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**LEGAL HANDBOOK FOR CITY OF FRESNO**  
**BOARDS, COMMISSIONS, COMMITTEES,**  
**AND SIMILAR BODIES**

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I.  
INTRODUCTION

Persons serving on the City of Fresno's (City) boards, commissions, committees, and similar bodies (collectively, "body") are public officers and carry out the duties of government. This *Legal Handbook for City of Fresno Boards, Commissions, Committees, and Similar Bodies* (Handbook) contains laws applicable to public officers serving on City bodies. This Handbook is intended to serve as a reference for public officers to help ensure actions taken in their official capacity are above reproach and in compliance with the laws. The City Attorney's Office (CAO) represents the City and is available to assist public officers while serving in their official capacity. In the event the CAO is unable to provide assistance because the matter is private in nature or creates a conflict of interest, we will refer the public officer to the appropriate agency or to their private attorney.

A. HOW CITY BOARDS, COMMISSIONS, COMMITTEES AND SIMILAR BODIES ARE CREATED.

A body may be created a number of ways, such as pursuant to federal law, state law, the City Charter, or the Fresno Municipal Code. The Mayor, Council, or an individual Councilmember may also create multi-member bodies as permitted by law, to assist them in carrying out their official duties.<sup>i</sup> Since there are many ways a body may be created, the enabling legislation or resolution that created the body must be consulted for determining the body's powers and duties.

B. THE POWERS AND DUTIES OF CITY BOARDS, COMMISSIONS, COMMITTEES, AND SIMILAR BODIES.

1. Enabling Legislation or Documents.

The CAO receives many inquiries regarding the qualification, appointment, term of office, and removal process for members serving on various City bodies. The enabling legislation that created the body will govern. For example, if a body was created by federal or state law, those laws must be consulted regarding its powers and duties. For boards and commissions created by Charter, including the Planning Commission, Civil Service Board, and City Retirement Boards, the Charter provisions located in Article IX of the Charter commencing with Section 900 et seq., govern. For all other bodies created by Council, the ordinance or resolution creating the body governs. Finally, whenever a body is created by the Mayor or individual Councilmember, the elected officer should file an organizational form with the City Clerk setting forth the powers and duties of the body, as adopted by Resolution 2004-185.

2. Internal Rules or Bylaws.

The Council Rules of Procedure provide default rules for bodies which have not adopted separate bylaws for that body.<sup>ii</sup> A body may adopt bylaws for its internal governance that are consistent with its powers and duties. There are also some well-established laws on the governance of bodies.

For example, an individual appointed to serve at the pleasure of the appointing authority may be removed from office by the appointing authority without cause and without notice and a hearing.<sup>iii</sup> However, if a public officer is appointed to serve a definite term of office, the officer may only be removed for cause before the expiration of the term. This means

that there must be specific and definite charges, justifying action, with legal notice, reasonable opportunity to be heard, and a finding or judgment.<sup>iv</sup> In another example, if a person is appointed to a board who does not meet the qualifications for the appointment, the appointment is considered null and void by operation of law.<sup>v</sup>

### C. THE RECORDS OF THE CITY CLERK.

Much of the enabling legislation and documents for City bodies are located in the City Clerk's Office and on the Clerk's website. The enabling legislation may take the form of, but is not limited to, an ordinance, resolution, minutes of Council meetings, and staff reports. In early 2004, the Council also adopted the "Boards and Commissions Appointment Process" via Resolution No. 2004-6 to streamline the application process for individuals interested in serving on various City bodies. Resolution No. 2004-6 was updated by Resolution 2020-043 in 2020, both of which are administered by the City Clerk and available on the City of Fresno website at [www.fresno.gov/cityclerk/](http://www.fresno.gov/cityclerk/) .

# # #

## II. THE BROWN ACT

### A. WHAT IS THE BROWN ACT?

The Ralph M. Brown Act (Brown Act) is state law governing meetings conducted by local legislative bodies to facilitate public participation and uphold the democratic process by public bodies.<sup>vi</sup> The Brown Act generally requires local legislative bodies to conduct meetings in open public sessions, and to post meeting agendas in advance.<sup>vii</sup>

### B. TYPES OF BOARDS, COMMISSIONS, COMMITTEES, AND SIMILAR BODIES THAT ARE SUBJECT TO THE BROWN ACT.

The Council, as the governing body of the City, is the quintessential “legislative body” subject to the Brown Act. Subsidiary bodies of the Council may also be subject to the Brown Act. Any board, commission, committee, or similar body of the City, such as a task force, created by Charter, ordinance, resolution, or formal action of the Council are legislative bodies subject to the open meeting requirements of the Brown Act. The only bodies not subject to the Brown Act are advisory ad hoc committees, which must be comprised solely of less than a quorum of the Council for a specific task and dissolve upon completion of the task.<sup>viii</sup> Examples of bodies of the City that fall within the definition of legislative bodies include the following:

#### 1. Bodies Created by Charter or Ordinance.

The City’s Charter created three legislative bodies: the Planning Commission, Civil Service Board, and Retirement Boards.<sup>ix</sup> Examples of bodies created by the Fresno Municipal Code include the following: Building Standards Appeals Board;<sup>x</sup> Mobile Home Park Rent Review Stabilization Commission;<sup>xi</sup> Historic Preservation Commission;<sup>xii</sup> Building Commission;<sup>xiii</sup> and the Industrial Development Authority.<sup>xiv</sup> Legislative bodies created by ordinance that are not codified in the Fresno Municipal Code are also subject to the Brown Act.

#### 2. Bodies Created by Resolution or Formal Action of the Council.

Bodies created by Council via resolution or formal action are legislative bodies for purposes of the Brown Act. The phrase “formal action” is a term intended to distinguish between the official actions of the Council and the informal actions of particular Councilmembers. For example, if the Council designates two of its members to sit on an advisory committee and establish a committee’s agenda, the Council has taken “formal action” even though Council did not act by formal resolution.<sup>xv</sup> Similarly, if the Council authorizes a public officer to appoint a committee, this will likely create an advisory committee by formal action of the Council.<sup>xvi</sup> “Formal action” of the Council is not limited to a formal resolution or a formal vote by the Council.<sup>xvii</sup>

#### 3. Subcommittees of Boards, Commissions, Committees, or Similar Bodies.

If a body created by Charter or Council creates a subcommittee to carry out its mission, the subcommittee may also be subject to the Brown Act. To make that determination, the same legal analysis that applies to City bodies also applies to the subcommittee. In other words, if the body that created the subcommittee is a “legislative body” for purposes of the Brown Act, the subcommittee will also be subject to the Brown Act unless the

subcommittee is an ad hoc committee. To be an ad hoc committee, the subcommittee must be composed solely of less than quorum of the legislative body that created it for a specific task, without continuing subject matter jurisdiction or a meeting schedule fixed by Charter, ordinance, resolution, or formal action of the body that created it.

#### C. BOARDS, COMMISSIONS, COMMITTEES, AND SIMILAR BODIES THAT ARE NOT SUBJECT TO THE BROWN ACT.

Examples of bodies that are not legislative bodies for purposes of the Brown Act include the following.

1. Ad Hoc Committees Comprised Solely of Less than a Quorum of the Council.

An ad hoc committee is a committee, 1) composed solely of less than a quorum of members of the body, 2) which does not have continuing subject matter jurisdiction, and 3) which does not have a meeting schedule fixed by Charter, ordinance, resolution or other formal action of the legislative body.<sup>xviii</sup> Ad hoc committees serve only a limited or single purpose, are not perpetual, and are automatically dissolved when their specific task is completed. Committees that do not qualify as ad hoc committees are standing committees subject to the Brown Act.

2. Committees Created by an Individual Decision Maker.

A multi-member body created by an individual decision maker is not subject to the Brown Act.<sup>xix</sup> For example, a committee created by the Mayor or individual Councilmember is not a “legislative body” for purposes of the Brown Act. However, if the Council directs or authorizes a single individual to appoint a body, the body will likely be subject to the Brown Act.<sup>xx</sup>

#### D. GENERAL REQUIREMENTS UNDER THE BROWN ACT.

The purpose of the Brown Act is to ensure decisions are made with public input and in view of the public. A body subject to the Brown Act must comply with rules providing public access to its meetings. The general requirements of the Brown Act are as follows:

1. Post the Agenda.
  - The agenda must be posted in an area freely accessible to the public.
  - The agenda for regular meetings must be posted at least seventy-two hours in advance.<sup>xxi</sup>
  - The agenda for special meetings must be posted at least twenty-four hours in advance.<sup>xxii</sup>
  - For emergency meetings, the media must be given one hour advance notice. Notice of meetings for dire emergencies must be given at or near the time the presiding officer notifies the members of the body of the meeting.<sup>xxiii</sup>
2. Contents of the Agenda.
  - The agenda must specify the time and location of the meeting.<sup>xxiv</sup>



