

**CITY OF IMPERIAL BEACH
TIDELANDS ADVISORY COMMITTEE**

A G E N D A

OCTOBER 14, 2013

**City of Imperial Beach Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

REGULAR MEETING – 3:00 p.m.

The Tidelands Advisory Committee for the City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at meetings, please contact the Secretary for the Community Development Department at (619) 628-1356, as far in advance of the meeting as possible.

1. CALL TO ORDER

2. ROLL CALL BY SECRETARY

3. PUBLIC COMMENTS - Each person wishing to address the Tidelands Advisory Committee regarding items not on the posted agenda may do so at this time. In accordance with State law, the Tidelands Advisory Committee may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to City staff or placed on a future agenda.

4. REPORTS

A. INTRODUCTIONS AND ADMINISTER OATHS OF OFFICE TO TIDELANDS ADVISORY COMMITTEE MEMBERS.

Recommendation: Following introductions of committee members and staff, City Clerk of the City of Imperial Beach to administer Oaths to the Tidelands Advisory Committee members.

B. SELECTION OF A CHAIR AND DESIGNATION OF THE TIME AND PLACE FOR HOLDING MEETINGS.

Recommendation:

1. Select a chair for the Tidelands Advisory Committee;
2. Discuss the merits of a vice chair and, if desired, select a vice chair; and
3. Designate a time and place to hold meetings of the Tidelands Advisory Committee.

C.* PRESENTATION ON KEY LEGAL ISSUES FOR BOARD AND COMMISSION MEMBERS INCLUDING ECONOMIC DISCLOSURES (FORM 700), CONFLICTS OF INTEREST AND THE BROWN ACT.

* No staff report.

D.* PRESENTATION ON PORT PROJECTS.

* No staff report.

Any writings or documents provided to a majority of the Tidelands Advisory Committee regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

5. ADJOURNMENT

/s/

Tina Barclay
Administrative Secretary II

For your convenience, a copy of the agenda and meeting packet may be viewed in the office of the City Clerk at City Hall or on our website at www.ImperialBeachCA.gov. Go to the Imperial Tidelands Advisory Committee Page located under the Government Section/City Boards and Committees Tab.



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: CHAIR AND MEMBERS OF THE TIDELANDS ADVISORY COMMITTEE

FROM: GREGORY WADE, ASSISTANT CITY MANAGER/COMMUNITY DEVELOPMENT DIRECTOR *GW*

MEETING DATE: OCTOBER 14, 2013

ORIGINATING DEPT.: CITY CLERK *JMH*

SUBJECT: INTRODUCTIONS AND ADMINISTER OATHS OF OFFICE TO TIDELANDS ADVISORY COMMITTEE MEMBERS

EXECUTIVE SUMMARY:

Introductions of the Tidelands Advisory Committee members and City staff, followed by Oaths of Office of Tidelands Advisory Committee members.

BACKGROUND:

The Tidelands Advisory Committee, consisting of five (5) members, was established to review all matters involving coastal and tidelands issues referred to it by resolution of the City Council or by the City Manager or his/her designee. Additionally, the City Council may delegate particular issues or a general work plan for review and make recommendations within the time limits set out in the resolution by the City Council.

On June 19, 2013, City Council approved Mayor Jim Janney's recommended appointments to the Tidelands Advisory Committee for terms of office in accordance with I.B.M.C. 2.24.080 as follows:

(3) terms of office expiring on December 31, 2014

- Michel Dedina
- David L. Van de Water
- Mary S. Doyle

(2) terms of office to expiring on December 31, 2016:

- Veronica Archer
- Joseph James Ellis

ANALYSIS:

In accordance with Article XX, Section 3, of the Constitution of the State of California, the Tidelands Advisory Committee members shall, before they enter upon the duties of their respective offices, take and subscribe the Oath for public officers.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

None.

RECOMMENDATION:

Following introductions of committee members, City Clerk of the City of Imperial Beach administers Oaths to the Tidelands Advisory Committee members.



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: CHAIR AND MEMBERS OF THE TIDELANDS ADVISORY COMMITTEE

FROM: GREGORY WADE, ASSISTANT CITY MANAGER/COMMUNITY DEVELOPMENT DIRECTOR *GW*

MEETING DATE: OCTOBER 14, 2013

ORIGINATING DEPT.: CITY CLERK

SUBJECT: SELECTION OF A CHAIR AND DESIGNATION OF THE TIME AND PLACE FOR HOLDING MEETINGS

EXECUTIVE SUMMARY:

Staff recommends that the Tidelands Advisory Committee select a chair and vice chair, if desired, and designate the time and place for holding meetings.

BACKGROUND:

In accordance with Imperial Beach Municipal Code Section 2.21.040, the committee may prepare and adopt rules and regulations for the internal government of its business including the selection of a chair and designate the time and place of holding meetings.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

None.

RECOMMENDATION:

1. Select a chair for the Tidelands Advisory Committee;
2. Discuss the merits of a vice chair and, if desired, select a vice chair; and
3. Designate a time and place to hold meetings of the Tidelands Advisory Committee.

Key Legal Issues for Board and Commission Members- Tidelands Advisory Committee

City of Imperial Beach

October 2013

IBMC Ch. 2.18/2.20– Commissions, Boards and Committees

- City Residency Required
- Appointment by Mayor with approval of City Council
- Can be removed by majority vote of City Council or by Mayor with approval of Council
- All meetings to be conducted per Brown Act
- Meetings must be recorded and meeting minutes filed with the City Clerk

IBMC Ch. 2.24 – Tidelands Advisory Committee

- 5 members + Community Dev. Director (non-voting)
- Terms of office: 2 terms expire Dec. 31 in each Presidential election year, 3 terms expire Dec. 31 each even year
- Three voting members constitute a quorum
- Reviews all matters involving coastal and tidelands issues referred by City Mgr. or Council resolution
- Recommendation of Committee is advisory (final action by Council, Coastal Cmmn. or Port District)
- Reports by Committee shall address conformity of the matter with City's local coastal plan, Port District Master Plan and other applicable rules or regulations

Economic Disclosure Requirement- Form 700

- Required by Political Reform Act to prevent conflicts of interest by requiring certain officials to disclose personal financial interests which could cause conflicts
- TAC is listed in City's Conflict of Interest Code
- Disclosure categories 2, 4 and 7: (2) Interests in Real Property; (4) Investments in business entities/sources of income engaged in land development, construction and acquisition or sale of real property; (7) Business positions (for-profit only)

Form 700

- Filed with City Clerk, available for public inspection
- Interests of filer, spouse/domestic partner and dependent children (varies with type of interest)
- Timing:
 - Assuming office – within 30 days of assuming office
 - Annual – while in office
 - Leaving office – within 30 days of leaving office
 - Amended – at any time

Form 700

- Penalties for failing to file up to \$100 and for late filing of up to \$5000
- Resources:
 - Form 700 Instructions and Reference Manual (www.fppc.ca.gov)
 - 1-866-ASK-FPPC
 - City Clerk and City Attorney

Conflicts of Interest

- Generally governed by Political Reform Act
- Precludes an official from participating in a decision if it will impact the official's economic interests
- “500-foot rule” of disqualification applies when you own property within 500 feet of the boundaries of the property that is the subject of a decision
- Other potential conflicts of interest (especially those involving contracts) should be discussed with the City Attorney as soon as they are identified

Conflicts of Interest

- Disqualification Procedure
 - Public disclosure of the economic interest when the agenda item is announced (for example, “I will be recusing myself from participating in this item because I own a home within 500 feet of the property that is the subject of this decision”)
 - Leaving the room: legally required for City Council and Planning Commission, and considered a “best practice” for other boards and commissions
 - Important: Disqualification precludes any and all discussion of the item with staff and/or fellow board members

AB 1234 Ethics Training

- State law requires certain officials to receive two hours of ethics training every two years
- Applicability: members of legislative bodies who receive compensation or who are eligible for expense reimbursement
- Newly appointed officials must complete the training within one year of assuming office
- Alternatives for Compliance
 - In-person training
 - Online training: see “Local Ethics Training” link under the “Ethics” tab on FPPC website (www.fppc.ca.gov)

Brown Act – Open Meetings

- Government Code § 54950 et seq.
- Requires meetings of the legislative bodies of public agencies to be open and public
- “Legislative body” includes the agency’s governing body (City Council) and advisory and decision making boards and commissions
- IBMC Section 2.20.020 requires all meetings of City boards, commissions and committees to be conducted in accordance with the Brown Act

Brown Act- What is a Meeting?

