

SECTION 5. Manner of Disqualification.

(a) Any Board Member who is required to disqualify himself or herself from a decision-making process shall not participate in any way in the matter before the Authority or any committee of the Authority. Further, such Board Member shall be subject to the requirements and procedures set forth in 2 California Code of Regulations Section 18707 if the Board Member is seated as a member of the Authority or committee during a meeting thereof and a governmental decision on such a matter is listed on the meeting agenda (see Appendix B for the current version of 2 CCR §18707). As of the date hereof, such procedures include the obligation to publicly recuse himself or herself and leave the room after making the identification required by said regulation, subject to certain exceptions as set forth in such regulation. Such recusal must take place after the announcement of the relevant agenda item, but before commencement of discussions or voting.

(b) Any designated employee who is required to disqualify himself or herself from a decision-making process shall notify the Executive Director of the Authority (if the Executive Director requires disqualification, such notification shall be made to the Authority Board Chair) in writing of the reason for the disqualification. A copy of this notice shall be filed with the Clerk of the Commission in his/her capacity as clerk of the Authority. Upon receipt of a designated employee's disqualification statement, the Executive Director shall immediately reassign the responsibility for the matter to another designated employee of the Authority.

SECTION 6. No Disqualification Required if Participation is Necessary. A designated employee may make or participate in the making of a decision when he or she has a financial interest which would otherwise require disqualification if his or her participation is legally required for the decision to be made as defined in California Code of Regulations Title 2, Division 6, Section 18705 and he or she follows the procedures outlined in Section 18705. The fact that the vote of a designated employee is needed to break a tie does not make his or her participation legally required for the purposes of this section.

SECTION 7. Assistance of the FPPC and Legal Counsel. Any Board Member or designated employee who is unsure of his or her duties under this code may request assistance from the FPPC pursuant to Government Code Section 83114 and in accordance with the requirements of Regulations 18329 and 18329.5, or from the Authority's Legal Counsel, provided that nothing in this section requires Legal Counsel to issue any formal or informal opinion.

SECTION 8. Violations. This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal, and civil sanctions provided in the Political Reform Act. In addition, if a court determines that a violation of the disqualification provisions of this Code has occurred and that the official action might not otherwise have been taken or approved, the decision in relation to which a violation has occurred may be set aside as void pursuant to Government Code Section 91003.

SECTION 9. Effective Date. This Conflict of Interest Code and the Appendix shall become effective immediately upon approval by the Authority Board. The initial disclosure statements required under this Code shall be filed on April 1, 2019.

ARTICLE II: Additional Authority Requirements

SECTION 1. Purpose. The Authority recognizes that certain conflict of interest issues may arise that are not governed by the Political Reform Act or the FPPC regulations referenced above. The provisions in this **Article II** are intended to address such issues.

SECTION 2. Campaign Contribution Disclosure; Levine Act. The Levine Act, Government Code Section 84308, prohibits Board Members from accepting, soliciting, or directing contributions (as defined in Government Code §82015) of more than Two Hundred Fifty Dollars (\$250) from any party who has a financial interest in any proceeding involving a license, permit, or other entitlement for use that is pending before the Authority and for three (3) months following the date a final decision is rendered in the proceeding. The Levine Act further prohibits any Board Member who has received a contribution within the preceding twelve (12) months from any party who has a financial interest in any proceeding involving a license, permit, or other entitlement for use that is pending before the Authority from making, participating in making, or in any way attempting to use his or her official position to influence the decision in said proceeding. A party has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable generally, on the party, a member of the party's immediate family, or on income, investments, business positions, or interests in real property that are described in Appendix A, Category 2. For purposes of this Section, the word "contribution" shall include a political contribution to a person who is running for, or serving in, any elective office.

(a) **Participants in Proceedings Pending Before the Authority.** In the event Authority staff and/or independent members of a screening committee (which does not include Board Members) evaluates and screens proposals submitted in response to a Request For Proposal or Qualifications and compiles a short list of firms to be considered by the Authority, only the proposals that the staff submits to Board Members for consideration shall be considered a part of a proceeding pending before the Authority. Only persons or entities on the short list will be considered involved in a proceeding before the Authority or any committee of the Authority.