- The agenda must contain a brief general description of each item of business to be transacted or conducted at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed twenty words.<sup>xxv</sup>
  - The agenda must provide a public comment period for the public to address the legislative body before or during consideration of an item on the agenda. For regular meetings, the agenda must also allow members of the public to address the body on any matter within the subject matter jurisdiction of the body. For special meetings, a member of the public does not have a right to address the legislative body on matters that do not appear on the agenda.<sup>xxvi</sup>
  - The agenda must include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires modification or accommodation in order to participate in the public meeting.<sup>xxvii</sup>
3. The Public's Rights.
- Members of the public may not be required to register their names, provide other information, complete a questionnaire, or fulfill any other conditions to attend the meeting.<sup>xxviii</sup>
  - The public has a right to videotape, record, or broadcast the meeting so long as it does not create a persistent disruption of the proceedings.<sup>xxix</sup>
  - Information given to a majority of the members of the legislative body in connection with an open meeting must be equally available to the public unless exempt under the Public Records Act.<sup>xxx</sup>
  - If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C Section 12132).<sup>xxxi</sup>
4. Non-Agenda Items Rule.
- A body may not discuss or take action on any item not appearing on the agenda.<sup>xxxii</sup>
  - Narrow exceptions to the non-agenda items rule allow a member to do the following: briefly respond to comments made by a private person during the public comment period; ask staff for clarification; direct staff to place an item on a future agenda; or make a brief announcement or report regarding the member's own activities.<sup>xxxiii</sup>
  - Additional exceptions to the non-agenda items rule allow deviation from the above in the following circumstances: emergency situations qualifying for "emergency meetings" as defined; when two-thirds of the members of the legislative body decide there is a need to take immediate action that was brought to their attention after the agenda was posted; or when an item was

continued from a prior meeting that was posted no more than five days prior to the date action is taken on the item.<sup>xxxiv</sup>

## E. WHAT IS A “MEETING”?

Meetings of the legislative body must comply with the open meeting requirements of the Brown Act. The term "meeting" is very broadly defined as any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate upon any matter which comes under the subject matter jurisdiction of the legislative body.<sup>xxxv</sup> Meetings may occur in a variety of situations.

### 1. Face to Face Meetings.

A meeting occurs whenever a majority of the members of the legislative body meets face to face to discuss, decide, or vote on an issue within its subject matter jurisdiction. The legislative body need not take any action for a gathering to be considered a “meeting.” A gathering is a meeting if a majority of the members of the body receives information, hears a proposal, discusses their views on an issue, or takes action on any issue under the subject matter jurisdiction of the body.

### 2. Informal Gathering.

A gathering need not be formally convened to be considered a “meeting,” and may occur in social situations. For example, if a majority of the members of the body have lunch together and discuss or decide matters within its subject matter jurisdiction, the gathering is a meeting. A meeting may arise in other contexts, such as at social gatherings where a majority of the members of the legislative body discuss any matter within the body’s subject matter jurisdiction.

### 3. Meetings Using Technology.

A meeting may also take place in situations where a majority of the members of the body do not meet face to face. The Brown Act expressly prohibits the use of devices, such as direct communication, personal intermediaries, or technological devices to develop a collective concurrence as to actions to be taken. For example, a member of the legislative body may not contact a majority of its members by telephone, text, e mail, direct message on social media or app, or by a third party to discuss any matter within its subject matter jurisdiction outside of the public domain. Most often, this type of a meeting occurs through a series of communications by individual members or groups smaller than a quorum that ultimately involve a majority of the members. These meetings are called serial meetings.<sup>xxxvi</sup>

Social media interactions have a special, restrictive rule. The Brown Act also prohibits even ONE member of a legislative body from responding to another member’s post about a matter within the jurisdiction of the body, even using “reactions” such as liking or hearting another member’s post.<sup>xxxvii</sup> The amendments prohibit any “discussion” on an internet-based social media platform, among members of a legislative body. Discussion includes "communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body."<sup>xxxviii</sup> In addition to the restriction on the use of comments and digital icons, the Brown Act prohibits a direct response to any communication on an internet-based social

media platform regarding a matter within the subject matter jurisdiction of the legislative body that is made, posted, or shared by another member of the legislative body.

#### 4. Serial Meetings.

Serial meetings occur through a series of communications by individual members or groups smaller than a quorum that ultimately involve a majority of the members.<sup>xxxix</sup> Serial meetings can occur when one member talks to other members individually so that in total a majority or quorum of members have discussed the matter with the member. It may also occur when less than a quorum discusses a matter, and then one of those members discusses the matter with another member, thereby creating a quorum of members. The best practice is to explicitly ask who the other member has spoken with regarding a matter to avoid reaching a quorum and thereby creating a serial meeting.

### F. GATHERINGS THAT ARE NOT MEETINGS.

There are six types of gatherings that are not subject to the Brown Act.<sup>xi</sup> If a gathering does not fall within any of the six exceptions, a majority of the members in the same room who are merely listening to a discussion of the body's business will be participating in a meeting that requires notice, an agenda, and a period for public comment. The six exceptions are as follows:

#### 1. The Individual Contact Exception.

Conversations between a member of the body and any other person, that does not serve to "poll" members of the body does not constitute a meeting for purposes of the Brown Act.<sup>xli</sup>

#### 2. The Conference Exception.

Attendance of a majority of the members of the body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the body, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

#### 3. Other Public Meetings.

Attendance of a majority of the members of the body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

#### 4. Meetings of Other Legislative Bodies.

Attendance of a majority of the members of the body at an open and noticed meeting of another body of the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

#### 5. Social or Ceremonial Occasions.

Attendance of a majority of the members of the body at a purely social or ceremonial occasion, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

## 6. Standing Committee Exception.

Attendance by a majority of the members of the body at an open and noticed meeting of a standing committee of that body, provided that the members of the body who are not members of the standing committee attend only as observers.

## G. TYPES OF MEETINGS.

There are three types of meetings that can be called under the Brown Act: regular meetings, special meetings, and emergency meetings.

### 1. Regular Meetings.

Regular meetings are held at a regular time and place established by local rules, with agendas published at least seventy-two hours before the meeting.<sup>xiii</sup> With certain exceptions, the body may only take action on items that are listed on the agenda.

### 2. Special Meetings.

Special meetings are called on an "as needed" basis for special purposes with at least twenty-four hours' notice. The body may only take action on items listed on the agenda.<sup>xiii</sup>

### 3. Emergency Meetings.

An emergency meeting may be called on less than twenty-four hours' notice, regarding a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the body. An emergency meeting may also be held for a "dire emergency" for a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity.<sup>xiv</sup>

## H. LOCATION OF MEETINGS.

As a general rule, regular and special meetings must be held within the boundaries of the territory over which the legislative body has jurisdiction.<sup>xv</sup> Exceptions to the boundary requirement are as follows: to comply with federal law, state law, or court order; to inspect real property or personal property which cannot be conveniently brought within the jurisdiction; to participate in meetings with multi agency significance located within the jurisdiction of one of the agencies; to meet in the nearest available facility if the body has no meeting facility within its jurisdiction, or at the principle office of the body located outside of the jurisdiction; to meet with federal or state officials on legislative or regulatory issues affecting the local agency; to meet in or nearby a facility owned by the local agency, if the facility is directly related to the topic of the meeting; and to visit the office of the body's legal counsel for closed session on pending litigation to reduce legal fees or cost.<sup>xvi</sup>

## I. REMOTE PARTICIPATION IN MEETINGS.

Members generally participate in meetings in-person, although the Brown Act allows participation remotely under two frameworks. First, the Brown Act allows a member to participate remotely when at least a quorum of the members are in the published meeting location within the jurisdiction, the location of the member's remote participation has been noticed on the agenda, the agenda is posted at the remote location, and the public may participate in the meeting from the remote location.<sup>xvii</sup>

Second, under legislation adopted in response to the Covid pandemic, a member may participate remotely up to twice a year for “just cause” (childcare issue, illness in family, business travel, immune-compromised family member) or for emergencies so long as the rest of the body votes to ratify the emergency.<sup>xlviii</sup> Members may not participate remotely for more than three consecutive months or 20% of regular meetings in a calendar year. They must have both audio and visual connections to participate in the meeting remotely. Members must also disclose the identity and relationship to anyone over 18 in the room with them during the meeting. A quorum of the legislative body must be present in the same noticed location. At the time of this Handbook’s drafting, this option for remote participation is set to expire at the end of 2025.

#### J. CLOSED SESSIONS.

Closed sessions are not open to the public and information acquired during closed sessions is confidential and may not be disclosed legally without the majority of the body’s approval.<sup>xlix</sup> A body may not meet in closed session unless expressly authorized by the Brown Act. The statutory exceptions to the open meeting requirements are narrowly construed, and unless a specific statutory exception applies, a legislative body must consider the matter in open session regardless of its sensitivity.<sup>l</sup> Examples of authorized closed sessions include: real property negotiations, existing or anticipated litigation, threat to public services or facilities, and personnel matters.<sup>li</sup>

The body should consult with their legal advisor before holding a closed session to ensure that the item meets all of the statutory requirements for holding a closed session, is properly noticed on the agenda, and that the reporting requirements following a closed session are satisfied.<sup>lii</sup>

#### K. BROWN ACT VIOLATIONS.

The district attorney or any interested person may demand in writing that the body declare any actions taken in violation of the Brown Act as null and void or cure the defect within ninety days of the alleged violation. However, if the action was taken in open session, but in violation of the agenda requirements, the written demand must be made within thirty days. The body must act on the matter within thirty days of receiving the written notice. If no action is taken by the legislative body, the district attorney or any interested person may file a suit to have the action of the body declared null and void.<sup>liii</sup>

The City may be required to pay attorneys’ fees and court costs for successful actions.<sup>liv</sup> Individual members of the body may also be criminally liable for violating the Brown Act, if a member attends a meeting with intent to deprive the public of information to which the member knows or has reason to know the public is entitled pursuant to the Brown Act.<sup>lv</sup> Criminal violations of the Brown Act are misdemeanors punishable by up to one year in jail and/or fines. For these reasons, the City’s business must be carried out in a manner that prevents any actual or perceived Brown Act violations.