- 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 item within the jurisdiction of the legislative body or agency

Brown Act

- “Meeting” exceptions:
 - Individual contacts
 - Attendance at community meetings, meetings of other agencies, conferences and seminars, social gatherings
 - Meetings of “ad hoc” subcommittees – temporary advisory committees of less than a quorum of the board, with a limited purpose, dissolved when the purpose is completed

Brown Act – Agenda Requirements

- 72-hour advance posting of agendas for regular meetings (physical posting and internet posting)
- 24-hour advance posting of special meeting agendas
- Must specify time and place of meeting
- Must contain “brief description” of each item of business to be discussed
- Action cannot be taken regarding items not listed on the agenda, with limited exceptions
- Non-agenda public comment must be allowed at all regular meetings

Brown Act Issues for Boards

- “Informal” meetings that are not noticed
- “Serial” meetings
 - A series of individual contacts that results in a majority of the members reaching a collective concurrence on an item of business (can occur by use of technology, such as email)
- Discussion of non-agendized items (other than brief response/direction to staff to agendize a future item)
- Teleconference meetings

Due Process and Ex Parte Contacts

- A party or applicant has a constitutional right of due process when a board or commission is making a decision that could impact the party/applicant's property rights
- Due process means the decision making process is fair:
 - The decision maker must hear all the evidence
 - The decision maker must not be biased or have prejudged the matter
 - The decision is based on substantial evidence
 - The affected party knows what evidence the decision was based on and has an opportunity to comment on or rebut the evidence

Due Process and Ex Parte Contacts

- “Ex parte” communications occur when decision makers receive evidence outside of the noticed hearing
- This can include site visits, speaking with parties/witnesses or conducting outside research
- Because the affected party has a right to comment on the basis for the decision, decision makers should either avoid ex parte contacts, or should disclose any facts gathered outside the hearing or ex parte contacts prior to the close of the hearing

The End

Questions?

DO'S AND DON'TS FOR CITY BOARD AND COMMISSION MEMBERS

October 2013

Economic Disclosure (Form 700)

- DO timely file your assuming office, annual and leaving office statements
- DO consult your conflict of interest code disclosure category and Form 700 instructions to determine what to disclose
- DO err on the side of disclosure
- DON'T disclose your personal residence address – it is exempt from disclosure
- DO keep a running file regarding matters such as gifts to make annual reporting easier
- DON't accept more than \$440 in annual gifts from a single source that is within your disclosure category
- DO use the City Attorney, Assistant City Attorney, City Clerk, and/or FPPC (1-866-ASK-FPPC) as resources

Conflict of Interest

- DO watch out for upcoming agenda items related to your economic interests
- DON'T participate in any way if you are disqualified from a matter – including discussion of the matter with staff or other board members outside of the meeting
- DO seek advice from the City Attorney, City Clerk, and/or FPPC (1-866-ASK-FPPC) on potential disqualification as soon as you identify an issue
- DO take special care to avoid conflict issues involving contracts, which are the most serious form of a conflict of interest

Brown Act – Open Meetings Law

- DON'T allow informal or social gatherings to become “meetings” subject to noticing and open meeting requirements
- DON'T allow a series of one-on-one contacts (including phone calls or emails) to turn into a “serial meeting”
- DO hold all meetings at a location within the City of Imperial Beach
- DO allow the public access to all meetings other than approved closed sessions
- DO provide a time for non-agenda public comment on each regular meeting agenda
- DON'T discuss items of business that are not listed on the agenda
- DON'T require meeting attendees to sign an attendance list or sign up sheet (use of a voluntary sign up sheet is permissible)
- DO make available for public inspection all recordings of meetings, and all documents distributed to board members during meetings

Disclaimer: This is a brief summary of some key legal issues applicable to board and commission members, for discussion purposes only. Many exceptions and variations to these general rules exist. Please seek individual advice if you have questions about any of these issues.

HIGHLIGHTS OF THE BROWN ACT
City of Imperial Beach Tidelands Advisory Committee
October 2013

Presented by
McDougal, Love, Eckis, Boehmer & Foley

Purpose

The Ralph M. Brown Act (Brown Act), California Government Code § 54950-54963, provides that all meetings of a legislative body of a local agency shall be open and public, and all persons shall be permitted to attend the meetings. The Brown Act is interpreted by the courts in a way that strongly favors open and public meetings. Although exceptions to the open meeting rules exist, they are interpreted narrowly.

Who is Covered by the Act? – Legislative Body of a Local Agency

The Brown Act defines “legislative body” broadly to include the governing body of a local agency, and includes councils, boards, commissions, standing committees, advisory committees, task forces and “blue ribbon” committees (GC § 54952). Newly elected or appointed members of legislative bodies who have not yet assumed office are also covered by the Brown Act. (GC § 54952.1).

The Tidelands Advisory Committee is required to comply with the Brown Act per Imperial Beach Municipal Code section 2.20.020.

The meetings of “ad hoc” advisory committees, comprised of less than a quorum of the board or commission, are not subject to the noticing and agenda requirements of the Brown Act. (GC §54952(b)). “Ad hoc” subcommittees are those that are used for a limited purpose over a limited period of time. Examples include ad hoc committees formed to make budget recommendations, draft by-laws or policies and procedures, or other similar temporary assignments.

What is a Meeting for Purposes of the Brown Act?

Gov’t Code § 54952.2(a) of the Brown Act defines “meeting” as “any congregation of a majority of the members of the legislative body at the same time and location . . . to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the legislative body.”

This definition is not limited to gatherings where action is taken, but also to gatherings involving only discussion or deliberation. “Deliberation” has been interpreted broadly by the courts to include information gathering sessions. 216 Sutter Bay Associates v. County of Sutter (1997) 58 Cal. App. 4th 860.

“Serial meetings” are a potential problem area under the Brown Act. Except for teleconferencing that meets certain noticing requirements, the Act prohibits using “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate or take action on any item of business.” (GC §54952.2(b)). Individual contacts, including electronic mail or phone contacts that occur in a series, may result in consensus being reached by a majority of members on an item of business. These types of contacts can result in a violation of the Act and should be avoided.

It should be noted that a “meeting” only occurs when an “item of business” is being discussed. It is generally accepted that communications regarding purely procedural matters (such as the time and date for scheduling an event or meeting) do not violate this rule.

“Meeting” Exceptions (GC §54952.2(c)):

1. Individual Contacts. The Brown Act does not cover individual contacts between a member of a legislative body and other persons. The exception recognizes the right to confer with constituents, advocates, consultants, reporters, local agency staff, or a single colleague. However, as discussed above, individual contacts cannot be used in stages to form a consensus between a majority of members on an item of business.
2. Conferences. The majority of a legislative body can attend a conference or similar gathering; open to the public, but cannot discuss official business among themselves.
3. Community Meetings. The majority of a legislative body can attend an open and publicized meeting organized by another organization, as long official business is not discussed among the members at the gathering.
4. Other Agency Meetings. A legislative body majority may attend an open and noticed meeting of another body of the local agency or another agency (such as the City Council) as long as official business is not discussed among the members while attending the meeting.
5. Social or Ceremonial Events. A majority of the legislative body may attend a purely social or ceremonial event if official business is not discussed among the members at the event.

Note: there is no exception that allows a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing on the agenda or an item of

business. The open meeting requirements also apply to retreats, study sessions and workshops.

What is Required for an “Open and Public” Meeting?

There are two essential elements for an open and public meeting under the Brown Act: (1) effective notice; and (2) an agenda that adequately describes the items to be considered.

1. Regular Meetings. Regular meetings are those meetings for which the time and place are provided for by resolution, ordinance, bylaws, or other rule of business. For regular meetings, an agenda must be posted at least 72 hours in advance of the meeting in a location freely accessible to the members of the public. The agenda must include: (1) a brief description of items to be discussed/business to be transacted, generally not exceeding 20 words; (2) time and location of the meeting. (GC § 54954.2(a)).
2. Special Meetings. In addition to regularly scheduled meetings, the legislative body may hold additional “special” meetings. Special meetings may be called by the presiding officer or a majority of the members. A written notice must be sent to each member of the legislative body, to each local newspaper of general circulation, and to other media outlets which have made a written request to receive such notices. Additionally, the notice with the time and place for the meeting must be posted in a location freely accessible to the public at least 24 hours in advance of the meeting. (GC § 54956).
3. Emergency Meetings. An agency can hold an emergency meeting when prompt action is needed due to the actual or threatened disruption of public facilities. An “emergency situation” exists if there is a work stoppage, crippling disaster or other activity that seriously impairs the public health, safety, or both. (GC § 54956.5). A majority of the legislative body must determine that an emergency exists to hold a meeting or discuss a non-agenda item as an emergency matter. (GC § 54954.2(b)(2)).

