g., Pub. Cont. Code § 20162: $5,000). Typically, the public agency begins by advertising a "Notice Request for Bids" or "Request for Quotes" in a newspaper of general circulation, and usually in local trade publications and on its website. Ads usually appear once a week for at least two weeks. (Note, ad and other bidding requirements may vary among agencies.) The Public agency then makes available plans and specifications for the Project. The public agency also makes available a "Notice to Bidders." The Notice to Bidders must state the time, date and place where bids will be publicly opened; the Notice typically also has procedures for material changes to specifications and receipt of bid addenda. Bidders must submit bids by the date, time and to the place where notice requires. Late bids are not usually accepted by public entities and are returned unopened. Bids may be submitted electronically if the public agency develops a system that accepts transmitted bids. Finally, the public agency publicly opens bids and determines whether bids are responsive and bidders are responsible.

C. STATUTORY FRAMEWORK

1. Counties

Public Works Projects in counties must be competitively bid. (Pub. Contract Code § 20128.) Competitive bidding thresholds vary and depend on the size of the county in terms of population. (Pub. Contract Code § 20120.) Generally, all public works projects over $4,000 must be competitively bid. In small counties 500,000 - 1,999,999 persons, the threshold increases to $6,500. In large counties, over 2 million persons, the threshold increases to $50,000.

2. Municipalities

Public contracting works by local public entities are generally governed by the Local Agency Public Construction Act. (Pub. Contract Code §§ 20100, *et seq.*) Competitive bidding for public works projects over $5,000 is required for general law cities. (Pub. Contract Code § 20162.) A project may not be split into smaller portions to avoid the competitive bidding requirement. (Pub. Contract Code § 20163.) Under Public Contract Code Section 20161, a "Public Project" is defined, for bidding purposes, as:

a. The erection, improvement, painting or repair of public buildings and works.

b. Work in streams, bays, etc.

c. Street or sewer work, except maintenance or repair.

d. Furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

3. Other Local Agencies/Special Districts

Competitive bidding requirements for local agencies and special districts vary in threshold amounts. Some agencies are exempt from competitive bidding altogether. Check the local enabling legislation to determine whether you are required to bid projects competitively.

a. When Statutes, Ordinances or Regulations so require.

b. School Districts—Pub. Contract Code Section 20111.

c. Municipal Utility Districts—Pub. Contract Code Section 20192.

d. Public Utility Districts—Pub. Contract Code Section 20204.1.

e. Various Transit Districts—Pub. Contract Code Section 20209-20323.

f. Agencies Acting under the Improvement Act of 1911—Pub. Contract Code Sections 20412, 20415.

g. Separation of Grade Districts—Pub. Contract Code Section 20472.

h. Community College Districts—Pub. Contract Code Section 20651.

i. Public Leaseback Corporations—Pub. Contract Code Section 20672.

j. Community Service Districts—Pub. Contract Code Section 20685.

k. Redevelopment Agencies—Pub. Contract Code Section 20688.2

l. County Sanitation Districts—Pub. Contract Code Section 20783.

m. Sanitary Districts—Pub. Contract Code Section 20803.

n. Fire Protection Districts—Pub. Contract Code Section 20813.

o. Highway Lighting Districts—Pub. Contract Code Section 20832.

p. Maintenance Districts—Pub. Contract Code Section 20842.

q. Bridge & Highway Districts—Pub. Contract Code Section 20914.

r. Uniform Construction Cost Accounting entities—Pub. Contract Code

Section 22033.

D. UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT—PUB. CONTRACT CODE SECTIONS 22000-22045.

This is an optional statutory scheme that applies to local public entities that adopt it and that satisfy its extensive accounting and reporting requirements It allows:

1. No bidding for projects less than $45,000.

2. Informal bidding for projects less than $175,000.

3. Formal bidding for projects over $175,000.

§ 18730. Provisions of Conflict of Interest Codes.