# # #

### III. CONFLICTS OF INTEREST

#### A. INTRODUCTION.

Members serving on City boards, commissions, committees, and similar bodies are public officers and subject to the conflict of interest laws. The purpose of such laws is to promote public confidence in the conduct of public officers. The conflict of interest laws discussed in this Handbook include the following: the Political Reform Act; Government Code Section 1090 et seq. relating to conflicts in contracts; incompatible offices; common law conflicts of interest; and other miscellaneous state law provisions. The laws in this area can be complex. This section of the Handbook is intended to assist public officers in recognizing situations that may give rise to a conflict of interest.

It is the duty of the individual member recuse themselves if required, and to contact the local agency's advisor if the member believes they may have a conflict of interest. Deciding whether a member has a conflict of interest is fact intense and generally requires significant research and analysis. For this reason, members should contact their legal advisor regarding a possible conflict as far in advance of their participation on the matter as possible. In matters involving potential conflicts, advance preparation is very important to ensure that participation occurs in an appropriate manner.

If the CAO is the body's legal advisor, please keep in mind that the CAO represents the City's interest, and the public officer only in their official capacity. Conflict of interest questions addressed to the City Attorney should be submitted in writing as far in advance of participation in the governmental decision as possible. Any last minute conflict of interest inquiries will usually result in the CAO giving conservative advice, that the member should announce their conflict and disqualify themselves from the matter. Since conflict of interest issues may affect the decisions of the body, it is the practice of the CAO to distribute copies of all written opinions relating to conflicts to the entire body.

#### B. POLITICAL REFORM ACT.

California voters adopted the Political Reform Act of 1974<sup>lvi</sup> (PRA) to ensure public officers perform their duties without considering their own financial interests. The Fair Political Practices Commission (FPPC) administers and enforces the PRA and issues regulations to carry out its purpose.<sup>lvii</sup> Conflicts of interest are prevented in two ways, by disclosure and disqualification.<sup>lviii</sup> The conflict of interest provisions of the PRA are applied on a decision by decision basis, and do not prevent a public officer from seeking or holding office, whether public or private.<sup>lix</sup>

This section of the Handbook is intended to provide an overview to assist public officers in identifying potential conflict issues early. A public officer should not rely solely on this Handbook to decide whether they have a conflict of interest under the PRA, as conflict analyses are fact-intensive and involve a detailed application of the laws.

##### 1. Members of Bodies Subject to the Political Reform Act.

Salaried and unsalaried members of bodies with "decision making authority" are public officers subject to the PRA.<sup>lx</sup> A body has decision making authority if any of the following apply.

- It may make a final governmental decision.
  - It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden.
  - It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public officer or governmental agency.<sup>lxi</sup>
2. Disclosure of Financial Interests.

Public officers disclose their financial interests on a form entitled “Statement of Economic Interests” (SEI) or “Form 700” issued by the FPPC. This mandatory disclosure of financial interests alerts public officers of personal interests that might be affected while performing their official duties, i.e., making governmental decisions. Disclosure also helps the public know about the public officer’s potential conflicts of interest. Form 700s submitted by public officers are public records filed under penalty of perjury and are made available for public inspection upon request.

The Council is required to adopt the City’s conflict of interest code designating which positions are required to file a Form 700, and which disclosure categories each position must include on their Form 700. The City’s local conflict of interest code is located in Fresno Municipal Code Section 2 901.

“Designated employees” are included in the conflict of interest code because their positions entail making or participating in decisions which may foreseeably have a material effect on any financial interest, and include members of decision making bodies.<sup>lxii</sup> State law also requires certain public officers to file Form 700s, independent of the local conflict of interest code, including members of the Planning Commission and public officers who manage public investments, such as City Councilmembers and the City Manager.<sup>lxiii</sup>

The extent of disclosure required on the Form 700 depends on the types of decisions made by the person in that position. The City’s conflict of interest code contains the following disclosure categories.

- Category I - Investments in, income from, and employment by, business entities (e.g., stock holdings, owning a business, a partnership).
- Category II - Sources of income, including gifts, loans, and travel payments.
- Category III - Interests in real property located within the City’s jurisdiction.

The City makes every effort to designate all positions making governmental decisions in the local conflict of interest code. Members of bodies whose positions are not designated in the local conflict of interest code who believe their positions involve making or participating in a governmental decision should contact the City Clerk’s Office. The City Clerk maintains the Form 700s filed by public officers. Regardless of whether the individual is required to file a Form 700, every governmental officer or employee must refrain from making or participating in a governmental decision that has a reasonably foreseeable material financial effect on their personal financial interests.<sup>lxiv</sup>

### 3. Disqualification Under the Four Step Process.

A conflict of interest arises from particular kinds of financial interests. Learning to recognize which financial interests may create a conflict of interest will prevent PRA violations. Once a public officer has the ability to spot potential problems, they can contact the FPPC or the agency's legal advisor for assistance. Determining whether a public officer has a conflict of interest requiring disclosure and recusal involves the four-step process described below.

Threshold question: Is the individual a public officer?

If the public officer is designated in the local conflict of interest code or Government Code 87200 to file a Form 700 each year, or otherwise participates in making governmental decisions, the individual is a public officer.<sup>lxv</sup>

Threshold question: What are the official's financial interests?

Identify the sources of a possible financial conflict of interest. There are six kinds of financial interests listed in the PRA.<sup>lxvi</sup>

- Business investment. A financial interest in a business entity in which the public officer, or their spouse or dependent children, has invested \$2,000 or more.
- Business employment or management. A business entity in which the public officer is a director, officer, partner, trustee, employee, or holds any position of management.
- Real property. A financial interest in real property in which the public officer, or their spouse or dependent children, has invested \$2,000 or more, and also certain leasehold interests.
- Sources of income. A financial interest in a source from whom the public officer has received (or has been promised) \$500 or more in income within twelve months prior to the decision. A public officer has a community property interest in their spouse's income.
- Gifts. A financial interest in anyone, whether an individual or an organization, who has given the public officer gifts which total \$590 or more within twelve months prior to the decision.
- Personal financial effect. A financial interest in the public officer's personal expenses, income, assets, or liabilities, as well as those of the public officer's immediate family. This is known as the "personal financial effects" rule. If these are likely to go up or down as a result of the governmental decision, then it has a "personal financial effect" on the public officer.

Financial interests not required to be reported on the Form 700 may nevertheless create a disqualifying conflict of interest. For example, a personal residence is not reported on the Form 700. However, it is common for a personal residence's proximity to a project to create a disqualifying conflict of interest, despite not being disclosed on the Form 700.

Directly involved financial interests (e.g. when the financial interest is the subject of the government decision) are directly affected by the governmental decision, and will create



a bigger risk of a conflict of interest than a financial interest that is only indirectly involved in the decision. For this reason, the conflict of interest regulations distinguish between directly involved and indirectly involved financial interests. There are specific rules for determining whether a financial interest is directly or indirectly involved in a governmental decision. The details of these rules are beyond the scope of this Handbook and will require a case by case analysis based on the particular facts.

#### Step One: Is It Reasonably Foreseeable the Governmental Decision Will Have a Financial Effect on Any of the Public Official's Financial Interests?