Rights of the Public to Attend and Participate

A number of the Act’s provisions relate to the rights of the public to attend and participate in meetings.

1. Attendance. Members of the public must be allowed to attend meetings of the legislative body and cannot be required to register their names, fill out a questionnaire, or have any other condition imposed in order to attend. (GC §54953.3). However, persons who are disruptive to the proceedings may be removed. (GC § 54957.9).
2. Recording. Members of the public must be allowed to make recordings of the meeting, as long as the recording is not disruptive. (GC § 54953.5).
3. Public Testimony. Every regular meeting agenda must allow for members of the public to speak on any item of interest within the subject matter jurisdiction of the legislative body (sometimes called “Public Comment” or “Oral Communications.”). Non-agenda comment is not required at special meetings. Public testimony regarding agenda items must be allowed at both regular and special meetings before or during the consideration of the agenda item. Reasonable regulations, such as time limits, may be adopted for public testimony. (GC § 54954.3). The legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or acts or omissions of the legislative body. (GC § 54954.3).
4. Secret Ballots. No secret ballots are allowed during open and public meetings. (GC § 54953(c)).

Permissible Closed Sessions

The Brown Act allows several exceptions to the open meeting requirement, allowing for closed sessions on specific subject matters that are confidential or sensitive. These exceptions are interpreted narrowly by the courts. The primary subject matters which can be discussed in closed session are:

1. Personnel matters. Includes appointment, evaluation, discipline, or dismissal of public employees. This exception includes contractors who function as officers or employees (such as a contract city attorney), but does not apply to elected officials, appointees to subsidiary bodies, or contractors who do not function as employees. (GC § 54957).
2. Pending litigation. Closed sessions are allowed for conferring with legal counsel regarding existing litigation or threatened litigation, or potential litigation to be initiated by the agency. (GC § 54956.9).

3. Real estate negotiations. (GC § 54956.8).
4. Labor negotiations (GC § 54957.6).
5. Public security. Covers issues involving threats to security of public buildings or to essential services. (GC § 54957).

Closed sessions may only be attended by members of the legislative body and necessary support staff with an official role advising the body regarding the closed session item. Additionally, the posted agenda for the closed session must include the legal authority for the closed session and a brief description of the item which is the subject of the session. Following some closed sessions (generally those where final action has been taken), a public report of the results of the closed session must be made. (GC § 54957.1).

Remedies for Violations

Civil and criminal penalties are provided in the Brown Act, as well as invalidation of some actions taken in violation of the law. The District Attorney can prosecute violations, and any private citizen can file a civil suit related to a violation. Prior to bringing a civil suit, a citizen must provide the legislative body with an opportunity to cure its actions (GC § 54960.1). A person who successfully enforces one of the Brown Act remedies may seek court costs and reasonable attorney's fees. The public agency may recover fees and costs if the court finds the lawsuit to be clearly frivolous and lacking in merit. (GC § 54960.5).

Miscellaneous Issues

1. Items not on the Agenda. The legislative body may not discuss or take action on items not included on the agenda. In response to public comment on non-agenda items, members may make brief comments such as to indicate that a subject will be included on a future agenda but may not take any action. (GC § 54954.2(a)).

An exception to this rule applies if two-thirds of the members present determine that there is an urgent need to take action on an item which came to the attention of the members after the meeting agenda was posted. Taking action on a non-agenda item is subject to challenge and should be approached with caution. (GC § 54954.2(b)).

2. Location of Meetings. According to the Brown Act, all of the legislative body's meetings must be held within the boundaries of the legislative body's jurisdiction. (GC § 54954(b)). There are some narrow exceptions, including one that allows a member to participate by teleconferencing if certain conditions are met, including: 1) a quorum of the legislative body is present in the jurisdiction; 2) the teleconference location is made available to the public; 3) the specific teleconference location is identified on the agenda; 4) an agenda is posted at the teleconference location, even if it is a hotel room or residence; 5) each teleconference location must have technology, such as a speakerphone, to allow the public to participate from that location; 6) all votes must be by roll call. (GC § 54953(b)(1)).

All meetings of the legislative body must be held in locations which are accessible to persons with disabilities pursuant to the Americans with Disabilities Act of 1990. (GC § 54953.2).

3. Records and Documents. The public has a right to review any documents distributed to a majority of the members of the legislative body except for privileged documents. The records must be made available to the public for inspection and copying, for a reasonable fee. The timeline for making records available to the public depends on who prepared them. For agency prepared records, the records must be made available to the public at the meeting, but for records prepared by third parties, the records can be made available after the meeting. (GC § 54957.5). If documents related to the agenda are distributed to the legislative body less than 72 hours prior to the meeting, the documents must be made available for public inspection at the same time they are distributed to the legislative body. (GC §54957.5).



Limitations and Restrictions on Gifts, Honoraria, Travel and Loans

A Fact Sheet For

- ♦ Local Elected Officers and Candidates for Local Elective Offices
- ♦ Local Officials Specified in Government Code Section 87200
- ♦ Judicial Candidates
- ♦ Designated Employees of Local Government Agencies

California Fair Political Practices Commission

Toll-free advice line: 1 (866) ASK-FPPC

Email advice: advice@fppc.ca.gov

Web site: www.fppc.ca.gov

January 2013

Introduction

The Political Reform Act¹ (the “Act”) imposes limits on gifts, prohibits honoraria payments, and imposes limits and other restrictions on the receipt of travel payments received by:

- Local elected officers and other local officials specified in Government Code Section 87200,² excluding judges;³
- Designated employees of local government agencies (i.e., individuals required to file statements of economic interests under a local agency’s conflict of interest code); and
- Candidates⁴ for any of these offices or positions and judicial candidates. (Sections 89502 and 89503.)

The Act also imposes limits and other restrictions on personal loans received by certain local officials.

This fact sheet summarizes the major provisions of the Act concerning gifts, honoraria, travel, and loans. You should not, however, rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, contact the Fair Political Practices Commission at (866) 275-3772 or advice@fppc.ca.gov or visit our website at www.fppc.ca.gov. Commission advice letters are available on our website. You may also be subject to local restrictions on gifts, honoraria, or travel.

Ethics Training

Most local agency officials are required to complete an ethics training course. Contact your agency for course information. Also see the FPPC website for a link to local agency ethics training.

Enforcement

Failure to comply with the laws related to gifts, honoraria, loans, and travel payments may result in monetary penalties of up to \$5,000 per violation. (Section 83116.)

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Local officials specified in Government Code Section 87200 include: members of boards of supervisors and city councils, mayors, city/county planning commissioners, city/county chief administrative officers, city/county treasurers, district attorneys, county counsels, city managers, city attorneys, court commissioners and public officials who manage public investments.

³ The gift limits and honoraria ban in the Political Reform Act do not apply to a person in his or her capacity as judge. However, candidates for judicial offices are subject to the restrictions contained in the Political Reform Act. (Sections 89502 and 89503.)

⁴ For purposes of the gift limit and honoraria prohibition, you become a “candidate” when you file a statement of organization (Form 410) as a controlled committee for the purpose of seeking elective office, a candidate intention statement (Form 501), or a declaration of candidacy, whichever occurs first. If you are an unsuccessful candidate, you will no longer be subject to the gift limit and honoraria prohibition when you have terminated your campaign filing obligations, or after certification of election results, whichever is earlier. (Sections 89502(b) and 89503(b).)

Gifts

Limitations

If you are a local elected officer, a candidate for local elective office, a local official specified in Government Code Section 87200, or a judicial candidate, you may not accept gifts from any single source totaling more than \$440 in a calendar year. (Section 89503.)⁵

If you are an employee of a local government agency who is designated in the agency's conflict of interest code, you may not accept gifts from any single source totaling more than \$440 in a calendar year if you are required to report receiving income or gifts from that source on your statement of economic interests. (Section 89503(c).)

What is a "Gift"?

