

CONFLICTS OF INTEREST

Ethics Commission
August 10, 2022

OVERVIEW

- ▶ Ethics Handbook Section on Conflict of Interest
- ▶ City Conflict of Interest Code
- ▶ Additional FPPC Regulations on Conflict of Interests

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ETHICS HANDBOOK

Conflict of Interest Policy

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

OVERVIEW

- ▶ What is a conflict of interest?
- ▶ How do I know if I have a conflict?
- ▶ What are the remedies for conflicts?
- ▶ How do I disqualify myself if I have a conflict of interest?
- ▶ What is a conflict of interest code?

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

WHAT IS A CONFLICT OF INTEREST?

- ▶ You have a conflict of interest if your public actions as a City official, employee or board member (includes City councilmembers, commission members, and committee members) affect your personal financial interests or the interests of your immediate family members. It does not matter whether the action has a negative or positive effect on the interest.
- ▶ Therefore, state law prohibits you from making, participating in making, or attempting to influence any government decision if it is reasonably foreseeable that the decision will have a material financial effect on any of your economic interests or those of an immediate family member.

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

DECISIONS RELATED TO CONTRACTS

- ▶ State law prohibits you from being financially interested in any City contract if your duties call on you to participate in any way or at any stage in the approval of the contract. Any participation (including discussion) in the process by which such a contract is developed, negotiated or executed is a violation of the law.

EMPLOYEE PARTICIPATION IN CITY PROCUREMENT PROCESSES

- ▶ When acting as a representative of the City in an request for proposals (“RFP”), invitation to bid (“ITB”) or other procurement process for goods, equipment or services, City employees are prohibited from using or allowing the use of their name and position to promote, endorse, or potentially benefit a company doing business with the City. This does not prohibit an employee from conducting or providing reference checks or obtaining background information on bidders or proposers in City procurements.

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

HOW DO I KNOW IF I HAVE A CONFLICT?

- ▶ It can be difficult to determine whether you have a legal conflict of interest pursuant to state law. Therefore, you should always contact the City Attorney's Office if a question arises.
- ▶ Remember that if you are married, one-half of your spouse's income is deemed to be your income. Therefore, if your spouse has any of the interests described above, you will have a conflict of interest.
- ▶ The City Attorney will work with you to determine if you have a conflict pursuant to City or state law and to determine whether you must "disqualify" yourself. Please note that the mere presence of one of the interests listed does not necessarily mean that you have a conflict. Since other factors may be involved, if there is any question you should consult with the City Attorney's Office.

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

HOW DO I KNOW IF I HAVE A CONFLICT?

You may have a conflict of interest if:

- ▶ You are an officer, director, partner, employee, trustee or manager of a company with business before your department or board.
- ▶ You have an investment of \$2,000 or more in a company with business before your department or board.
- ▶ You have an interest in real property of \$2,000 or more and that real property is the subject matter of an item before your department or board. This includes leasehold interests that are longer than a “month-to-month” tenancy.
- ▶ You own or lease an interest in real property that is located within 500 feet of a property which is the subject matter of a decision before your department or board. (An “interest in real property” does not include a “month-to-month” tenancy.)
- ▶ You receive any income which totals \$500 or more within the prior 12 months, from a person or entity with business before your department or board. Income includes loans or forgiveness of indebtedness.
- ▶ You receive a gift or gifts totaling \$500 or more within the prior 12 months, from a person or entity with business before your department or board (gifts include rebates, discounts, free meals, free tickets or travel).
- ▶ You or someone that is a source of income to you (\$500 or more within the prior 12 months) is the subject of a proceeding before your department or board.
- ▶ As a result of a decision before your department or board your personal finances or those of your immediate family will either increase or decrease in any manner.

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

WHAT ARE THE REMEDIES FOR CONFLICTS?

- ▶ If a conflict of interest exists, you must be “disqualified” – meaning that you must **abstain** from making, participating in making, discussing or attempting to use your official position in any way to influence the government decision that might affect that personal interest. (If you are a Councilmember or a Planning Commissioner, you must also leave the room while the issue is being discussed.)
- ▶ Again, the City Attorney’s Office will provide advice concerning the existence of a conflict and if disqualification is required. Further, there are circumstances when your entire board may be disqualified.
- ▶ Please be aware that severe penalties may result for you and the City, if you do not abstain when appropriate.

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

HOW DO I DISQUALIFY MYSELF IF I HAVE A CONFLICT OF INTEREST?