The public official must determine whether it is reasonably foreseeable the governmental decision will have a financial effect on their financial interests.<sup>lxvii</sup> A financial effect is presumed to be reasonably foreseeable when the public official's financial interest is directly involved - a named party in, or the subject of, the governmental decision.<sup>lxviii</sup>

If a public official's financial interest is indirectly involved - not a party to, or the subject of, the governmental decision - the occurrence of a financial effect need not be likely to occur to be considered "reasonably foreseeable" if it can be recognized as a realistic possibility (more than hypothetical or theoretical).<sup>lxix</sup>

In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest, the following nonexclusive factors should be considered:

- The extent to which the occurrence of the financial effect is contingent on intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency;
- Whether the public official should anticipate a financial effect as a potential outcome under normal circumstances when using appropriate due diligence and care;
- Whether the public official has a financial interest that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest;
- Whether a reasonable inference can be made that the financial effects of the governmental decision might compromise the public official's ability to act in a manner consistent with their duty to act in the best interests of the public;
- Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage, for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision; and
- Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of

the governmental decision on their financial interest in formulating a position.<sup>lxx</sup>

If a financial effect is not reasonably foreseeable, there is no conflict of interest.<sup>lxxi</sup> If it is, the public official must proceed to Step Two

#### Step Two: Will the Reasonably Foreseeable Financial Effect Be Material?

Step Two examines whether the governmental decision will have a material financial effect on the public officer's financial interests.<sup>lxxii</sup> The word "material" is akin to the term "important." The officer will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have a material impact on their financial interests. The FPPC regulations contain "materiality standards," or criteria for determining what kinds of financial impacts resulting from governmental decisions are considered material.<sup>lxxiii</sup>

The public official must determine whether the potential effect of the governmental decision on each financial interest is material.<sup>lxxiv</sup> To determine materiality, the public official first identifies which type(s) of financial interest may be affected, then apply the materiality standard for that type of financial interest as set forth in the FPPC's regulations.<sup>lxxv</sup> In addition, one must determine whether a decision will have a material financial effect on the public official's personal finances (and those of the official's immediate family).<sup>lxxvi</sup>

Materiality is generally presumed when a public official's financial interest is directly involved in the decision – meaning it is a party to, or the subject of, the governmental decision. The personal financial effect of a governmental decision is material if the official or a member of the official's immediate family may receive a financial benefit or loss of \$500 or more in any twelve-month period due to the decision.<sup>lxxvii</sup>

When a public official owns real property, its proximity to property that is the subject of a governmental decision can determine materiality. If the distance is 500 feet or less, there is a presumption of materiality.<sup>lxxviii</sup> If the distance is more than 500 and less than 1,000 feet, the decision's effect on the official's property must be considered to determine materiality.<sup>lxxix</sup> If the distance is 1,000 feet or more, there is a presumption that the decision will not have a material effect on the official's property interest.<sup>lxxx</sup> Different rules apply to leasehold interests.<sup>lxxxi</sup>

If the reasonably foreseeable financial effect is not material, there is no conflict of interest.<sup>lxxxii</sup> If it is material, the public official must proceed to Step Three.

#### Step Three: Will the Material Financial Effect on the Public Official's Financial Interest Be Indistinguishable From Its Effects on the Public Generally?

Even when the reasonably foreseeable financial effect of a governmental decision on a public official's financial interests is material, a public official does not have a disqualifying conflict of interest if the official establishes the decision will affect their financial interests in a manner that is indistinguishable from the manner in which the decision will affect the public generally.<sup>lxxxiii</sup>

The effect of a decision on a public official's financial interest is indistinguishable from the effect on the public generally if: 1) the decision will affect a "significant segment" of the public, and 2) the effect on the public official's financial interest is not "unique" when

compared to the effect on the significant segment.<sup>lxxxiv</sup> A “significant segment” generally means at least 25% of: 1) all businesses or nonprofit entities within the official’s jurisdiction; 2) all real property, commercial real property, or residential real property within the official’s jurisdiction; or 3) all individuals within the official’s jurisdiction. If the official’s only financial interest is their primary residence, a “significant segment” means the decision affects at least 15% of residential real property within the official’s jurisdiction.<sup>lxxxv</sup>

A governmental decision’s financial effect is considered unique when it has a disproportionate effect on a public official’s financial interest.<sup>lxxxvi</sup> The FPPC regulation lists several scenarios involving a disproportionate effect, such as effects to the official’s immediate family. The regulation also sets forth specific rules and exceptions for certain types of governmental decisions and circumstances, such as those involving:

- Assessments, taxes, fees, or rates;
- Limited neighborhood effects on residential properties;
- Residential rental properties;
- Certain appointed members of a board or commission;
- States of emergency; and
- Governmental entities.<sup>lxxxvii</sup>

When the effect on the public official’s financial interest is indistinguishable from the effect on the public generally, there is no disqualifying conflict of interest. If it is distinguishable, the public official must proceed to Step Four.

Step Four: Is the Public Official “Making, Participating in Making, or in Any Way Attempting to Use Their Official Position to Influence the Governmental Decision”?

If a public official has a disqualifying conflict of interest after applying the first three steps of the analysis they may not make, participate in making, or attempt to use their official position to influence the governmental decision unless an exception applies.<sup>lxxxviii</sup>

A public official “makes a governmental decision” if they authorize or direct any action, votes, appoints a person, obligates or commits their agency to a course of action, or enters into a contract on behalf of their agency.<sup>lxxxix</sup> “Participating in a decision” means providing information, an opinion, or a recommendation to affect the decision without significant intervening substantive review.<sup>xc</sup> A public official “uses an official position to influence a governmental decision” by contacting or appearing before any official in their agency (or in an agency subject to the authority or budgetary control of their agency) for the purpose of affecting a decision, or contacting or appearing before another government agency for the purpose of affecting a decision while acting or purporting to act on behalf of their agency.<sup>xci</sup>

The FPPC regulation includes seven important exceptions to the prohibition against making, participating in, or influencing a governmental decision:

- Ministerial decisions;
- Appearances as a member of the general public on matters related solely to their personal interests, limited to interests in real property and business

interests wholly owned or controlled by the official or the official's immediate family;

- Decisions involving the official's terms of employment, including compensation and independent contractor consulting contracts, or those of their immediate family;
- Public speaking to the general public or media;
- Academic decisions involving teaching or research responsibilities;
- Architectural and engineering documents prepared for a client and for use in a proceeding before the official's agency or body; and
- Additional consulting services if the agency already contracted with the consultant, for an agreed upon price, to recommend services of the type offered by the consultant or their employer and the consultant has no economic interest other than in the consulting firm that would be affected by the decision.<sup>xcii</sup>

#### 4. Conflicts Created by Campaign Contributions.

Pursuant to the Levine Act (which is part of the Political Reform Act), campaign contributions over \$250 may create conflicts for local agency "officers" when the contributor is connected to a matter before the officer. "Officer" includes elected or appointed officers, alternates, chief executive officers, and candidates for elective office.<sup>xciii</sup> This includes members of city councils, county and special district boards, and appointed boards and commissions. The law does not apply to courts, the judicial branch, or the governor's cabinet members.<sup>xciv</sup>

Under the Levine Act:

- Officers of an agency are prohibited from accepting, soliciting, or directing campaign contributions over \$250 from any party to, or participant in, a proceeding involving a license, permit, contract, or entitlement for use ("proceeding") before their agency. "License, permit, or other entitlement for use," includes all business, professional, trade, and land use licenses and permits, all other entitlements for use, all entitlements for land use, all franchises, and all contracts (other than competitively bid, labor, or personal employment contracts).<sup>xcv</sup> This includes contributions from parties and their agents, and from those with a financial interest in the matter (and their agents) who merely participate in a proceeding, as by speaking at a Council meeting. The prohibition applies while the proceeding is pending and for twelve months following a final decision, when the officer knows or has reason to know the party has a financial interest in the proceeding (such as owning a home nearby).<sup>xcvi</sup> This prohibition impacts fundraising for a year after the decision.
- An officer who received a campaign contribution of more than \$250 from a party or participant, or their agents, in the past twelve months may be disqualified from participating in that proceeding. The disqualification depends on whether the officer "knowingly and willfully" accepted a

contribution from a party, or if they accepted a contribution knowing the donor was a participant with a financial interest in the decision. Additionally, an officer who received a contribution greater than \$250 in the preceding twelve months from a party or participant to the proceeding must disclose that fact on the record.<sup>xcvii</sup>

- Parties to and participants in a proceeding must disclose on the record if they made contributions over \$250 within the prior twelve months to any officer of the agency and are prohibited from making contributions to any officer of the agency while the proceeding is pending and for twelve months after the date a final decision is rendered.<sup>xcviii</sup>

If an officer receives a contribution that will otherwise require disqualification under Section 84308, they may participate if they return the contribution within thirty days from the time they know or should know about (1) the contribution and (2) the proceeding.<sup>xcix</sup> Additionally, an officer who accepts, solicits, or directs a contribution of more than \$250 during the twelve months after the date a final decision may cure the violation by returning the contribution or the portion exceeding \$250 within fourteen days, but only if they did not knowingly and willfully accept, solicit, or direct the prohibited contribution, and the officer's controlled committee (or the officer if none) must maintain records of the cure.<sup>c</sup>

Like other sections of the PRA, the Levine Act is very detail-oriented and the regulations set forth parameters and definitions impacting the analysis. Consulting with campaign counsel or public agency advisor is essential if an officer believe they may have a conflict due to a campaign contribution of a party or participant, or their agent, in a proceeding before a decision making body of which they are a decision maker.

## 5. Exceptions.

### Legally Required Participation.

Even if a public officer has a disqualifying conflict of interest, their participation may be legally required if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.<sup>ci</sup> These are rare circumstances in which the public officer may be called upon to take part in a decision despite the fact that the public officer has a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances where the government agency would be paralyzed from acting. The public officer is most strongly encouraged to seek advice from the legal advisor or the Fair Political Practices Commission before the public officer acts under this rule.