A "gift" is any payment or other benefit provided to you that confers a personal benefit for which you do not provide payment or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. (Section 82028.) (See FPPC Regulation 18946 for valuation guidelines.)

Except as discussed below, you have "received" or "accepted" a gift when you know that you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. This includes gifts that are accepted by someone else on the official's behalf and gifts made to others at the direction of the official. (Regulation 18941.)

Gifts to Family Members

Under certain circumstances, a gift to an official's family member* is considered a gift to the official. (Regulation 18943.) Anything given to a family member is presumed to be a gift to the official if: (1) there is no established relationship between the donor and the family member where it would generally be considered appropriate for the family member to receive the gift or; (2) the donor is someone who lobbies the official's agency, is involved in an action before the official's agency in which the official may foreseeably participate, or engages in business with the agency in which the official will foreseeably participate. (Wedding gifts are treated differently, see below.)

*For purposes of this rule, an official's "family member" includes the official's spouse; registered domestic partner; any minor child of the official who the official can claim as a dependent for federal tax purposes; and a child of the official who is aged 18 to 23 years old, attends school, resides with the official when not attending school, and provides less than one-half of his or her own support.

⁵ The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2013-2014, the gift limit is \$440. (Section 89503; Regulation 18940.2.) Gifts aggregating \$50 or more must be disclosed, and gifts aggregating \$440 or more may subject you to disqualification with respect to the source. (Section 87103(e).) Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gift must be disclosed. Some conflict of interest codes require very limited disclosure of income and gifts. If your agency's conflict of interest code requires you to disclose income and gifts only from specified sources, gifts from sources that are not required to be disclosed on your Form 700 are not subject to the \$440 gift limit.

Gift Exceptions

The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) **The following payments are not gifts:**

1. Items that are returned (unused) to the donor, or for which you reimburse the donor, within 30 days of receipt. (Section 82028(b)(2); Regulation 18941.)

2. Items that are donated (unused) to a non-profit, tax-exempt (501(c)(3)) organization in which the official, or a member of the official's immediate family, does not hold a position or a government agency within 30 days of receipt without claiming a deduction for tax purposes. (Section 82028(b)(2); Regulation 18941.)

3. Gifts from your spouse (or former spouse), child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b)(3); Regulation 18942(a)(3).) This exception includes great grandparents, great uncles and aunts, great nieces and nephews, and first-cousins once removed.

4. Gifts of hospitality including food, drink or occasional lodging that you receive in an individual's home when the individual or a member of his or her family is present and the individual is someone with whom the official has a relationship, connection, or association unrelated to the official's position and the hospitality is provided as part of that relationship. (Regulation 18942(a)(7); Regulation 18942.2.)

5. Gifts commonly exchanged between you and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. (Regulation 18942(a)(8)(A).)

6. Reciprocal exchanges between you and another individual (other than a lobbyist) that occur on an ongoing basis so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official and no single payment is \$440 or more. For example, if two people get together regularly for lunches and rotate picking up the lunch tab so that each pays approximately half the time over the course of the calendar year, no gift need be reported. (Regulation 18942(a)(8)(B).)

7. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.

"Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than \$440. You have the burden of demonstrating that the item is informational. In addition, on-site demonstrations, tours, or inspections, including air flights over an area that is the subject of the information and designed specifically for public officials are considered informational material. However, this exception does not apply to meals or to transportation to the site unless the transportation is not commercially available. (Section 82028(b)(1); Regulations 18942(a)(1) and 18942.1.)

8. A devise or inheritance. (Section 82028(b)(5); Regulation 18942(a)(5).)

9. Campaign contributions, including rebates or discounts received in connection with campaign activities. (Section 82028(b)(4); Regulation 18942(a)(4).) However, campaign contributions must be reported in accordance with the campaign disclosure provisions of the Act and may be subject to other limitations imposed by the Act.

10. Personalized plaques and trophies with an individual value of less than \$250. (Section 82028(b)(6); Regulation 18942(a)(6).)

11. Admission for the official and one guest at an event where the official performs a ceremonial role, such as throwing out the first pitch at a Dodgers' game, so long as the official's agency complies with the posting provisions set forth in Regulation 18944.1(d). (Regulation 18942(a)(12).; Regulation 18942.3.)

12. A prize or award received in a bona fide contest or competition, or game of chance. This must be reported as income if over \$500 unless it is received in the California State Lottery. To qualify for this exception the contest or competition must have a broad base of contestants and the competition must be unrelated to the official's duties. (Regulation 18942(a)(13).)

13. Benefits received as a guest attending a wedding reception where the benefits are the same as those received by the other guests at the reception. (Regulation 18942(a)(14).)

14. Bereavement offerings, such as flowers at a funeral received in memory of a close family member. (Regulation 18942(a)(15).)

15. Benefits received as an act of neighborliness such as the loan of an item, an occasional ride, or help with a repair where the act is consistent with polite behavior in a civilized society and would not normally be part of an economic transaction between like participants under similar circumstances. (Regulation 18942(a)(16).)

16. Personal benefits commonly received from a dating partner. These gifts are not disclosable or limited but are subject to disqualification under the conflict of interest laws. (Regulation 18942(a)(17)(A).)

17. Acts of Human Compassion. Assistance, financial or otherwise, to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance, or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach. (Regulation 18942 (a)(17)(B).)

Note: The exception does not apply if the individual providing the benefit to the official is involved in some manner with with business before the official. (See Regulation 18942(a)(17)(D)(i-iii).) For example, (i) a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 of the Act and registered to lobby the official's agency; (ii) a person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered; (iii) a person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

18. Benefits received from a long-time personal friend where the gift is unrelated to the official's duties. The exception does not apply if the individual providing the benefit to the official is involved in some manner with with business before the official. (Regulation 18942(a)(17)(C), see note above about restrictions under Regulation 18942(a)(17)(D)(i-iii).)

19. Benefits received from an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable

material financial effect on the individual who would otherwise be the source of the gift. (Regulation 18942(a)(18).)

20. Two tickets for admission, for your own use, to attend a fundraiser for a campaign committee or candidate, or to a fundraiser for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The ticket must be received from the organization or committee holding the fundraiser. (Regulation 18946.4.)

21. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that you do not use and do not give to another person. (Regulation 18946.1.)

22. Gifts provided to your government agency. This may include passes or tickets to facilities, goods, or services, travel payments, and other benefits. However, this exception does not apply to elected officials and officials specified in Government Code Section 87200 with regard to travel payments. In addition, certain conditions must be met before a gift received by an official through his or her agency would not be considered a gift to the official. An agency must disclose specified payments on its website. (Regulations 18944 –18944.3.) Contact the FPPC for detailed information.

23. Generally, payments made by a third party to co-sponsor an event, or that are principally legislative, governmental or charitable in nature. In some cases, these payments may be considered “behested payments” also requiring disclosure.

24. Leave credits (e.g., sick leave or vacation credits) received under a bona fide catastrophic or emergency leave program established by your employer and available to all employees in the same job classification or position. Donations of cash are gifts and are subject to limits and disclosure. (Regulation 18942(a)(9).)

25. Food, shelter, or similar assistance received in connection with a disaster relief program. The benefits must be received from a governmental agency or charity (501(c)(3)) and must be available to the general public. (Regulation 18942(a)(10).)

26. Items awarded in an employee raffle, received by the agency from an agency employee who is not acting as an intermediary for another donor. This exception applies when an agency holds an employee raffle and the item awarded in the raffle has been obtained with agency funds, or is otherwise an asset of the agency and not donated to the agency by a non-agency source. This exception does not apply to passes or tickets of the type described in Regulation 18944.1. (Regulation 18944.2(a) and (b).)

27. Items received by an employee during an employee gift exchange, so long as the item received is provided by another employee of the agency and the gifts are not substantially disproportionate in value. (Regulation 18944.2(c).)

Source of Gift

Under most circumstances, it is clear who is the source of a gift, but if the circumstances indicate that the gift is being provided by an intermediary, you must determine both the donor and the intermediary in reporting the gift. Regulation 18945 provides the rules for determining the source of the gift.