(b) **Notice to Authority Board Members.** To facilitate compliance with the Levine Act, the Authority staff shall include as part of the Board Members' agenda packets for Authority Board Meetings and committee meetings information described in (i) and (ii) of this subsection regarding each application for a license, permit, or other entitlement for use that will be considered by the Board or such committee. "License, permit, or other entitlement for use" shall include all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts for goods or services (other than competitively bid, or labor, or personal employment contracts), and all franchises. Such notice shall include:

(i) The name of the persons or entities that submitted the application for a license, permit or other entitlement for use ("applicant"). The term "applicant" shall include any owner, manager or employee, who acts as an agent of the applicant with respect to the application; and

(ii) To the extent known by staff, the name of each person who actively supports or opposes a decision in the proceeding before the Authority involving a license, permit, or other entitlement for use and who has a financial interest in the decision; such persons are referred to herein as “participants” in a decision. The term “participant” shall include any owner, manager or employee who acts as an agent of the participant with respect to the application. Lobbying Board Members or Authority staff by direct communication (either in person or in writing), testifying in person before the Authority, or otherwise acting to influence Board Members shall constitute active support of or opposition to a decision pending before the Authority.

In the event Authority staff and/or independent committee compiles a short list of firms, the Proposal Data Form will contain information on only those firms that comprise the short list.

(c) **Prohibition on Making Contributions During Pendency of Proceeding.** Applicants and participants, and their agents, shall not make contributions of more than Two Hundred Fifty Dollars (\$250) to any Board Member while a proceeding involving a license, permit, or other entitlement for use is pending before the Authority and for three (3) months following the date a final decision is rendered by the Authority in the proceeding.

(d) **Statement of Applicants and Participants.** As part of any Request For Proposal or Qualification, any other solicitation process, or any license, permit, or other entitlement for use, Authority staff shall provide all applicants and participants a statement form that requests the information described in (i) and (ii) of this subsection (d). When a close corporation, as defined in Corporations Code Section 158, is an applicant or participant, the majority shareholder is subject to the Levine Act’s disclosure and prohibition requirements. Generally, a close corporation is a corporation whose issued shares are owned by not more than ten (10) persons. Such statement form shall request the following information:

(i) Whether or not an applicant or participant, and/or their respective agents have made any contribution of more than Two Hundred Fifty Dollars (\$250) within the preceding twelve (12) months to any Board Member; and

(ii) Whether or not an applicant or participant, and/or their respective agents anticipate or plan to make any contributions of more than \$250 to any Board Member in the three (3) months following the date a final decision is rendered by the Authority in the proceeding.

If an applicant, participant, and/or their respective agents, fail to notify or disclose to the Authority in writing prior to the relevant proceeding whether or not such contributions have been made or are intended to be made, then such disclosures may also be made orally during said proceeding.

(e) **Limitations on Receiving Contributions.** While a proceeding involving a license, permit, or other entitlement for use is pending before the Authority and for three (3) months following the date a final decision is rendered in the proceeding, Board Members shall not accept, solicit, or direct a contribution of more than Two Hundred Fifty Dollars (\$250) from any applicant or participant who has a financial interest in the decision. This prohibition shall apply regardless of whether the Board Member accepts, solicits, or directs the contribution for

himself, or on behalf of any other Board Member, or on behalf of any candidate for office or on behalf of any committee.

(f) Disclosure of Conflict. Before the Authority renders a decision in a proceeding involving a license, permit, or other entitlement for use, each Board Member shall disclose orally at the time of the proceeding, or in a writing delivered to the Clerk of the Commission, in his or her capacity as clerk of the Authority, at any time prior to the proceeding, any contributions of more than Two Hundred Fifty Dollars (\$250) that the Board Member has received within the preceding twelve (12) months from any applicant or participant involved in the proceeding before the Authority.