### Segmentation.

An agency may segment a decision in which a public official has a disqualifying interest to allow participation by the official in the other portions of the decision, provided all the following conditions apply: 1) the decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest; 2) the decision in which the official has a financial interest is segmented from the other decisions; 3) the decision in which the official has a financial interest is considered first, and a final decision is reached by the agency without the disqualified official's participation in any way; and 4)

once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.<sup>cii</sup>

Decisions are “inextricably interrelated” when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision. For budget decisions and general plan adoption or amendment decisions affecting an entire jurisdiction, once all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan.<sup>ciii</sup>

## 6. Disclosure and Recusal Procedures.

When recusing from a matter, officials must publicly disclose each type of financial interest creating their disqualifying conflict and leave the room while the decision is deliberated and decided. The disclosure must occur immediately prior to the matter being considered, orally as part of the public record.<sup>civ</sup> However, campaign contribution disclosures required under the Levine Act may be made in writing as part of the public record instead.<sup>cv</sup> The official must leave the room after the disclosure is made and refrain from any participation in the decision. The official will not be counted toward achieving a quorum while the item is discussed.<sup>cvi</sup>

For an agenda item on a consent calendar (uncontested items), the official may remain in the room during the consent calendar. If an official has a personal interest in the agenda item (because they own real property or a business entity involved in the decision, as defined by the FPPC Regulation) and wishes to speak or appear as a member of the general public, following the public identification of the financial interest and recusal the official may leave the dais and speak or observe from the area reserved for members of the public.<sup>cvi</sup>

Officials are required to provide the following information, by type of conflict:

- Business interest: the name of the business, a general description of its activities, and any position held by the official.
- Real property interest: the property's address, assessor's number, or simply an identification that the property is the official's personal residence.
- Source of income interest: the name of the source of income.
- Source of gift interest: the name of the source of gift.
- All other interests: the nature of the expense, liability, asset, or income affected.<sup>cvi</sup>
- Contributions from a party to or participant in a proceeding (or their agent): that the official received contributions from a party, participant, or agent of a party or participant (as applicable) greater than \$250 within the preceding twelve months, and the name(s) of the contributor(s).<sup>cix</sup>

When a public official has a conflict of interest and no exception applies, the public officer has the duty to disqualify themselves from making a governmental decision. This duty

cannot be delegated to staff members or to an attorney. The duty rests with the officers in question because only they know the extent of their own personal financial dealings.

#### 7. Civil and Criminal Enforcement.

If a conflict of interest exists, several different agencies or persons may bring an action to enforce the PRA. A district attorney, the California Attorney General, or the FPPC may bring an action, either civil or criminal.<sup>cx</sup> In addition, any person residing within the jurisdiction may obtain authorization to bring a civil action to enjoin violations or compel compliance with the PRA. Finally, a local agency may discipline persons who violate certain provisions of the PRA.<sup>cx</sup>

A knowing and willful PRA violation is a misdemeanor punishable by a fine and/or imprisonment. A violator may be fined up to \$10,000 or three times the amount not properly disclosed, unlawfully contributed, expended, given, or received, for each violation.<sup>cx</sup> Finally, any person convicted of a misdemeanor under the PRA is barred from being a candidate for any elective office or acting as a lobbyist for four years following the conviction.<sup>cx</sup> A court may set aside an official action of a public officer if the action might not have otherwise been taken had the violator disqualified themselves.<sup>cx</sup>

#### 8. Resources Available from the Fair Political Practices Commission.

The FPPC has staff and several resources to assist public officers on conflict laws:

- Seek informal assistance from a consultant at the FPPC. The consultant can be reached at (916) 322 5660 or 1 (866) ASK FPPC [(866) 275 3772] during normal business hours.
- Review materials on conflicts of interest which are available on the Fair Political Practices Commission website, located at [www.fppc.ca.gov](http://www.fppc.ca.gov).
- Request a formal written advice letter from the FPPC.

The CAO has no statutory duty or authority under the PRA to give advice to any advisory body on the PRA or its application. By statute, the FPPC has the primary responsibility for impartially administering and implementing the PRA.

Opinions from the CAO are not binding on the FPPC. Therefore, a public officer's reliance on a CAO opinion will not immunize an officer from any FPPC administrative action, or from any civil or criminal proceeding if any officer violated the PRA or other conflict of interest laws. Only good faith reliance on formal written advice from FPPC offers protection. We refer each officer who wants this assurance to request a formal opinion from the FPPC. An officer may rely in good faith on a formal opinion, and acquire some protection from administrative action, and from civil and criminal actions or penalties.

#### C. CONFLICTS OF INTEREST IN CONTRACTS UNDER SECTION 1090 ET SEQ.

Section 1090 prohibits public officers from being financially interested in a contract. Section 1090 states:

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

officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. . . .

The purpose of Section 1090 is to make certain that every public officer is guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity.

Any contract made in violation of Section 1090 is void and cannot be enforced.<sup>cxv</sup> In addition, the officer who commits a violation may be subject to criminal and civil penalties, and potential disgorgement of any consideration received, or any property acquired in the transaction.<sup>cxvi</sup> Further, willfully violating Section 1090, or aiding or abetting an officer in violating Section 1090, forever disqualifies an official from holding any office in California.<sup>cxvii</sup> Both Section 1090 and the PRA may apply to a situation. In instances where Section 1090 conflicts with the PRA, the PRA will control over Section 1090.<sup>cxviii</sup>

### 1. Persons Who Are Subject to Section 1090.

Virtually all board members, officers, and employees, and some consultants, are public officers within the meaning of Section 1090.<sup>cxix</sup> Section 1090 also applies to members of advisory bodies if they participate in the making of a contract through their advisory function.<sup>cxx</sup> Section 1090's reference to "officers" applies to outside advisors (independent contractors, including corporate consultants) with responsibilities for public contracting similar to those belonging to formal officers.<sup>cxxi</sup> Effective January 1, 2024, an independent contractor is not an "officer" under Section 1090 if the contractor did not prepare or assist the public entity with any portion of a request for proposals, request for qualifications, or any other subsequent or additional contract with the public entity.<sup>cxxii</sup> If a contractor does assist with contracting matters, seek the advice of counsel or the FPPC to determine whether Section 1090 prohibits participation in making the contract.

### 2. Participation in Making a Contract.

The critical test for determining whether Section 1090 has been violated is whether the public officer participated in the making of a contract in their official capacity.<sup>cxxiii</sup> Section 1090 has been extended to cover those who "participate" in the making of the contract by giving advice or being involved in preliminary discussion, negotiations, compromises, reasoning, planning, drawing of specifications, or the solicitation for bids.<sup>cxxiv</sup>

A contract must be finalized before a violation of Section 1090 can occur. Once a contract is made, Section 1090 is violated if the financially interested officer participated in any way in the making of the contract. In other words, a public officer may be convicted of a violation regardless of whether the officer actually participated personally in executing the contract, so long as the officer had the opportunity to, and did influence execution directly or indirectly to promote their personal interests.<sup>cxxv</sup>

### 3. A Multi-member Body May Not Execute a Contract If Even One of Its Members Has a Requisite Financial Interest in a Contract.

If a public officer is a member of a multi-member body that executes the contract, the officer is conclusively presumed to be involved in the making of the contract.<sup>cxxvi</sup> The effect is that public officers serving on a multi-member body cannot escape liability for a Section 1090 violation merely by abstaining from voting or participating in discussions or negotiations. This absolute prohibition applies regardless of whether the contract is found



to be fair and equitable, or whether the officer abstains from all participation in the decision. In other words, no multi-member body may make a contract in which one of its members has a financial interest even if the “interested” member abstains.<sup>cxxvii</sup>

#### 4. Requisite Financial Interest.

Section 1090 applies to contracts in which a public officer has a financial interest. The term “financial interest” is not defined in the statute. Based on case law and statutory exceptions to the basic prohibition, the term is liberally interpreted.<sup>cxxviii</sup> Whether a proscribed financial interest exists in a public contract is primarily a question of fact.<sup>cxxix</sup> Financial interests include both direct and indirect interests in a contract.<sup>cxxx</sup> The following is an example of an indirect interest: A member of a county board of supervisors sold his printing business to his son, in return for a promissory note. The printing business provided printing services to the county. The court concluded that the supervisor had a financial interest in the county printing contract, because the contract enhanced the security of his promissory note.<sup>cxxxi</sup>

#### 5. The Multi member Body May Execute a Contract If Its Member Has Only a “Remote Interest” and Abstains from Participating in the Making of the Contract.