Gifts from Multiple Sources

In determining the cumulative value of any reportable gifts, separate gifts from an individual and an entity that the individual controls or where the individual directs the payment of the gift must be aggregated as one source in complying with the reporting and limit requirements. For example, separate gifts from J.R. Ewing and Ewing Oil Company would be treated as if from one source if J.R. owns more than a 50 percent interest in the company unless the making of the gift was determined by someone else

in the company. In that case, the gift from Ewing Oil would be aggregated with any gifts made by that individual. (Regulation 18945.1)

Group gifts, where you received a single gift from multiple donors (such as a retirement gift from coworkers) need not be reported unless any one individual contributes more than \$50 to the total cost of the gift. (Regulation 18945.2.)

Valuation of Gifts

The general rule for determining the value of a gift is to apply the fair market value at the time the gift is received. Fair market value can be determined by finding any local or Internet advertisement for the item. Special exceptions to the fair market value rule are contained in Regulations 18946.1 through 18946.5 covering admission to ticketed and invitation-only events, wedding gifts, attendance at nonprofit and political fundraisers, and air travel. (Regulation 18946.)

Gifts Reported by the Official's Agency

The following exceptions are also applicable to gifts, but the official's agency may be required to report these items on a Form 801 or Form 802 instead of the official reporting the items on a statement of economic interests (Form 700).

Form 801: For an item to be considered a gift to the official's agency instead of a gift to the official, the payment (or item) must provide a **personal benefit** to a public official, such as a travel payment; and, in order for an agency to convert the payment into an agency gift, the payment may only be used for **official agency business and the agency must control the payment**. If the payment meets these requirements, the agency must report it on a Form 801 and the item is not reported on the individual's statement of economic interests (Form 700). (Regulation 18944.)

Form 802: When an official's agency provides an entertainment or sporting ticket or pass to a public official in order for it not to be reported as a gift on the individual's statement of economic interests (Form 700), the agency must have a written policy stating the public purpose for distribution of the tickets. The ticket or pass cannot be earmarked by the original source for use by a particular agency official, the agency must determine, in its sole discretion, which official may use the ticket or pass. The Form 802 is also used to report tickets provided for officials who perform a ceremonial role on behalf of the agency. (Regulation 18944.1.)

Behested Payments

The following payments are not considered gifts, but the official may be required to report these items on a Form 803.

Form 803: Behested payments are payments made principally for legislative, governmental, or charitable purposes. These payments are not for personal or campaign purposes. For example, an elected official may ask a third party to contribute funds to a school in his or her district, or to a job fair or health fair. Generally, a donation will be made "at the behest" if it is requested, solicited, or suggested by the elected officer, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of, the elected officer. This includes payments behested on behalf of the official by his or her agent or employee. Behested payments totaling \$5,000 or more from a single source in a calendar year must be disclosed by the official on a Form 803, which is filed with the official's agency within 30 days of the date of the payment(s). (Section 82015; Regulation 18215.3.)

Reportable Gifts Not Subject to Limits

The following exceptions are also applicable to gifts, but you may be required to report these items on a statement of economic interests (Form 700) and they can subject you to disqualification:⁶

1. Certain payments for transportation, lodging, and subsistence are not subject to gift limits but may be reportable. Travel payments are discussed below. See Regulation 18946.5 to determine the value of gifts of air transportation.
2. Wedding gifts are not subject to the gift limit but are reportable. For purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse. (Regulation 18946.3.)
3. A prize or award received in a bona fide competition not related to your official status is not subject to the gift limit, but must be reported as income. Therefore, it is reportable if the value of the prize or award is \$500 or more. (Section 87207; Regulation 18942(a)(13).)

⁶ Designated employees should consult the “disclosure category” portion of their agency’s conflict-of-interest code to determine if a particular source of income or gifts must be disclosed.

Honoraria

The Prohibition

If you are a local elected officer, a candidate for local elective office, a local official specified in Government Code Section 87200, or a judicial candidate, you may not accept honoraria payments. (Section 89502.)

If you are an employee of a local government agency who is designated in the agency's conflict of interest code, you may not accept honoraria payments from any source if you are required to report receiving income or gifts from that source on your statement of economic interests. (Section 89502(c).)

What is an "Honorarium"?

An "honorarium" is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501.)

A "speech given" means a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate. (Regulation 18931.1.)

An "article published" means a nonfictional written work: 1) that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and 2) that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. (Regulation 18931.2.)

"Attendance" means being present during, making an appearance at, or serving as host or master of ceremonies for any public or private conference, convention, meeting, social event, meal, or like gathering. (Regulation 18931.3.)

Exceptions

The Act and Commission regulations provide certain exceptions to the prohibition on honoraria. (Section 89501; Regulations 18930-18933.) **The payments described below are not prohibited and are not required to be disclosed on a statement of economic interests (Form 700):**

1. An honorarium that you return (unused) to the donor or the donor's agent or intermediary within 30 days. (Section 89501(b); Regulation 18933.)
2. An honorarium that is delivered to your government agency within 30 days for donation to the agency's general fund or equivalent account for which you do not claim a deduction for income tax purposes. (Section 89501(b); Regulation 18933.)
3. A payment that is not delivered to you but is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization. However:
 - You may not make the donation a condition for your speech, article, or attendance;
 - You may not claim the donation as a deduction for income tax purposes;
 - You may not be identified to the non-profit organization in connection with the donation; and
 - The donation may have no reasonably foreseeable financial effect on you or on any member of your immediate family. (Regulation 18932.5.)

4. A payment received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person. However, a payment which would be considered an honorarium is prohibited if one of these persons is acting as an agent or intermediary for someone else. (Regulation 18932.4(b).)

5. Items 6, 8, and 9 under “Exceptions to the Definition of ‘Gift’” discussed earlier in this fact sheet. (Regulation 18932.4.)

Exceptions That May Be Reportable as Income or Gifts

The following payments are not considered “honoraria” but may be reportable and can subject you to disqualification:⁷

1. Payments received for a comedic, dramatic, musical, or other similar artistic performance, and payments received for the publication of books, plays, or screenplays. (Regulations 18931.1-18931.2.) However, such payments are reportable income.

2. Income earned for your personal services if the services are provided in connection with a bona fide business, trade, or profession – such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting – and the services are customarily provided in connection with the business, trade, or profession.

This exception does not apply if the sole or predominant activity of the business, trade, or profession is making speeches. In addition, you must meet certain criteria to establish that you are practicing a bona fide business, trade, or profession (such as maintenance of business records, licensure, proof of teaching position) before a payment received for personal services which may meet the definition of honorarium would be considered earned income and not an honorarium. (Section 89501(b); Regulations 18932-18932.3.) Earned income is required to be reported. Contact the FPPC for detailed information.

3. Certain payments for transportation, lodging, and subsistence are not considered honoraria but may be reportable and subject to the gift limit. (Sections 89501(c) and 89506.) Travel payments are discussed below.

⁷ Designated employees should consult the “disclosure category” portion of their agency’s conflict-of-interest code to determine if a particular source of income or gifts must be disclosed.

Travel Payments

The Act and Commission regulations provide exceptions to the gift limit and honoraria prohibition for certain types of travel payments. (Section 89506; Regulations 18950-18950.4.)

The term “travel payment” includes payments, advances, or reimbursements for travel, including actual transportation, parking and related lodging and subsistence. (Section 89506(a).)

Exceptions

The following types of travel payments are not subject to any limit and are not reportable on a statement of economic interests (Form 700):

1. Free admission to an event at which you make a speech, participate on a panel, or make a substantive formal presentation, transportation, and necessary lodging, food, or beverages⁸, and nominal non-cash benefits provided to you in connection with the event so long as:
 - a. The speech is for official agency business and the official is representing his or her government agency in the course and scope of his or her official duties; and
 - b. The payment is a lawful expenditure made only by a federal, state, or local government agency for purposes related to conducting that agency’s official business.

The exception does not apply to state or local elected officers and officials specified in Section 87200. (Regulation 18950.3(b).)

2. Travel payments provided to you by your government agency or by any state, local, or federal government agency which would be considered income and not a gift (i.e., payments for which you provide equal or greater consideration). (Section 89506(d)(2); Regulation 18950.1(d).)

3. Reimbursements for travel expenses provided to you by a bona fide non-profit, tax-exempt (501(c)(3)) entity for which you provide equal or greater consideration. (Section 82030(b)(2).)

4. Travel payments provided to you directly in connection with campaign activities. However, these payments must be reported in accordance with the campaign disclosure provisions of the Act. (Regulations 18950.1(c); 18950.4.)