2 CA ADC § 18730
BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 7. Conflicts of Interest
Article 2. Disclosure (Refs & Annos)

2 CCR § 18730

§ 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.[1]

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.2

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements.

Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property[3] is required to be reported,[4] the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property equals or exceeds $2,000, exceeds $10,000, exceeds $100,000, or exceeds $1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,[5] the statement shall contain:

1. The name and address of each source of income aggregating $500 or more in value, or $50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was $1,000 or less, greater than $1,000, greater than $10,000, or greater than $100,000;

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,[6] the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than $10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of $470.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than $470 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public 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 persons, provided that the person making the loan

is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed $500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of $500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her 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, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of $100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than $250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth $2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth $2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating $500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $470 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value $1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

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[1] Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

[2] See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

[3] For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

[4] Investments and interests in real property which have a fair market value of less than $2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

[5] A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

[6] Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.

2. Editorial correction (Register 80, No. 29).

3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).

4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).

5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).

6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).

7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).

8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42)

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).

10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).

11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.

12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).

13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).

14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).

15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).

16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of

Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).

34. Redesignation of portions of subsection (b)(8)(A) as new subsections (b)(8)(B)-(D), amendment of subsections (b)(8.1)-(b)(8.1)(A), redesignation of portions of subsection (b)(8.1)(A) as new subsections (b)(8.1)(B)-(C) and amendment of subsection (b)(9)(E) filed 12-1-2016; operative 12-31-2016 pursuant to Cal. Code Regs. tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 49).

This database is current through 8/10/18 Register 2018, No. 32
2 CCR § 18730, 2 CA ADC § 18730

Exhibit B to Resolution

Titles/Positions of Persons Required to Submit Statements of Economic Interests and Disclosure Categories

Title/Position	Category
Positions Covered by Government Code Section 87200	
The following positions are NOT covered by the City's Conflict of Interest Code because they must file under Government Code Section 87200 and therefore, are listed for informational purposes only.	
Mayor	1
City Council Members	1
City Attorney	1
City Manager	1
Finance Director	1
Planning Commission Members	1
Positions Covered by the City of Petaluma's Conflict of Interest Code	
Appointed Officials	
Public Officials	
City Clerk	1
Appointed Officials	
Airport Commissioners	1
Animal Services Advisory Committee Members	1
Building Board of Appeals Members	1
Historic and Cultural Preservation Committee Members	1
Pedestrian and Bicycle Advisory Committee Members	1
Personnel Board Members	1
Petaluma Community Development Successor Agency	1
Public Art Committee Members	1
Recreation, Music, and Parks Commissioners	1
Senior Advisory Committee Members	1
Technology Advisory Committee Members	1
Tree Advisory Committee Members	1
Transit Advisory Committee Members	1
Youth Commission Members (Adult Members)	1
Designated Employees	
City Attorney's Office	
Assistant City Attorney	2
City Clerk's Office	
Deputy City Clerk	3
City Manager's Office	
Assistant City Manager	1
Risk and Safety Officer	1
Building Services Division	
Building Inspector I, II	4, 5
Chief Building Official	1

Title/Position	Category
Plans Examiner/Deputy Chief Building Official	4, 5
Senior Building Inspector	4, 5
Economic Development/Redevelopment	
Economic Development/Redevelopment Manager	1
Housing Division	
Housing Administrator	1
Information Technology/GIS Division	
Geographic Information Systems Manager	2
Information Technology Manager	2
Recreation Services Division	
Recreation Supervisor	2
Finance Department	
Commercial Services Manager	2
Finance and Accounting Manager	2
Revenue Development Specialist	2
Fire Department	
Assistant Fire Chief	1
Battalion Chief	2
Fire Chief	1
Fire Marshal	1
Human Resources Department	
Human Resources Director	1
Police Department	
Deputy Police Chief	1
Neighborhood Preservation Coordinator	4,5
Police Chief	1
Police Lieutenant	1
Police Sergeant	1
Public Works and Utilities Department	
Administration	
Director of Public Works and Utilities	1
Assistant Public Works and Utilities Director	1
Development Engineering Division	
City Engineer	1
Inspection Supervisor	4, 5
Capital Projects Engineering Division	
Associate Civil Engineer	4, 5
Project Manager	1
Public Works Inspector	2
Senior Civil Engineer	1
Operations Division	
Airport and Marina Manager	2
Operations Manager	1
Transit Division	