A public officer with only a “remote interest” in a contract will not be deemed to have an interest within the meaning of Section 1090. If the public officer’s financial interest is a remote interest, a contract may be executed by the multi-member body without the vote of the officer, if all the following occur:

- The official discloses the financial interest to the agency, board, or body.
- The interest is noted in the body's official records.
- The officer completely abstains from any participation in the making of the contract.<sup>cxxxii</sup>

An officer who intentionally fails to disclose the existence of a remote interest before action is taken on a contract in question violates Section 1090, and will be subject to criminal prosecution. However, the violation does not void the contract unless the private contracting party had knowledge of the officer’s remote interest at the time the contract was executed.<sup>cxxxiii</sup>

There are 17 categories of financial interests considered “remote interests” pursuant to Section 1091(b)(1) (17). The “remote interests” consist of the following:

- Officer or employee of a nonprofit corporation. An officer or employee of a nonprofit corporation, except as provided in Section 1091.5(a)(8).
- Employee or agent of a private contracting party. An employee or agent of a private contracting party, if the following four conditions are met: the contracting party has ten or more other employees; the public officer was an employee or agent of that party for at least three years prior to taking office; the public officer owns less than 3% of the shares of stock of the contracting party; and the former or current employee or agent is not an

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

- Employees or agents of the contracting party. An employee or agent of the contracting party, if all of the following conditions are met: the agency in which the person is an officer is a local public agency located in a county with a population of less than 4,000,000; the contract is competitively bid and is not for personal services; the employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party; the contracting party has ten or more other employees; the employee or agent did not directly participate in formulating the bid of the contracting party; and the contractor is the lowest responsible bidder.
- Parent. A parent's interest in the earnings of their minor child for personal services.
- Landlord or tenant. That of a landlord or tenant of the contracting party.
- Attorney, stockbroker, insurance or real estate broker/agent. This narrow exception may apply to: an attorney of a contracting party or an owner, officer, employee or agent of a firm, which renders or has rendered services to the contracting party in the capacity of stockbroker, insurance agent/broker or real estate agent/broker. For this exception to apply, two conditions must be present. The individual must not receive any remuneration, consideration or commission as a result of the contract; and the individual has an ownership interest of 10% or more of the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- Member of a nonprofit corporation formed under the Agricultural Code or Corporations Code. Any member of a nonprofit corporation formed under either the Food and Agricultural Code or Corporations Code for the sole purpose of selling agricultural products or supplying water.
- Supplier of goods and services. A supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to their election or appointment to office.
- Party to a Land Conservation Contract. An officer who enters into any contract or agreement under the California Land Conservation Act of 1965.
- Director or 10% owner of bank or savings and loan. Except as provided in Section 1091.5(b),<sup>cxv</sup> a director of, or a person having an ownership interest of 10% or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.
- Employee of consulting engineering, architectural, or planning firm. An engineer, geologist, architect, or planner employed by a consulting engineering, architectural, or planning firm who does not serve as an officer, director, or in a primary management capacity.

- Housing assistance contracts. An elected officer in a housing assistance payment contract, entered into pursuant to Section 8 of the United States Housing Act of 1937,<sup>xxxxv</sup> as amended, provided that the officer was elected after November 1, 1986, and the contract was in existence prior to the officer assuming office. The exemption for housing assistance contracts extends only to renew or extend an existing tenant's contract or, in a jurisdiction in which the rental vacancy rate is less than 5%, as to new tenants in a unit previously under a Section 8 contract.
  - Salary, per diem, or reimbursement of expenses from a government entity. A salary, per diem, or reimbursement for expenses from a government entity.
  - Ownership of less than 3% of shares in a for-profit corporation derived from employment. A for profit corporation that is the contracting party, provided the officer owns less than 3% of the shares of the corporation (and the shares are derived from their employment with that corporation).
  - Party to litigation involving the body of which the official is a member when there is a settlement. All the following must be true: The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel; after a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest; and the interested member has recused themselves from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.
  - Officers and employees of investor-owned utility regulated by the PUC. When the official is an employee or officer of an investor-owned utility entering into an agreement with the City, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency benefiting the public when: the contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission; the contract provides no individual benefit to the official that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract; the official has recused themselves from all participation in making the contract on behalf of the body or board of which they are a member; and the contract implements a program authorized by the Public Utilities Commission.
  - Owner or Partner of Firm Serving as Appointed Member of Unelected Body of the City. So long as the owner or partner recuses themselves from providing any advice to the body regarding the contract, and from all participation in reviewing a project resulting from that contract.
6. Interests Considered "Noninterests."

The Legislature has defined certain financial interests as noninterests. Unlike the "remote interest" exception, an interest that falls into one of these categories is treated as no

interest at all, and holding such an interest does not require abstention and often does not require disclosure. The noninterests in Section 1091.5 include:

- Corporate ownership and income. The ownership of less than 3% of the shares of a corporation for profit, provided that the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed 5% of the officer's total annual income, and any other payments made to the officer by the corporation do not exceed 5% of the officer's total annual income.
- Reimbursement of expenses. Reimbursement for actual and necessary expenses incurred in the performance of official duty.
- Public services. A recipient of public services generally provided by the public body or board of which the officer is a member, on the same terms and conditions as if the officer were not a member of the board.
- Landlords and tenants of governments. A landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency of this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state, unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.
- Public housing tenants. A tenant in public housing, created pursuant to the Health and Safety Code, in which the officer serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 of Division 24 of the Health and Safety Code.
- Spouses. A spouse of an officer or employee of a public agency in their spouse's employment or office holding if their spouse's employment or office holding has existed for at least one year prior to their election or appointment.
- Unsalaries members of nonprofit corporations. A non-salaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and the interest is noted in its official records.
- Uncompensated officers of tax exempt corporations. An uncompensated officer of a nonprofit, tax exempt corporation which, as one of its primary purposes, supports the functions of a public body or board, or to which the public body has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

- Government employees in contracts between government agencies. A person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in the official records.
- Attorney, stockbroker, insurance or real estate broker/agent. An attorney of the contracting party or an owner, officer, employee, or agent of a firm which renders, or has rendered service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10% in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- Officers, employees and owners of less than 10% of a bank or savings and loan. Except as provided in subdivision (b),<sup>cxxxvi</sup> that of an officer or employee of or a person having less than a 10% ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.
- Certain bona fide nonprofit, tax exempt corporations. That of: (a) a bona fide nonprofit, tax exempt corporation, having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit that enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes; and (b) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation.
- Officer, employee, or member of the Board of Directors of the California Housing Finance Agency. If the officer, employee, or member participated in the planning, discussions, development, or approval of a loan product or program and both of the following two conditions exist: the loan product or program is or may be originated by any lender approved by the agency; the loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.
- Officer is a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the Board. So long as the agreement contains the same terms and conditions as if the official were not a member of the body

or board. For purposes of this paragraph, “public services” includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

7. Eminent Domain.

Absent unusual facts, an eminent domain is not subject to Section 1090 because the process is statutorily mandated.<sup>cxxxvii</sup>

8. Subdivided Lands.

An officer is not prohibited from subdividing land owned by the officer or in which the officer has an interest. The officer must fully disclose the nature of the interest in the land to the body, and may not vote or participate in any manner in the approval.<sup>cxxxviii</sup>

9. Local Workforce Investment Board.<sup>cxxxix</sup>

Section 1090 does not apply to contracts or grants made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998, except when both of the following conditions are met: (a) the contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents; and (b) the member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

10. Limited Rule of Necessity.

According to the California Attorney General, the rule of necessity has two facets.<sup>cxl</sup> The first facet concerns situations in which a board must contract for essential services and no source other than that which triggers the conflict is available. The contracting officer, or a public board upon which they serve, would be the sole source of supply of such essential supply or service, and also would be the only officer or board permitted by law to execute the contract. Public policy would authorize the contract despite this conflict of interest.

The second facet of the doctrine focuses on the performance of official duties rather than upon the procurement of goods or services. A public officer is permitted to carry out the essential duties of their office despite a conflict of interest when they are the only one who may legally act. It ensures that essential governmental functions are performed even where a conflict of interest exists.<sup>cxli</sup>

According to the California Attorney General, when the rule of necessity is applied to a member of a multi-member board, as opposed to a single officer or employee, the board member must abstain from any participation in the decision. In other words, the effect of the rule of necessity is to permit a board with a substantially interested member to nevertheless make a contract, but the board member is still prohibited from participating in its making. In the case of a single officer or employee, application of the rule of necessity permits the officer or employee to participate in the making of the contract.<sup>cxlii</sup>

## 11. Remedies for Contracts Made in Violation of Section 1090.

Generally, every contract made in violation of Section 1090 may be avoided at the instance of any party except the officer interested in the contract.<sup>cxliii</sup> A narrow exception exists for a good faith lessee, purchaser, or encumbrancer of real property, where value was paid, and interest acquired without actual knowledge of a Section 1090 violation.<sup>cxliiv</sup> In all other instances, payments made to the contracting party must be returned and no claim for future payments under such contract may be made. In addition, the Supreme Court has determined that the public entity is entitled to retain any benefits which it receives under the contract.<sup>cxliv</sup>

Every officer subject to Section 1090 who willfully violates any of the provision of Section 1090 et seq., is punishable by a fine of not more than one thousand dollars or by imprisonment in state prison, and is forever disqualified from holding any office in the State of California.<sup>cxlvi</sup> Any current public officer or employee who willfully and knowingly discloses confidential information for pecuniary gain, to any other person, confidential information acquired in the course of their official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.<sup>cxlvii</sup>

### D. INCOMPATIBLE PUBLIC OFFICES.

The Government Code codifies a common law doctrine of “incompatible offices,” restricting the ability of public officers to hold two different public offices simultaneously if the offices have overlapping and conflicting public duties. “A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible.”<sup>cxlviii</sup> A “public office” is a position in government, 1) which is created or authorized by the Constitution or some law; 2) the tenure of which is continuing and permanent, not occasional or temporary; 3) in which the incumbent performs a public function for the public benefit and exercises some of the sovereign powers of the state.<sup>cxlix</sup>