- ▶ If disqualification on a meeting agenda item is required, you must **publicly disclose** the interest which is the subject of the potential conflict as well as the fact that you are disqualifying yourself from any participation in the decision.
- ▶ The disclosure may be made orally at the public meeting and/or in writing to the board secretary and must be made a part of the agency's official records (e.g., the minutes of the meeting.)

ETHICS HANDBOOK

CONFLICT OF INTEREST POLICY

WHAT IS A CONFLICT OF INTEREST CODE?

- ▶ Conflict of Interest Code is a set of rules and regulations adopted pursuant to California's Political Reform Act.
- ▶ Each Conflict of Interest Code designates positions required to file a Statement of Economic Interests - Form 700, and assigns disclosure categories specifying the types of interests to be reported.
- ▶ The types of interests you must disclose depend upon the responsibilities of your designated position. The disclosure requirements may include the reporting of investments, business positions, interests in real property, income and other financial interests.

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CITY CONFLICT OF INTEREST CODE

CITY CONFLICT OF INTEREST CODE

- ▶ Required by the CA Political Reform Act (see Gov. Code section 87300 et seq.).
- ▶ Must reflect the current structure of the organization and properly identify officials, employees, and consultants who is required to file Statements of Economic Interests (Form 700s).
- ▶ Departments are required to review its COI Code at least every even-numbered year.
- ▶ The role of the City Clerk's office is to facilitate, communicate, and educate City Departments on the process.
- ▶ Code identifies what financial interests must be disclosed on their Form 700. Currently, all employee designated in the City's COI Code are required to report all categories on their Form 700.
- ▶ FPPC requires departments are notified that they must review COI Codes by July 1, 2022 and approved by the City Council by October 3, 2022.
- ▶ FPPC offers training for employees tasked with creating or amending their agency's COI Codes including how to adopt/amend a code, analysis of disclosure categories, how to designate positions, and how to assign categories to those positions.

CITY CONFLICT OF INTEREST CODE

The FPPC recommends the following considerations when a department reviews its conflict of interest codes:

- ▶ Is the current code more than five years old?
- ▶ Have there been any substantial changes to the department's organizational structure since the current code was adopted?
- ▶ Have any positions been eliminated or renamed since the current code was adopted?
- ▶ Have any new positions been added since the current code was adopted?
- ▶ Have there been any substantial changes in duties or responsibilities for any positions since the current code was adopted?
- ▶ If a department answers "yes" to any of the above questions, most likely its conflict of interest code will need to be amended.



**Conflict of Interest Code
EXHIBIT A (Final Draft)**

Entity: City of Long Beach
Agency: Water Department

Position	Disclosure Category	Files With	Status
Accounting Officer	LBC-01	City Clerk	Unchanged
Administrative Analyst III	LBC-01	City Clerk	Unchanged
Administrative Officer - Water	LBC-01	City Clerk	Unchanged
Assistant General Manager	LBC-01	City Clerk	Unchanged
Assistant to the General Manager	LBC-01	City Clerk	Unchanged
Business System Specialist VI	LBC-01	City Clerk	Unchanged
Business System Specialist VII	LBC-01	City Clerk	Unchanged
Buyer I	LBC-01	City Clerk	Unchanged
Buyer II	LBC-01	City Clerk	Unchanged
Chief Construction Inspector	LBC-01	City Clerk	Unchanged
Civil Engineer	LBC-01	City Clerk	Unchanged
Construction Inspector I	LBC-01	City Clerk	Unchanged
Construction Inspector II	LBC-01	City Clerk	Unchanged
Construction Services Officer	LBC-01	City Clerk	Unchanged
Contract Administrator I	LBC-01	City Clerk	Unchanged
Contract Administrator II	LBC-01	City Clerk	Unchanged
Deputy General Manager - Business	LBC-01	City Clerk	Unchanged
Deputy General Manager - Engineering	LBC-01	City Clerk	Unchanged
Deputy General Manager - Operations	LBC-01	City Clerk	Unchanged
Director of Administration	LBC-01	City Clerk	Unchanged
Director of Engineering	LBC-01	City Clerk	Unchanged
Director of Finance	LBC-01	City Clerk	Unchanged
Director of Government & Public Affairs	LBC-01	City Clerk	Unchanged
Director of Operations	LBC-01	City Clerk	Unchanged
Director of Planning and Water Conservation	LBC-01	City Clerk	Unchanged
Director of Water and Sewer Field Operations	LBC-01	City Clerk	Unchanged
Director of Water Quality and Process	LBC-01	City Clerk	Unchanged
Director of Water Resources	LBC-01	City Clerk	Unchanged
Division Engineer	LBC-01	City Clerk	Unchanged
Electrical and Instrumentation Supervisor	LBC-01	City Clerk	Unchanged