(g) Disqualification from Participating in a Proceeding. No Board Member shall make, participate in making, or in any way attempt to use his or her position in the Authority to influence a decision in a proceeding pending before the Authority or committee of the Authority involving a license, permit, or other entitlement for use if the Board Member has received a contribution of more than Two Hundred Fifty Dollars (\$250) within the preceding twelve (12) months from an applicant involved in the proceeding before the Authority or a participant who has a financial interest in the decision. A Board Member who received a contribution which would otherwise require disqualification may participate in the proceeding if he or she returns the contribution within thirty (30) days from the time the Board Member knows, or should have known, about both the making of the contribution and the participant's participation in the proceeding involving the license, permit, or other entitlement for use.

(h) Effect of Disqualification. If a Board Member is so disqualified from participation in any decision, that Board Member shall not participate in any way in the matter before the Authority or any committee of the Authority. Further, such Board Member shall be subject to the requirements and procedures set forth in 2 California Code of Regulations Section 18707 if the Board Member is seated as a member of the Authority Board or committee and a governmental decision on such a matter is listed on the agenda thereof (see Appendix B for the current version of 2 CCR §18707). As of the date hereof, such procedures include the obligation to publicly recuse himself or herself and leave the room after making the identification required by said regulation, subject to certain exceptions as set forth in such regulation.

SECTION 3. Authority Officers and Employees Running for Elected Office or Serving as an Elected Official. Pursuant to Government Code Section 3203, the Authority is not permitted to restrict its officers and employees' political activities, except to the extent required by other applicable law. Accordingly, any officer or employee of the Authority is permitted to run for elected office. However, the Authority believes it is appropriate to impose certain reporting and recusal requirements upon such officers and employees, consistent with the requirements set forth above with respect to Board Members' obligations under the Levine Act.

(a) Campaign Disclosures. If any Authority officer or employee is required under any applicable law to make any campaign-related filings with any City, County, or other governmental agency located completely or partially within Alameda County or Santa Clara County, and/or with the FPPC, the officer or employee shall simultaneously provide copies of any such filing(s) to the Clerk of the Commission, in his or her capacity as clerk of the Authority. The foregoing obligation shall also apply with respect to campaign-related filings made by or on

behalf of any committee controlled by an Authority officer or employee. The Clerk of the Commission shall make and retain a copy of any such campaign filings.

(b) Disqualification from Participating in a Proceeding. No Authority officer or employee shall participate in making, or in any way attempt to use his or her position with the Authority to influence a decision in a proceeding pending before the Authority or committee of the Authority involving a license, permit, or other entitlement for use if the officer or employee has received a contribution of more than Two Hundred Fifty Dollars (\$250) within the preceding twelve (12) months from an applicant involved in the proceeding before the Authority or a participant who has a financial interest in the decision.

**APPENDIX A
DESIGNATED EMPLOYEES AND DISCLOSURE CATEGORIES**

Designated Employees

The following positions entail the making or participating in the making of decisions which may foreseeably have a material effect on financial interests.

| Position | Disclosure Categories |
|---|--|
| Authority Board Member | 1 & 2 |
| Executive Director | 1 & 2 |
| Deputy Executive Director of Projects and Programming | 1 & 2 |
| Deputy Executive Director of Planning and Policy | 1 & 2 |
| Deputy Executive Director of Finance and Administration | 1 & 2 |
| Director of Finance | 4 & 6 |
| Director of Programming and Project Controls | 2, 3, 4 & 5 |
| Director of Project Delivery | 2, 3, 4 & 5 |
| Director of Express Lane Operations | 3 & 4 |
| Director of Budgets and Administration | 4 & 6 |
| Director of Planning | 2, 3, 4 & 5 |
| Director of Government Affairs and Communications | 4 & 5 |
| Legal Counsel | 1 & 2 |
| Consultant* | as determined by the Executive Director |
| Advisory Committee Members (all) | 2, 3, 4 & 5 |

* Consultants, as defined in 2 California Code of Regulations §18700.3, shall be included in the list of designated employees. Not all outside contractors are considered to be Consultants under this Regulation, since it depends on the contractor's particular scope of work. Further, the Executive Director may determine in writing that a particular Consultant is hired to perform a range of duties that is limited in scope and thus it may be appropriate to assign one or more of the limited disclosure requirements set forth below. The Executive Director's determination designating a specific contractor as a Consultant and assigning one or more specific disclosure categories, which determination may be made utilizing FPPC Form 805, is a public record and shall be retained for public inspection in the same manner and locator as this Code.