Title/Position	Category
Transit Manager	1
Environmental Services Division	
Environmental Services Supervisor	1
Environmental Services Manager	1
Environmental Services Analyst	1
Water Recycling Plant Operations Supervisor	1
Parks and Facilities Maintenance Division	
Parks and Facilities Maintenance Manager	1
Consultants*	1
Executive Director, North Bay Animal Services	1
Planning Manager, Contract	1
Principal Planner, Contract	1

*The awarding authority of a particular consultant contract shall require a particular consultant to file a Statement of Economic Interests if the awarding authority finds that a consultant will:

A. Make a government decision to:
   1. Approve a rate, rule or regulation.
   2. Adopt or enforce a rule.
   3. Issue, deny, suspend or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement.
   4. Authorize the City to enter into, modify or renew a contract, provided it is the type of contract that requires City approval.
   5. Grant City approval to a contract requiring such approval and to which the City is party or approval to the specifications for such a contract.
   6. Grant City approval to a plan, design, report, study or similar term.
   7. Adopt or grant approval of policies, standards or guidelines for the City or for any subdivision thereof.

B. Serve in a staff capacity with the City and in that capacity perform the same or substantially all of the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

Exhibit C to Resolution

Explanation of Disclosure Categories

Category 1: Full Disclosure

- **What to report?** All investments and business positions in business entities, sources of income including gifts, loans and travel payments, and interests in real property located in the City.
- **What Form 700 schedules?** All Schedules (A through E)

Category 2: ALL INCOME, EXCLUDING INTERESTS IN REAL PROPERTY

- **What to report?** All investments and business positions in business entities, and sources of income including gifts, loans and travel payments.
- **What Form 700 schedules?** A, C, D, E
- **Schedule B** does *not* apply to your disclosure category.

Category 3: CITY/DEPARTMENT-RELATED INCOME

- **What to report?** All investments and business positions in business entities and sources of income including gifts, loans and travel payments if the source is of a type which provides, manufactures, or supplies goods, materials, equipment, machinery or services, including training or consulting services, of the type utilized by or subject to the review or approval by the City or the department in which that person is employed.
- **What Form 700 schedules?** A, C, D, E
- **Schedule B** does *not* apply to your disclosure category.

Category 4: CITY/DEPARTMENT-RELATED INCOME, REAL PROPERTY

- **What to report?** All investments and business positions in business entities and sources of income including gifts, loans and travel payments, and all interests in real property, if the source is of a type which provides, manufactures, or supplies goods, materials, equipment, machinery or services, including training or consulting services, of the type utilized by or subject to the review or approval of the City or the department in which that person is employed.
- **What Form 700 schedules?** All Schedules (A through E)

Category 5: REGULATORY, LAND DEVELOPMENT RELATED INCOME, REAL PROPERTY

- **What to report?** All investments and business positions in business entities and sources of income including gifts, loans and travel payments, and interests in real property, if the source is of the type that is subject to the regulatory permit or licensing authority by the department in which that person is employed or the source of income is from land development, construction or the acquisition or sale of real property by the City.
- **What Form 700 schedules?** All Schedules (A through E)

Resolution No. 2018-159 N.C.S.
of the City of Petaluma, California

RESOLUTION REPEALING THE CITY OF PETALUMA'S CONFLICT OF INTEREST CODE (RESOLUTION NO. 2016-194 N.C.S.) AND ANY CONFLICTING RESOLUTIONS AND ADOPTING BY REFERENCE THE MODEL CONFLICT OF INTEREST CODE SET FORTH IN TITLE 2, SECTION 18730 OF THE CALIFORNIA CODE OF REGULATIONS AND TAKING RELATED ACTIONS