Offices are incompatible when: 1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body; 2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; or, 3) Public policy considerations make it improper for one person to hold both offices.<sup>cl</sup> The prohibition on holding two offices does not apply when one office is part of a governmental entity’s advisory body (does not make final decisions or decisions that are frequently adopted without substantive changes or review), nor does it apply to positions of employment.<sup>cli</sup>

An official is deemed to forfeit the first office upon acceptance of the second office. Accordingly, whichever position the official accepted first they automatically forfeit.<sup>clii</sup>

### E. COMMON LAW CONFLICT OF INTEREST DOCTRINE.

In 1928, the California Supreme Court enunciated the common law doctrine<sup>cliii</sup> against conflicts of interest as follows:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.<sup>cliv</sup>

As a general rule, the decision maker should not be tempted by their own personal or pecuniary interest and the doctrine will apply to situations involving nonfinancial personal interest.<sup>clv</sup> The common law conflict of interest doctrine aims to avoid even the appearance of impropriety.<sup>clvi</sup>

The common law conflict of interest is not defined by statute or by regulation. The California Attorney General has taken the position that where no conflict is found according to statutory prohibitions, special situations could still constitute a conflict under the longstanding common law doctrine.<sup>clvii</sup> If a situation arises where a common law conflict of interests exists as to a particular transaction, the officer is disqualified from taking any part in the discussion and vote regarding the particular matter.<sup>clviii</sup>

## F. OTHER MISCELLANEOUS CONFLICTS LAWS.

### 1. Discount Passes on Common Carriers.

The California Constitution Article XII, Section 7 prohibits public officers from accepting free or discounted passes from a transportation company. The basic prohibition states:

A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. . . .<sup>clix</sup>

The Attorney General has opined that the prohibition applies in the following manner:<sup>clx</sup>

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

The Attorney General has indicated that where free flights or travel is part of a compensation package (i.e., where the public officer was a spouse of a flight attendant), the free transportation was offered to the public officer as a member of a larger group under a generally authorized or approved plan, a violation does not result.<sup>clxi</sup> The Attorney General has also sanctioned frequent flyer discounts and a coach to first-class upgrade as part of the airline's policy of providing free first-class upgrades to honeymooning couples.<sup>clxii</sup>

Thus, if the pass or discount is provided to the officer because of their position as a government official, the prohibition applies.<sup>clxiii</sup> If it is provided to the officer as a member of a larger group that is not related to the functions of their office, the prohibition may not be applicable.



2. Government Code Section 87407: Revolving Door for Local Agencies.

Officers are prohibited from using their official positions to influence a governmental decision related to any person in which the public officer has, is negotiating with, or has any arrangement for future employment. Section 87407 reads:

No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

A decision “directly relates” to a prospective employer if:

- The employer, either directly or by agent, has initiated a proceeding in which a decision will be made by filing an application, claim, appeal, or similar request.<sup>clxiv</sup>
- The employer, either directly or by agent, is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the subject person.<sup>clxv</sup>
- The employer will be financially affected by the decision, as defined by the FPPC’s conflict-of-interest regulations.<sup>clxvi</sup>

The conflict does not apply if the prospective employer is a state, local, or federal agency; the official is legally required to make or participate in the making of the decision; or the decision will affect the prospective employer in substantially the same manner as it will affect a “significant segment” of the public generally.<sup>clxvii</sup>

# # #

## IV. RETENTION AND DISCLOSURE OF PUBLIC RECORDS

### A. INTRODUCTION.

The City, including its boards, commissions, committees, and similar bodies, are subject to state laws governing the retention of public records.<sup>clxviii</sup> The City's records retention schedule is located in Resolution No. 2008-243, which lists the time periods certain public records must be retained by the City. In addition to the City's duty to retain records, the California Public Records Act<sup>clxix</sup> (Public Records Act) details what government information is and is not available to the public. The Public Records Act, which is modeled after the federal Freedom of Information Act, applies to records containing information relating to the conduct of the public's business prepared, owned, used, or retained by a local agency regardless of physical form or characteristics.<sup>clxx</sup> City bodies are "local agencies" and subject to the Public Records Act.<sup>clxxi</sup> Unless otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies.<sup>clxxii</sup> Any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.<sup>clxxiii</sup>

### B. PUBLIC RECORDS ARE SUBJECT TO DISCLOSURE UNLESS EXPRESSLY EXEMPT UNDER THE PUBLIC RECORDS ACT.

Public records are subject to disclosure unless they are expressly exempt under the Public Records Act or exempt under the "balancing test." The balancing test is also referred to as the "catchall provision," where the City must determine whether the public interest in disclosure is clearly outweighed by the public interest in nondisclosure.<sup>clxxiv</sup>

### C. PROCEDURE FOR REQUESTING AND RESPONDING TO REQUESTS FOR PUBLIC RECORDS.

- Any person may request to inspect or receive a copy of a record. The request may be verbal and need not be in writing. City staff may ask the person to submit the request in writing to ensure timely and full compliance with the request.
- The local agency must determine whether the request reasonably describes an identifiable record. If not, the local agency must make reasonable efforts to assist the person to make a focused and effective request that reasonably describes an identifiable record. This additional duty is not required if the records requested are made available, the records are expressly exempt from disclosure, or an index of the records are made available.<sup>clxxv</sup>
- If the records requested exist, the local agency must determine within ten days of receipt of the request (verbal or written) whether the request in whole or in part, seeks disclosable records. The local agency must immediately notify the person of the determination and the reasons therefor. Under unusual circumstances, the duty to respond may be extended by no later than fourteen days. Under no circumstances may the Public Records Act be used to delay or obstruct inspection or copying of public records.<sup>clxxvi</sup>

- The City must determine whether the records requested are exempt from disclosure under its express provisions or under the balancing test. If certain portions of the record are exempt from disclosure, the local agency must delete those portions that are reasonably segregable from the record, and make the balance of the record available for inspection.<sup>clxxvii</sup>
- If the request is denied, the local agency must justify the denial by demonstrating that the record is expressly exempt under the Public Records Act or under the balancing test.<sup>clxxviii</sup> If the request for records was in writing, any denial in whole or in part, must be in writing. The notification of denial must include the names and titles or positions of each person responsible for the denial.<sup>clxxix</sup>
- If the records are not exempt from disclosure, the local agency must have the records made available for inspection, or have copies of the records available upon payment of a fee as set forth in the Master Fee Schedule.<sup>clxxx</sup>
- If the documents are voluminous or in a form that is not easily reproducible, ask the person whether a summary of the information contained in existing documents may be provided as a response to the request.

The local agency should contact its legal advisor whenever there is a question of whether a document is exempt from disclosure, whenever the document is labeled attorney-client privilege, and whenever the document pertains to litigation or threatened litigation.

#### D. VIOLATIONS OF THE PUBLIC RECORDS ACT.

A local agency may not file a declaratory relief action solely to determine the local agency's obligation to disclose documents requested by a member of the public.<sup>clxxxi</sup> If the local agency refuses to supply records, the requesting person may bring an action in Superior Court to compel disclosure. If the court determines the records must be turned over, the local agency is required to pay attorneys' fees and court costs. If the local agency prevails, it is entitled to attorneys' fees only if the court finds that the request was "clearly frivolous."<sup>clxxxii</sup> Usually, refusal to disclose is based upon the privacy rights of an employee or applicant.

# # #

V.  
RECOMMENDATIONS

In summary, individuals serving on a City board, commission, committee, or a similar body, or one of its subcommittees, are subject to a number of state laws concerning open meetings, ethics, and conflicts. For this reason, we recommend all such bodies of the City, no matter how small, maintain at a minimum an official address, a files location, a copy of agendas, notices, and minutes of meetings in their files. Contact your body's advisor with any questions.

# # #

## ENDNOTES

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- i See for example, Charter Section 900, which permits the Council to create boards and commissions as in its judgment are required, and grant them such powers and duties authorized by law.
- ii Resolution 2023-035, Rule No. 1.
- iii *Zumwalt v. Trustees of Cal. State Colleges* (1973) 33 Cal. App. 3d 665, 674.
- iv McQuillin Mun. Corp. ' 12.230.10(3rd ed.) pp 399 - 400.
- v *Daniels V. Tergeson* (1989) 211 Cal. App. 3d 1204; 73 Ops. Cal. Atty. Gen. 197, 206 (1990) and cases cited therein.
- vi *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4<sup>th</sup> 547, 555.
- vii *Boyle v. City of Redondo Beach* (1999) 70 Cal. App. 4<sup>th</sup> 1109, the Brown Act is located in Government Code Section 54950 *et seq.* All statutory references are to the Government Code, unless otherwise noted.
- viii Section 54952(b).
- ix Charter Sections 907-910.
- x FMC Section 11-102.
- xi FMC Section 12-2001, *et seq.*
- xii FMC Section 15-4905.
- xiii FMC Section 11-504.
- xiv FMC Section 8-2-602.
- xv *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 805.
- xvi *Frazer v. Dixon Unified School District* (1993) 18 Cal. App. 4th 781, 792-793.
- xvii *The Brown Act, Open Meetings For Legislative Bodies*, California Attorney General's Office 2003, p. 5.
- xviii Section 54952(b).
- xix 75 Ops. Cal. Atty. Gen. 263, 269 (1992).
- xx *Frazer v. Dixon Unified School District* , *supra*, 18 Cal. App. 4th at p. 793.
- xxi Section 54954.2.
- xxii Section 54956.
- xxiii Section 54956.5.
- xxiv Section 54954.2.
- xxv *Id.*
- xxvi Section 54954.3.