Disclosure Categories

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned. Such economic interests are reportable if they are either located in or doing business in the jurisdiction, are planning to do business in Alameda County and/or Santa Clara County, or have done business during the previous two years in Alameda County and/or Santa Clara County.

Category 1: All investments and business positions in business entities and sources of income (including gifts, loans and travel payments) that do business or own real property within Alameda County and/or Santa Clara County.

Category 2: All interests in real property which is located in whole or in part within, or not more than two miles outside, the boundaries of Alameda County and/or Santa Clara County.

Category 3: All investments and business positions in business entities and sources of income (including gifts, loans and travel payments) that are engaged in land development, construction or the acquisition or sale of real property within Alameda County and/or Santa Clara County.

Category 4: All investments and business positions in business entities and sources of income (including gifts, loans and travel payments) that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the Authority.

Category 5: All investments and business positions in business entities and sources of income (including gifts, loans and travel payments), including income from nonprofits or similar organizations, if the source is of the type to receive grants or similar funding from or through the Authority.

Category 6: All investments and business positions in business entities, and sources of income, including gifts, loans, and travel payments, if the source is of the type of firm in or with which the Authority is empowered to invest its funds, or the source has during the reporting period filed a claim or currently has a claim pending with the Authority.

APPENDIX B
EXCERPTS FROM FPPC REGULATIONS AS OF THE ADOPTION HEREOF

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18700.3. Consultant, Public Official Who Manages Public Investments: Definitions.

(a) For purposes of Sections 82019 and 82048, “consultant” means an individual who, pursuant to a contract with a state or local government agency:

(1) Makes a governmental decision whether to:

(A) Approve a rate, rule, or regulation;

(B) Adopt or enforce a law;

(C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

(D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

(E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

(F) Grant agency approval to a plan, design, report, study, or similar item;

(G) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

(b) For purposes of Section 87200, the following definitions apply:

(1) “Other public officials who manage public investments” means:

(A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B).

(c) “Public investments” means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(d) “Public moneys” means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(e) “Management of public investments” means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 82048, 87100, 87200 and 87302, Government Code.

HISTORY

1. New section filed 6-22-2015; operative 7-22-2015. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 26). For prior history, see Register 2015, No. 18.
2. Amendment of subsection (a)(2) filed 7-10-2015; operative 7-10-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 28).

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18704. Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined.

(a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

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

(c) Using Official Position to Attempt to Influence a Decision. A public official uses his or her official position to influence a governmental decision if he or she:

(1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or

(2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

(d) Exceptions. Making, participating in, or influencing a governmental decision does not include:

(1) Ministerial. Actions by a public official that are solely ministerial, secretarial, or clerical.

(2) Appearances as a Member of the General Public. An appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental

function if the official is appearing on matters related solely to the his or her personal interests, including interests in:

(A) Real property owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;

(B) A business entity owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family; or

(C) A business entity over which the official, members of his or her immediate family, or the official and members of his or her immediate family solely or jointly exercise full direction and control.

(3) Terms of Employment. Actions by a public official relating to his or her compensation or the terms or conditions of his or her employment or consulting contract.

However, an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or his or her immediate family, or set a salary for the official or his or her immediate family different from salaries paid to other employees of the government agency in the same job classification or position.

(4) Public Speaking. Communications by a public official to the general public or media.

(5) Academic Decisions.

(A) Teaching decisions, including an instructor's selection of books or other educational materials at his or her own school or institution, or other similar decisions incidental to teaching; or

(B) Decisions by a public official who has teaching or research responsibilities at an institution of higher education relating to his or her professional responsibilities, including

applying for funds, allocating resources, and all decisions relating to the manner or methodology with which his or her academic study or research will be conducted. This exception does not apply to a public official who has institution-wide administrative responsibilities as to the approval or review of academic study or research at the institution unrelated to his or her own work.