WHEREAS, pursuant to Section 87300 et seq. of the California Government Code, the City of Petaluma is required to adopt and promulgate a Conflict of Interest Code; and,

WHEREAS, pursuant to Government Code Section 87302, the City's Conflict of Interest Code must specifically enumerate the positions within the City, other than those specified in Government Code Section 87200, that involve the making or participating in making decisions that may foreseeably have a material effect on any financial interest, and, for each such enumerated position, the Conflict of Interest Code must state the specific types of investments, business positions, interests in real property and sources of income that are reportable; and,

WHEREAS, on December 19, 2016, the City Council adopted Resolution 2016-194 N.C.S., adopting a Conflict of Interest Code for public officials and designated employees; and,

WHEREAS, the City Council at this time wishes to repeal the Conflict of Interest Code adopted by 2016-194 N.C.S. and adopt a revised Conflict of Interest Code establishing the City's conflict policy and defining the circumstances requiring disqualification; and,

WHEREAS, Title 2, Section 18730 of the California Code of Regulations contains the terms of a Model Conflict of Interest Code developed by the Fair Political Practices Commission ("FPPC") that cities can adopt by reference, which may be amended from time-to-time by the FPPC after public notice and hearing to conform to amendments in the Political Reform Act; and,

WHEREAS, adopting by reference the terms of the FPPC's Model Conflict of Interest Code set forth in the California Code of Regulations, and amendments thereto, as the Conflict of Interest Code of the City of Petaluma will meet the statutory requirements for adopting such a code and save the City time and resources by minimizing the actions required to keep the Code in conformity with the Political Reform Act; and

WHEREAS, the City Council is further required biennially to review and update as warranted the list of designated positions required to submit Statements of Economic Interest and the disclosure categories for such positions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PETALUMA DOES RESOLVE AS FOLLOWS:

Section 1: The above recitals are true and correct and are incorporated herein by reference.

Section 2: 2016-194 N.C.S., adopted December 19, 2016 and any other resolution in conflict with the Conflict of Interest Code adopted by this Resolution, is hereby repealed.

Section 3: The Model Conflict of Interest Code set forth in Title 2, Section 18730 of the California Code of Regulations, which is attached hereto and incorporated herein as Exhibit "A" to this Resolution, and any amendments to the Model Conflict of Interest Code subsequently adopted by the Fair Political Practices Commission, is hereby adopted, as amended, by the City of Petaluma as its Conflict of Interest Code, along with the attached "Exhibit "B" enumerating positions within the City in addition to those set forth in Government Code Section 87200 that are subject to the provisions of the Conflict of Interest Code and their disclosure categories and the attached "Exhibit C" explaining the conflict of interest form filing requirements for various categories. This Resolution and the attached Exhibits A, B and C together constitute the Conflict of Interest Code of the City of Petaluma.

Section 4: Pursuant to Section 4 of the Model Conflict of Interest Code adopted hereby, public officials and designated employees and consultants shall file Statements of Economic Interest with the City Clerk.

Section 5: The effective date of the Conflict of Interest Code shall be the date the code is originally approved and adopted by the City Council.

Section 6: Statements of Economic Interest shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the City Clerk. Statements for all public officials and designated employees will be retained by the City Clerk.

Section 7: If any provision, sentence, clause, section or part of this Resolution is found to be unconstitutional, illegal or invalid, such finding shall affect only such provision, sentence, clause, section or part, and shall not affect or impair any of the remaining parts.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:	I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 15th day of October 2018, by the following vote:	Approved as to form: City Attorney
AYES:	Albertson, Barrett, Vice Mayor Healy, Kearney, King, Miller	
NOES:	None	
ABSENT:	Mayor Glass	
ABSTAIN:	None	
ATTEST:	Claire Cooper City Clerk	Vice Mayor