**Conflict of Interest Code
EXHIBIT A (Final Draft)**

Entity: City of Long Beach
Agency: Water Department

Position	Disclosure Category	Files With	Status
Electrical Supervisor	LBC-01	City Clerk	Unchanged
Executive Assistant to the Board of Water Commissioners	LBC-01	City Clerk	Unchanged
Executive Assistant to the General Manager	LBC-01	City Clerk	Unchanged
Executive Secretary	LBC-01	City Clerk	Unchanged
Garage Supervisor I	LBC-01	City Clerk	Unchanged
Garage Supervisor II	LBC-01	City Clerk	Unchanged
General Manager - Water	LBC-01	City Clerk	Unchanged
Laboratory Services Officer	LBC-01	City Clerk	Added
Reason: FY 22			
Manager, Administration	LBC-01	City Clerk	Unchanged
Manager, Budget and Rates	LBC-01	City Clerk	Unchanged
Manager, Business Development	LBC-01	City Clerk	Unchanged
Manager, Engineering	LBC-01	City Clerk	Unchanged
Manager, Finance	LBC-01	City Clerk	Unchanged
Manager, Government & Public Affairs	LBC-01	City Clerk	Unchanged
Manager, Information Services	LBC-01	City Clerk	Unchanged
Manager, Planning	LBC-01	City Clerk	Unchanged
Manager, Security and Emergency Preparedness	LBC-01	City Clerk	Unchanged
Manager, Water Process	LBC-01	City Clerk	Unchanged
Manager, Water Quality	LBC-01	City Clerk	Unchanged
Manager, Water Quality & Process	LBC-01	City Clerk	Unchanged
Manager, Water Resources	LBC-01	City Clerk	Unchanged
Network Administrator	LBC-01	City Clerk	Unchanged
Office Administrator	LBC-01	City Clerk	Unchanged
Principal Construction Inspector	LBC-01	City Clerk	Unchanged
Procurement & Warehouse Officer	LBC-01	City Clerk	Unchanged
Public Information Officer	LBC-01	City Clerk	Unchanged
Safety Specialist I	LBC-01	City Clerk	Unchanged
Safety Specialist II	LBC-01	City Clerk	Unchanged
Safety Specialist III	LBC-01	City Clerk	Added

ETHICS COMMISSION PARTICIPATION IN FUTURE CITY CONFLICT OF INTEREST CODES

- ▶ The City Clerk has agreed to request an annual review of COI Codes after budget adoption (roughly around September) before the Clerk sends the annual notice to the FPPC in January.
- ▶ This will allow the Commission to participate in the process with the departments in October/November on an annual basis.
- ▶ Depending on the desire of the Commission, the departments can either submit TFFs or give quick presentations about the changes to their COI Codes and why the changes occurred, which will allow the Commission to provide feedback on the COI Codes.

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FPPC

CONFLICTS OF INTEREST

The Political Reform Act and Government Code section 1090

THE POLITICAL REFORM ACT

FPPC CONFLICTS OF INTEREST

Political Reform Act

- ▶ Government Code Section 87100 of the Political Reform Act (the “Act) prohibits a public official at any level of state or local government from making, participating in making, or attempting to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.
- ▶ An official has a “financial interest” if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official’s interests as identified and distinguishable from the decision’s effect on the public generally.
- ▶ Taken together, these provisions of the Act prohibit an official from taking part in a decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests identified in the Act distinguishable from the decision’s effect on the public generally.

FPPC CONFLICTS OF INTEREST Political Reform Act

ELEMENTS TO DETERMINE IF CONFLICT OF INTEREST EXISTS

- ▶ Making, Participating in Making, or Attempting to Influence a Decision
- ▶ Financial Interests
- ▶ Foreseeability of Financial Effect
- ▶ Materiality Standards
- ▶ The Public Generally Exception
- ▶ Legally Required Participation
- ▶ Segmentation
- ▶ Disqualification Requirements

FPPC CONFLICTS OF INTEREST

Political Reform Act

Making, Participating in Making, or Attempting to Influence a Decision

- ▶ **MAKING A DECISION** – if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the agency.
- ▶ **PARTICIPATING IN A DECISION** - if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- ▶ **USING OFFICIAL POSITION TO ATTEMPT TO INFLUENCE A DECISION** - if the official contacts or appears before:
 - ▶ (1) Any official in the official’s agency, or in an agency subject to the authority or budgetary control of the official’s agency, for the purpose of affecting a decision; or
 - ▶ (2) Any official in any other government agency for the purpose of affecting a decision, and the official purports to act within the official’s authority or on behalf of the official’s agency in making the contact.