5. Any payment for travel that is excluded from the definition of “gift” as described earlier in this fact sheet.

Reportable Payments Not Subject to Limit

The following travel payments are not subject to the gift limit but may be reportable on a statement of economic interests (Form 700):

1. Travel that is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code. (Section 89506(d)(3); Regulation 18950.1(e).) For reporting purposes, these travel payments would be considered part of the salary, wages, and other income received from the business entity and would be reported on Schedule A-2 or C of Form 700.

⁸ Lodging, food, or beverages are “necessary” only when provided on the day immediately preceding, the day(s) of, and the day immediately following the speech, panel, seminar, or similar service.

2. Travel within the United States that is reasonably related to a legislative or governmental purpose – or to an issue of state, national, or international public policy – in connection with an event at which you give a speech, participate in a panel or seminar or provide a similar service. Lodging and subsistence expenses in this case are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel, or other similar service. (Section 89506(a)(1); Regulation 18950.1(a)(2).

Note that this exception is different than travel payments described earlier. Under the circumstances described in this paragraph, transportation within the United States is not subject to the gift limit but is reportable and can subject a public official to disqualification.

As discussed earlier, most local government employees are not required to report travel payments paid by a governmental agency in the course of employment. (Regulation 18950.3.)

3. Travel **not** in connection with giving a speech, participating in a panel, or seminar or providing a similar service but which is reasonably related to a legislative or governmental purpose – or to an issue of state, national, or international public policy – and which is provided by:

- A government, governmental agency, foreign government, or government authority;
- A bona fide public or private educational institution defined in Section 203 of the California Revenue and Taxation Code;
- A non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or
- A foreign organization that substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(Section 89506(a)(2); Regulation 18950.1(b).)

Loans

Personal loans received by elected and appointed officials are subject to limits and other restrictions and, in some circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

Limitations on Loans from Agency Officials, Consultants, and Contractors

If you are an elected official or an official specified in Section 87200 (see footnote 2 on page 1), you may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member, or consultant of your government agency or an agency over which your agency exercises direction and control. (Section 87460(a) and (b).)

In addition, you may not receive a personal loan that exceeds \$250 at any given time from any individual or entity that has a contract with your government agency or an agency over which your agency exercises direction and control. This limitation does not apply to loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status. (Section 87460(c) and (d).)

Loan Terms Applicable Only to Elected Officials

In addition to the limitations above, if you are an elected official, you may not receive a personal loan of \$500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. (Section 87461.)

The following loans are not subject to these limits and documentation requirements:

1. Loans received by an elected officer's or candidate's campaign committee.
2. Loans received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption.
3. Loans made, or offered in writing, prior to January 1, 1998. (Sections 87460 and 87461.)

Loans as Gifts

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

1. If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of:
 - The date the loan was made;
 - The date the last payment of \$100 or more was made on the loan; or
 - The date upon which the official has made payments aggregating to less than \$250 during the previous 12 months. (Section 87462.)

The following loans will not become gifts to an official:

1. A loan made to an elected officer's or candidate's campaign committee. This loan would, however, be a campaign contribution. Consult the FPPC campaign manual for local candidates (Manual 2) for more details.

2. A loan described above on which the creditor has taken reasonable action to collect the balance due.

3. A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)

4. A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

5. A loan that would not be considered a gift as outlined earlier in this fact sheet (e.g., loans from certain family members). (Section 87462.)

California Fair Political Practices Commission

Frequently Asked Questions: Form 700 Disclosure

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The FAQs listed below are selected from questions people frequently ask the FPPC about the Statement of Economic Interests (Form 700). All efforts have been made to provide helpful, easy to understand, answers to common questions. Please note that this fact sheet cannot address all of the unique variables and circumstances related to disclosure. Individuals are encouraged to contact the FPPC with specific facts. Keep in mind that the Form 700 is a public document and many agencies post the forms on their websites. Form 700s filed by State Legislators and Judges, members of the FPPC, County Supervisors, and City Council Members are available on the FPPC's website.

General Questions

1. Q. Do all officials have the same disclosure requirements for Form 700 reporting?
 - A. No. The majority of individuals that file the Form 700 must do so by following the rules set forth in their agency's conflict-of-interest code ("designated employees"). Before completing the Form 700, an official should be familiar with the disclosure category for his or her position. For example, since job duties differ from agency to agency, an analyst for one agency may not have the same reporting requirements as an analyst from another agency.

Officials listed in Government Code Section 87200 (e.g., boards of supervisors, city council members, planning commissioners, elected state officials, etc.), must report all investments, sources of income, sources of gifts, and real property interests within their agency's jurisdiction.
2. Q. Is it necessary to read all of the information before completing the Form 700?
 - A. Each individual must verify the Form 700's content under penalty of perjury. Therefore, all effort must be made to understand the instructions. When necessary, the FPPC may be contacted for specific, personal guidance. Immunity from an enforcement action can only be provided when an official submits a request for formal written advice.
3. Q. Where are the Form 700s filed?
 - A. Most state and local officials file with their agency. In most instances, the agency is required to forward the originals for specified officials to the FPPC; however, only retired judges serving on assignment and legislative staff file the Form 700 *directly* with the FPPC.
4. Q. If the Form 700 is postmarked by the due date, is it considered filed on time?
 - A. Yes.

5. Q. If an official holds various positions for which the Form 700 is required, is a statement required for each position?
- A. Yes, however one expanded statement covering the disclosure requirements for all positions may be completed so long as an originally signed statement is filed with each filing officer.
6. Q. Do individuals need to complete the entire Form 700 when they leave office?
- A. Yes. All of the same schedules are required for the assuming office, the annual, and the leaving office filings.
7. Q. An individual is hired into a newly created management position in her agency's Information Technology Department. How does she complete the Form 700?
- A. Because it is a newly created position, the law requires that economic interests are reported under the broadest disclosure category in the agency's conflict-of-interest code unless the agency sets interim disclosure that is tailored to the limited range of duties of the position. Generally, the Form 700 must be filed with the agency within 30 days of the date of hire. Note: An individual may request that the agency complete the Form 804 (Agency Report of New Positions) to tailor the disclosure category to the job duties of the new position.
8. Q. Must board members of a nonprofit public benefit corporation that operates California charter schools file Form 700?
- A. Yes. Members of charter schools are officials and must file Form 700.

Income Questions

9. Q. Must an official report a spouse's or registered domestic partner's income?
- A. Generally an official is required to report 50% of his or her spouse's or registered domestic partner's salary disclosing the employer's name as the source of income on Schedule C of the Form 700. If the spouse or registered domestic partner is self-employed, the business entity should be reported on Schedule A-2. Officials should check their disclosure category, if applicable, to determine if the income is reportable. Note: The filer's regular government salary is not reportable.
10. Q. If an official owns a business in which he has received income of \$10,000 or more from a client, is the official required to disclose the client's name on Schedule A-2, Part 3?
- A. Yes. However, Regulation 18740 (available at www.fppc.ca.gov) provides a procedure in which an official may request an exemption for nondisclosure of a client's name if disclosure of the name would violate a legally recognized privilege under California law. Requests for exemptions must be submitted to the FPPC's Executive Director.

Investment Questions

11. Q. An official holds various stocks through an account managed by an investment firm. The account manager decides which stocks to purchase with no input from the official. Is the official required to disclose the stocks contained in this account?

- A. Yes. Unless the stocks are in diversified mutual funds registered with the SEC, any investments worth \$2,000 or more in a business entity located in or doing business in the jurisdiction must be disclosed on Schedules A-1 or A-2. The official's disclosure category should also be reviewed, if applicable, to determine if the investments are reportable.
12. Q. If an official has funds invested in a retirement account, must the investments held in the retirement account be disclosed?
- A. Investments held in a government defined-benefit pension program plan (i.e., CalPERS) are not reportable. Investments held in a fund such as a defined contribution plan 401(k) or exchange traded fund (ETF) are not required to be disclosed if the fund meets specified requirements. (See Regulation 18237.) An official may need to contact their account manager for assistance in determining what assets are held in the account.
13. Q. An official and his spouse have a living trust that holds rental property in the official's jurisdiction, their primary residence, and investments in diversified mutual funds. How is this trust disclosed?
- A. The name of the trust, the rental property, and its income, must be reported on Schedule A-2. The official's primary residence, if used exclusively as a personal residence, and investments in diversified mutual funds registered with the SEC are not reportable. Although the official's primary residence is not required to be disclosed on the Form 700, it is still considered an economic interest for conflict of interest purposes.