(6) Architectural and Engineering Documents.

(A) Drawings or submissions of an architectural, engineering, or similar nature prepared by a public official for a client to submit in a proceeding before the official's agency if:

(i) The work is performed pursuant to the official's profession; and

(ii) The official does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the official.

(B) An official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if:

(i) The review committee's sole function is to review architectural designs or engineering plans and to make recommendations to a planning commission or other agency;

(ii) The review committee is required by law to include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(iii) The official is a sole practitioner.

(7) Additional Consulting Services: Recommendations by a consultant regarding additional services for which the consultant or consultant's employer would receive additional income if the agency has already contracted with the consultant, for an agreed upon price, to make recommendations concerning services of the type offered by the consultant or consultant's

employer and the consultant does not have any other economic interest, other than in the firm, that would be foreseeably and materially affected by the decision.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87101 and 87302, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 18702 to section 18704, including amendment of section heading and section, filed 4-27-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18). For prior history of section 18704, see Register 2015, No. 6.

2. Repealer and new section and amendment of Note filed 6-22-2015; operative 7-22-2015. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 26).

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18707. Disqualification Requirements.

(a) Public Officials under Section 87200. For recusal under Section 87105, all of the following apply when a public official who holds an office specified in Section 87200 has a financial interest in a decision within the meaning of Section 87100, and the governmental decision relates to an agenda item that is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.):

(1) Content and Timing of Identification. Following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, the public official must do all of the following:

(A) The public official must publicly identify each type of financial interest held by the official that is involved in the decision and gives rise to the disqualifying conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and the following details identifying each financial interest:

(i) If an investment, the name of the business entity in which each investment is held;

(ii) If a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;

(iii) If real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;

(iv) If income or gifts, the identification of the source; and

(v) If personal financial effect, the identification of the expense, liability, asset or income affected.

(B) Form of Identification. If the governmental decision will be made during an open session of a public meeting, the public identification must be made orally and be made part of the official public record.

(C) Recusal and Leaving the Room. The public official must recuse himself or herself and leave the room after the identification required by this regulation is made. He or she will not be counted toward achieving a quorum while the item is discussed.

(2) Special Rules for Closed Session. If the governmental decision is made during a closed session of a public meeting, the public identification must be made orally during the open session before the body goes into closed session and may be limited to a declaration that his or her recusal is because of a conflict of interest under Section 87100. The declaration will be made part of the official public record. The public official must not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(3) Exceptions:

(A) Uncontested Matters. The exception from leaving the room granted in Section 87105(a)(3) for a “matter [that] has been placed on the portion of the agenda reserved for uncontested matters” means agenda items on the consent calendar. If the public official has a financial interest in a matter that is on the consent calendar, the public official must comply with subdivisions (a)(1)(A) and (a)(1)(B) of this regulation, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.

(B) Absence. If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, there are no public identification duties on the public official for that item at that meeting.

(C) Speaking as a Member of the Public Regarding an Applicable Personal Interest. When a personal interest found in Regulation 18704(d)(2) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (a)(1)(A) and (a)(1)(B) of this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion and deliberations of the matter with the members of the public.

(b) For All Other Public Officials. For recusal from any decision other than a decision under subdivision (a), all of the following apply:

(1) If a public official determines not to act because of his or her financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.

(2) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence will not be counted toward achieving a quorum.

(3) During a closed meeting of the agency, a disqualified official must not be present when the decision is considered or knowingly obtain or review a recording or any other nonpublic information regarding the governmental decision.

(4) An agency may adopt a local rule requiring a disqualified official to step down from the dais or leave the chambers.

(c) Confidential Information. Nothing in the provisions of this regulation is intended to cause an agency or public official to make any disclosure that would reveal the confidences of a closed session or any other privileged information as contemplated by law including but not limited to the recognized privileges found in Regulation 18740.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87101, 87105 and 87200, Government Code.

HISTORY

1. New section filed 6-22-2015; operative 7-22-2015. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 26). For prior history, see Register 2015, No. 21.