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xxvii	Section 54954.2.
xxviii	Section 54953.3.
xxix	Section 54953.5.
xxx	Section 54957.5.
xxxi	Section 54954.2.
xxxii	Section 54954.2(a)(3).
xxxiii	<i>Id.</i>
xxxiv	Section 54954.2(d).
xxxv	Section 54952.2(a).
xxxvi	Section 54952.2(b).
xxxvii	Section 54952.2.
xxxviii	Section 54952.2 (b)(3)(B)(i).
xxxix	Section 54952.2(b).
xl	Section 54952.2.
xli	Section 54952.2(c)(1).
xlii	Sections 54954; 54952.2(a)(1), (3).
xliii	Section 54956.
xliv	Section 54956.5.
xlv	Section 54954.
xlvi	<i>Id.</i>
xlvii	Section 54953(b).
xlviii	Section 54953(e).
xlix	Section 54963.
I	<i>Rowen v. Santa Clara Unified School District</i> (1981) 121 Cal. App. 3d 231, 234.
ii	Sections 54956.8-54957.6.
iii	Sections 54954.5, 54957.1 <i>et seq.</i>
liii	Section 54960.1.
liv	Section 54960.5.
lv	Section 54959.
lvi	Sections 81000 <i>et seq.</i>
lvii	All references to regulations are to Title 2, Division 6 of the California Code of Regulations, also known as the FPPC Regulations.
lviii	Sections 87100 <i>et seq.</i>

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- lix *Eldridge v. Sierra View Hospital District* (1990) 224 Cal. App. 3d 311.
- lx Regulation 18700.
- lxi *Id.*
- lxii Section 82019.
- lxiii Section 87200.
- lxiv Section 87100: Regulation 18700.
- lxv Regulation 18700.
- lxvi Regulation 18700.
- lxvii Regulation 18700(d).
- lxviii Regulation 18701(a).
- lxix Regulation 18701(b).
- lxx Regulation 18701(b).
- lxxi Regulation 18701(d).
- lxxii Regulations 18700, 18702.
- lxxiii Regulation 18702 *et seq.*
- lxxiv Regulation 18700 (d)(2).
- lxxv Regulations 18702.1 – 18702.5.
- lxxvi Regulation 18702(a)(5).
- lxxvii Regulation 18702.5.
- lxxviii Regulation 18702.2(a)(7).
- lxxix Regulation 18702.2(a)(8).
- lxxx Regulation 18702.2(b).
- lxxxi Regulation 18702.2(c).
- lxxxii Regulation 18702.2(d).
- lxxxiii Regulation 18703.
- lxxxiv Regulation 18703(a).
- lxxxv Regulation 18703(b)(1)-(2).
- lxxxvi Regulation 18703(c).
- lxxxvii Regulation 18703(e)(1)-(7).
- lxxxviii Regulation 18700(d); See Section 87100.
- lxxxix Regulation 18704(a).
- xc Regulation 18704(b).
- xcI Regulation 18704(c).

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xcii	Regulation 18704(d)(1)-(7).
xciii	Section 84308(a).
xciv	Regulation 18438.1.
xcv	Section 84308(a).
xcvi	Section 84308(b).
xcvii	Section 84308(c).
xcviii	Section 84308(e).
xcix	Section 84308(d)(1).
c	Section 84308(d)(2).
ci	Regulation 18705.
cii	Regulation 18706.
ciii	<i>Id.</i>
civ	Regulation 18707(a).
cv	Regulation 18348.8(a).
cvi	Regulation 18707(a)(3).
cvii	<i>Id.</i>
cviii	Regulation 18707.
cix	Regulations 18438.8.
cx	Section 91001.
cxii	Section 91003.
cxiii	Sections 91000, 91005.
cxiv	Section 91002.
cxv	Section 91003.
cxvi	<i>Thomson v. Call</i> (1985) 38 Cal. 3d 633, 649.
cxvii	Section 1097.
cxviii	Section 1097(a)9-(b).
cxviii	Section 81013 - Political Reform Act prevails over all other statutory provisions that would otherwise prohibit an individual from complying with the Political Reform Act.
cxix	<i>Thomson v. Call, supra</i> , 38 Cal. 3d at p. 633.
cxx	<i>Millbrae Assn. for Residential Survival v. City of Millbrae</i> (1968) 262 Cal. App. 2d 222, 237.
cxxi	<i>People v. Superior Court (Sahlolbei)</i> (2017) 3 Cal.5th 230, 237-240.
cxxii	Section 1097.6, effective January 1, 2024.



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- cxxiii *Millbrae Assn. for Residential Survival v. City of Millbrae, supra*, 262 Cal. App. 2d at p. 237; 66 Ops. Cal. Atty. Gen. at 160-161.
- cxxiv *Campagna v. City of Sanger* (1996) 42 Cal. App. 4th 533, 538.
- cxxv *People v. Sobel* (1974) 40 Cal. App. 3d 1046, 1052.
- cxxvi *Thomson v. Call, supra*, 38 Cal. 3d at p. 649.
- cxxvii *Thomson v. Call, supra*, 38 Cal. 3d at pp. 645, 649.
- cxxviii *Conflicts of Interest*, California Attorney General's Office (2010), pp. 61-62.
- cxxix 84 Ops. Cal. Atty Gen.158 (2001).
- cxxx *Thomson v. Call, supra*, 38 Cal. 3d at p. 645.
- cxxxi *Moody v. Shuffleton* (1928) 203 Cal. 100.
- cxxxii Section 1091.
- cxxxiii Section 1091(d).
- cxxxiv Section 1091.5(b) identifies interests deemed "noninterests."
- cxxxv 42 U.S.C. Section 1437f.
- cxxxvi Section 1091.5(b) states that an officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor, or creditor.
- cxxxvii *Santa Clara Valley Water District v. Grosse* (1988) 200 Cal. App. 3d 1363, 1369.
- cxxxviii Section 1091.1.
- cxxxix Section 1091.1.
- cxl 69 Ops. Cal. Atty. Gen. 102, 109.
- cxli *Id.*
- cxlii *Id.*, school board trustee abstention; 67 Ops. Cal. Atty. Gen. 369, *supra*, at p. 378, board member abstention; 65 Ops. Cal. Atty. Gen. 305, 310, superintendent of schools permitted to participate.
- cxliii Section 1092.
- cxliv Section 1092.5.
- cxlv *Thomson v. Call, supra*, 38 Cal. App. 3d at p. 633.
- cxlvi Section 1097.
- cxlvii Section 1098.
- cxlviii Section 1099(a).
- cxlix 68 Ops. Cal. Atty. Gen. 337 (1985).
- cl Section 1099(a)(1)-(3).

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- cli Section 1099(c)-(d).
- clii Section 1099(b).
- cliii The common law has developed through precedential court decisions. It differs from statutory law which has been created through the legislative process.
- cliv *Noble v. City of Palo Alto*, (1928) 89 Cal. App. 47, 51.
- clv *Clark v. Hermosa Beach* (1996) 48 Cal. App. 4th 1152.
- clvi 92 Ops.Cal.Atty.Gen. 19 (2009).
- clvii 53 Ops. Cal. Atty. Gen. 163 (1970).
- clviii 26 Ops. Cal. Atty. Gen. 5, 7 (1955).
- clix Cal. Const. Art. XII, Section 7.
- clx *Conflicts of Interest*, California Attorney General's Office (2010) at pp. 84-85.
- clxi 67 Ops. Atty Gen. 81 (1984).
- clxii 74 Ops. Atty Gen. 26 (1991).
- clxiii See 76 Ops.Cal.Atty.Gen. 1 (1993)
- clxiv Regulation 18701(a).
- clxv *Id.*
- clxvi Regulation 18702, *et seq.*
- clxvii Regulation 18747(d).
- clxviii Sections 34090 *et seq.*
- clxix Sections 7920.000 *et. seq.*
- clxx Section 7920.530(a).
- clxxi Section 7920.510.
- clxxii Section § 7922.525(a).
- clxxiii Section 7922.530.
- clxxiv Section 7922.000.
- clxxv Section 7922.605.
- clxxvi Section 7922.535.
- clxxvii Section 7922.525.
- clxxviii Section 7922.540.
- clxxix *Id.*
- clxxx Section 7922.530.
- clxxxi *Filarsky v. Superior Court* (2002) 28 Cal. 4th 419.
- clxxxii Section 7293.115(b).