Real Property Questions

14. Q. Is an official's personal residence reportable?
- A. Generally, any personal residence occupied by an official or his or her family (including a vacation home) is not reportable if used exclusively as a personal residence. However, a residence for which a business deduction is claimed is reportable if the portion claimed as a tax deduction is valued at \$2,000 or more. The amount of the tax deduction is not relevant. In addition, any residence for which an official receives rental income is reportable if it is located in the jurisdiction.
15. Q. If an official is required to report his or her personal residence, is the street address required to be disclosed?
- A. The assessor's parcel number may be listed instead of the street address.

Enforcement Question

16. Q. What is the penalty for not filing the Form 700 on time or not reporting all required economic interests?
- A. A late fine of \$10 per day up to a \$100 may be assessed. In addition, if a matter is referred to the FPPC Enforcement Division for failure to file or failure to include all required economic interests, the fine may be substantially higher. In 2012, the FPPC collected over \$61,000 in

finances for late statements and non-disclosure of economic interests. If an individual does not pay a fine, the matter may be referred to the Franchise Tax Board for collection.

Gift Questions

17. Q. What is the gift limit for 2013-2014?

- A. **\$440:** This means that gifts from a single, reportable source may not exceed \$440 in a calendar year. For officials and employees who file the Form 700 under an agency's conflict-of-interest code ("designated employees"), this limit applies only if the official or employee would be required to report income or gifts from that source on the Form 700, as outlined in the "disclosure category" portion of the agency's conflict-of-interest code. Note: For conflict of interest purposes, the gift must be under \$440 to avoid consideration under the conflict rules.

State Lobbyist & Lobbying Firm Limit:

\$10: State candidates, state elected officers, and state legislative officials may not accept gifts aggregating more than **\$10 in a calendar month** from a single **lobbyist** or **lobbying firm**. The same rule applies to state agency officials, including members of state boards and commissions, if the lobbyist or firm is registered to lobby, or should be registered to lobby, the official's or employee's agency.

18. Q. During the year, an official received several gifts of meals from the same reportable source. Each meal was approximately \$35. Is the source reportable?

- A. Yes. Gifts from the same reportable source are aggregated, and the official must disclose the source when the total value of all meals reaches \$50.

19. Q. An official is listed in the conflict-of-interest code for his agency, a school district. He must disclose investments and income from sources of the type that provide services utilized by his agency, including construction firms. Does he have to report gifts received from any construction company in the world?

- A. Yes. The reporting obligations of a filer must relate to the specific duties of the designated position. Certainly, if he is required to report income from construction firms doing business in the jurisdiction, his job duties have something to do with construction firms. While income (other than gift) reporting has a jurisdictional limitation under the Act, gift reporting does not. Therefore, gifts from construction firms are reportable from anywhere in the world, but only if there is some connection with or bearing upon the function or duties of the individual's position.

20. Q. How does an individual return a gift so that it is not reportable?

- A. Unused gifts that are returned to the donor, or gifts whose value is reimbursed, within 30 days of receipt are not reportable. The recipient may also donate the unused item to a charity or governmental agency within 30 days of receipt or acceptance so long as the donation is not claimed as a tax deduction.

21. Q. Co-workers exchange gifts of similar value on birthdays. Are these items reportable?

- A. No. Such gift exchanges with individuals, other than lobbyists, on birthdays, holidays, or similar occasions, are not reportable or subject to gift limits. The gifts exchanged must be similar in value.
22. Q. Must an official report gifts received from an individual whom the official is dating?
- A. No. Gifts of a personal nature exchanged because the individuals are in a bona fide dating relationship are not reportable or subject to gift limits. However, the official remains subject to the conflict of interest rules and some matters may require recusal from voting.
23. Q. In March, a vendor that provides goods to an agency had its contract renewed by the city council. Within 12 months, the vendor provided entertainment tickets to the spouse of one of the city council members. Does the city council member report the tickets as gifts?
- A. Yes, unless an exception (such as bona fide competition) applies, the tickets are a reportable gift. A gift to an official's spouse is a gift to the official when there is no established working, social, or similar relationship between the donor/vendor and the spouse or there is evidence to suggest that the donor had a purpose to influence the official, such as appearing before the official's agency within the previous 12 months.
24. Q. An agency received two free tickets to a sporting event from a local vendor. The agency had discretion to determine who in the agency received the tickets. Each ticket was valued at \$40. If the Director of Transportation used the tickets, how does she report them?
- A. Generally, the tickets are reportable in the amount of \$80 on the director's Form 700 if the vendor is the type of source covered under the director's disclosure category in the agency's conflict-of-interest code. However, in some circumstances, the director is not required to report the tickets on her Form 700. If the tickets are claimed as taxable income from her agency or if the use of the tickets by the director meets a valid public purpose identified in the agency's published ticket policy, instead of the director reporting the tickets on her Form 700, the agency would complete the FPPC Form 802 (Agency Report of Ceremonial Events and Ticket/Pass Distributions) and forward the form to the FPPC for posting on its website.
25. Q. An agency received a large box of chocolates as a holiday gift from a local merchant. It was addressed to the agency and not to a particular employee. Is there a reporting requirement?
- A. Generally, the receipt of food and beverages is considered a gift. However, in this instance, the gift would only be reportable by an employee if (1) the vendor was a reportable source on the individual's Form 700 and (2) the employee consumed candy valued at \$50 or more.
26. Q. Do prizes received by city employees in a drawing conducted by the city for all city employees participating in the city's charitable food drive constitute gifts under the Act, subject to the Act's limits and reporting requirements, if they were donated to the agency by an outside source?
- A. Yes. The prizes are gifts if donated by an outside source. This is not considered a bona fide competition because the raffle is only open to officials in that city.

27. Q. Is a ticket provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of his or her agency reportable on the official's Form 700?
- A. No, so long as the organization holding the event provides the ticket. However, the agency must complete FPPC Form 802 (Agency Report of Ceremonial Role Events and Ticket/Pass Distributions) and forward it to the FPPC. The form will identify the official's name and explain the ceremonial function.
28. Q. Are frequent flyer miles reportable?
- A. No. Free tickets received under an airline's frequent flyer program that are available to all members of the public are not required to be disclosed.
29. Q. If a non-profit organization pays for an official to travel to a climate policy conference after receiving the funds to pay for the travel from corporate sponsors, specifically for the purpose of paying for the official's travel, is the non-profit organization or the corporate sponsors the source of the gift?
- A. The corporate sponsors are the source of the gift if the corporate sponsors donated funds specifically for the purpose of the official's travel. Thus, the benefit of the gift received by the official would be pro-rated among the donors. Each reportable donor would be subject to the gift limit and identified on the official's Form 700. The FPPC should be contacted for specific guidance to determine the true source of the travel payment.
30. Q. May an official accept travel, lodging and subsistence from a foreign sister city while representing the official's home city?
- A. Travel and related lodging and subsistence paid by a source other than the official's agency is normally a gift if the source is reportable on the official's Form 700. If the travel and related lodging and subsistence is paid by a foreign government and is reasonably related to a legislative or governmental purpose, it is not subject to the gift limit. However, the payments must be disclosed on the Form 700. While in the foreign country, any personal excursions not paid for by the official must also be disclosed and are subject to the gift limit. If private entities make payments to the foreign government to cover the travel expenses, the gift limit will apply and travel payments will likely be prohibited. Please contact the FPPC for more information.
31. Q. An analyst for a state or local agency participates on a panel addressing new federal standards related to the agency's regulatory authority. If the analyst's travel payments are paid by the federal agency, must the analyst report the payment on the Form 700? Transportation and related lodging and subsistence were limited to the day immediately preceding, the day of, and the day immediately following the analyst's panel participation.
- A. The travel payments are not reportable or subject to any limits unless:
(1) A non-governmental source reimbursed or funded the travel expenses. In that case, the gift of travel is not from the federal agency and may be reportable. Individuals should inquire as to the source of all travel payments; or (2) The analyst is an elected state or local official or serving in a position covered by Government Code Section 87200.

32. Q. A state legislator and a planning commissioner were guest speakers at an association's event. Travel expenses were paid by the association, and the event was held in California. Is this reportable?
- A. The payment is reportable, but not subject to the gift limits. In general, payments for travel within the United States that are provided to attend a function where the official makes a speech are not limited, but are reportable. The rules require that the speech be reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and the travel payment must be limited to actual transportation and related lodging and subsistence the day immediately preceding, the day of, and the day immediately following the speech.

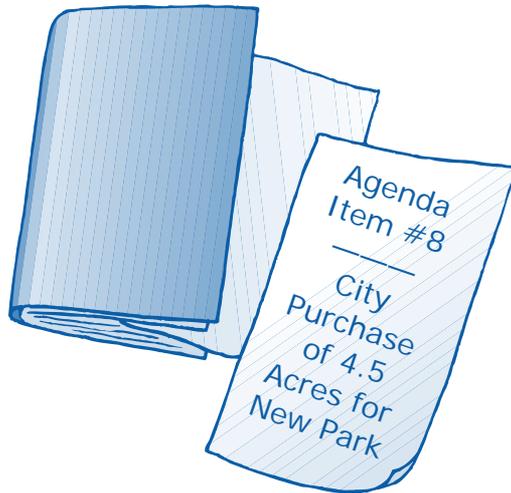
Tickets to Non-Profit and Political Fundraisers Questions

33. Q. An official is offered a ticket from a 501(c)(3) charitable organization to attend its fundraising event. The face value (price) of the ticket is \$500, and the ticket states that the tax deductible portion is \$350. If the official accepts the ticket, what must be reported?
- A. Nothing is required to be reported on the Form 700 so long as the ticket is provided directly by the 501(c)(3) organization and is used for the official's own attendance at the fundraiser. In this case, the ticket is deemed to have no value. The official may also accept a second ticket provided directly by the 501(c)(3) organization for his or her guest attending the event, without a reporting obligation by either the official or the guest.
34. Q. What if someone, such as a business associate, purchases a table at a non-profit fundraiser and offers an official a seat at the table?
- A. If another person or entity provides a ticket, it is a gift and subject to the gift limit. The value is the non-deductible portion on the ticket. If there is no declared face value, then the value is the pro-rata share of the food, catering service, entertainment, and any additional item provided to all attendees at the event. The "no value" exception only applies if the official receives no more than two tickets for his or her own use directly from the 501(c)(3) organization.
35. Q. An agency employee who holds a position designated in the conflict-of-interest code receives a ticket to a fundraiser from a person not of the type listed in the agency's code. Is the agency employee required to report the value?
- A. No. A ticket or any other gift may be accepted under these circumstances without limit or reporting obligations. Note: agencies must ensure the conflict-of-interest code adequately addresses potential conflicts of interests.
36. Q. A 501(c)(3) organization provides a ticket to an official for its fundraising event. The organization seats the official at a table purchased by a business entity. Does the official have to report the ticket?
- A. No. So long as the ticket is provided directly by the 501(c)(3) organization and is used for the official's own attendance at the fundraiser, the ticket is not reportable regardless of where the official is seated.

37. Q. An official receives a ticket to attend a political fundraiser held in Washington D.C. from a federal committee. Is the official required to disclose the ticket as a gift, and is it subject to the gift limit?
- A. No. The value of the ticket is not a gift so long as the ticket is provided to the official directly by the committee holding the fundraiser and the official personally uses the ticket.
38. Q. A political party committee is holding a political fundraiser at a golf course and a round of golf is included. If the committee provides an elected official a ticket, is the ticket reportable?
- A. No. So long as the official uses the ticket for his or her own use. If someone other than the political party provides a ticket, the full cost of the ticket is a gift.
39. Q. If a business entity offers an official a ticket or a seat at a table that was purchased for a political fundraiser, what is the value?
- A. The value is the pro-rata share of the food, catering services, entertainment, and any additional benefits provided to attendees.
40. Q. If an official attends an event that serves only appetizers and drinks, does the “drop-in” exception apply no matter how long the official stays or how many appetizers or drinks are consumed?
- A. No. The focus of the food and beverages “drop-in” exception is on the nature of the particular official’s attendance and consumption, not on the event as a whole. For example, if an official attends an event that serves only appetizers and drinks but stays for more than a few minutes and consumes more than a “de minimis” amount of appetizers and drinks, the “drop-in” exception does not apply and the official will have received a gift. This is determined on a case-by-case basis.
41. Q. An organization, which is not a 501(c)(3) organization, is holding a fundraiser at a professional sporting event. Tickets to this sporting event are sold out and it appears that tickets are only available at a substantially higher price than the stated face value amount of the ticket provided to the official by the organization. If the official attends the event, what is the value of the gift?
- A. The official may value the ticket at the face value amount stated on the ticket to the sporting event.
42. Q. An official receives a ticket to a fundraiser, and if accepted, the ticket will result in a reportable gift or a gift over the current gift limit. What are the options?
- A. The official may reimburse the entity or organization that provided the ticket for the amount over the gift limit (or pay down the value to under the \$50 gift reporting threshold if the official does not want to disclose the ticket). Reimbursement must occur within 30 days of receipt of the ticket. A candidate or elected official may use campaign funds to make the reimbursement if there is a political, legislative, or governmental purpose for the payment. A ticket that is not used and not given to another person is not considered a gift to the official.

Can I vote?

**A Basic Overview
Of Public Officials'
Obligations Under the
Political Reform Act's
Conflict-of-Interest Rules**



**California
Fair Political
Practices
Commission**

“My home is near the proposed new shopping mall. Can I vote on the issue at next month’s Planning Commission meeting?”

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act’s conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the “big picture” level and to help guide you to more detailed resources.

Stripped of legal jargon:

➤ You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that



**Fair
Political
Practices
Commission**

Toll-free Advice Line: 1-866-ASK-FPPC

the outcome of the decision will have an important impact on your economic interests, **and**

➤ a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act “on general principles” or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note...

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC’s web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — **1-866-ASK-FPPC** — as far in advance as possible.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

On the next page are the eight steps:

Eight steps to help you decide



Step One: Are you a “public official” within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the “public generally” exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One — Are you a “public official,” within the meaning of the rules?

The Act’s conflict-of-interest rules apply to “public officials” as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency’s conflict-of-interest code, you are a “public official.” If you file a Statement of Economic Interests (Form 700) each year, you are a “public official” under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency’s legal counsel or the FPPC.

Governmental Decision

Step Two — Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the

conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion* or *judgment* with regard to the decision. If the answer is “yes,” then your conduct with regard to the decision is very probably covered.

When you have a conflict — Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-

licly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— *The Arroyo City Council is considering widening the street in front of council member Smith’s personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.*

— *Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she **may not** sit in the public area and listen to the discussion.*

— *Supervisor Robertson rents a home to a county employee. The county employee is the sub-*

*ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session **but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.** He may not attend the closed session or obtain any non-public information from the closed session.*

Economic Interests

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.

“The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise.”

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse’s or registered domestic partner’s income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving “pass-through” income from the business’s clients. In other words, the business’s clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has

given you gifts which total \$390 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the “personal financial effects” rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a “personal financial effect” on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.



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Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations

if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC’s web site, <http://www.fppc.ca.gov>.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word “material” is akin to the term “important.” You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called “materiality standards,” that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your

“Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”

-- California Political Reform Act of 1974

agency counsel or the FPPC. However, to understand the rules at a “big picture” level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment’s thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards

distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does “sufficiently likely” mean? Put another way, how “likely” is “likely enough?” The Political Reform Act uses the words “reasonably foreseeable.” The FPPC has interpreted these words to mean “substantially likely.” Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are

met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

“Public Generally” Exception

Step Seven — If you have a conflict of interest, does the “public generally” exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the “public generally” exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The “public generally” exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-

ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the “public generally” exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act’s conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
- Understand the “big picture” of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.
- Don’t try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the “big picture.” You’ll then be able to look up or ask about the particular rules you need to apply to any given case.
- Don’t be afraid to ask for advice. It is available from your agency’s legal counsel and from the FPPC.



How To Contact Us:

Mail:

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Website:

www.fppc.ca.gov

Telephone:

Toll-free advice line:

1-866-ASK-FPPC
(1-866-275-3772)

Regular line: 1-916-322-5660

Enforcement hot-line:

1-800-561-1861

The seal of the State of California is a circular emblem. It features a central figure, Minerva, seated on a rock and holding a grizzly bear. She is wearing a helmet with a grizzly bear's head on top. The seal is surrounded by the words "EUREKA" at the top, "THE STATE OF" on the right, and "CALIFORNIA" at the bottom. The seal is rendered in a light yellow color.

**Fair Political
Practices Commission**