FPPC CONFLICTS OF INTEREST

Political Reform Act

EXCEPTIONS to Making, Participating in Making, or Attempting to Influence a Decision

- ▶ MINISTERIAL - Includes actions that are solely ministerial, secretarial, or clerical
- ▶ APPEARANCES BY AN OFFICIAL AS A MEMBER OF THE GENERAL PUBLIC – if the appearance is before an agency in the course of its government function IF the official is appearing on matters related solely to the official's personal interests. Includes interest in real property or business owned/controlled by the official, members of the official's immediate family, or the official and members of the official's immediate family
- ▶ TERMS OF EMPLOYMENT – Actions related to the official's compensation or terms/conditions of their employment or consulting contract.
- ▶ PUBLIC SPEAKING – Communications by an official to the public or media

FPPC CONFLICTS OF INTEREST

Political Reform Act

EXCEPTIONS to Making, Participating in Making, or Attempting to Influence a Decision

- ▶ **ACADEMIC DECISIONS** – Teaching decisions or decisions by an official who has teaching or research responsibilities at an institution of higher education relating to the official’s professional responsibilities
- ▶ **ARCHITECTURAL & ENGINEERING DOCUMENTS**- Drawings or submissions of an architectural, engineering, or similar nature prepared by an 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. Exception includes something prepared for a client by the official.
- ▶ **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 the 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.

FPPC CONFLICTS OF INTEREST

Political Reform Act

Financial interests which may give rise to an official's disqualifying conflict of interest, if the official:

- ▶ Is an officer, director, partner, employee, trustee or manager of a company with business before their department or board.
- ▶ Has an investment of \$2,000 or more in a company with business before their department or board.
- ▶ Has an interest in real property of \$2,000 or more and that real property is the subject matter of an item before your department or board. This includes leasehold interests that are longer than a "month-to-month" tenancy.
- ▶ Own or lease an interest in real property that is located within 500 feet of a property which is the subject matter of a decision before their department or board. (An "interest in real property" does not include a "month-to-month" tenancy.)
- ▶ Receives any income which totals \$500 or more within the prior 12 months, from a person or entity with business before their department or board. Income includes loans or forgiveness of indebtedness.
- ▶ Receives a gift or gifts totaling \$500 or more within the prior 12 months, from a person or entity with business before their department or board (gifts include rebates, discounts, free meals, free tickets or travel).
- ▶ Or someone that is a source of income to the official (\$500 or more within the prior 12 months) is the subject of a proceeding before their department or board.
- ▶ As a result of a decision before the official's department or board their personal finances or those of their immediate family will either increase or decrease in any manner.

FPPC CONFLICTS OF INTEREST Political Reform Act

FORESEEABILITY OF FINANCIAL EFFECT - EXPLICITLY INVOLVED

- ▶ A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in the decision.
- ▶ An official's financial interest is "explicitly involved" in a decision if the interest is a "named party in, or the subject of," the decision, and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, denial, or revocation of any license, permit, other entitlement to, or contract with, the interest.
- ▶ Additionally, an official's real property interest is explicitly involved in any decision affecting the real property.

FPPC CONFLICTS OF INTEREST

Political Reform Act

FORESEEABILITY OF FINANCIAL EFFECT – NOT EXPLICITLY INVOLVED

- ▶ When an official's financial interest is not explicitly involved in a decision, the financial effect of the decision is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. The effect need not be likely to be reasonably foreseeable.
- ▶ Factors to consider when determining if a decision's effect on an official's not explicitly involved interest is reasonably foreseeable include, but are not limited to, the following:
 - ▶ The extent to which the occurrence of the effect is contingent upon intervening events (other than future governmental decisions by the official's agency or an agency subject to the budgetary control of the official's agency).
 - ▶ Whether the official should anticipate a financial effect on the financial interests at issue as a potential outcome under normal circumstances when using appropriate due diligence and care. Whether the official has an interest of the type that would typically be affected by the terms of the decision.
 - ▶ Whether the decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the official has a financial interest.
 - ▶ Whether a reasonable inference can be made that the financial effects of the decision on the official's financial interest might compromise an official's ability to fulfill their duty to act in the best interests of the public.
 - ▶ Whether the decision will provide or deny an opportunity, or create an advantage for one of the official's financial interests.
 - ▶ Whether the official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the decision on the official's financial interest in formulating a position.

FPPC CONFLICTS OF INTEREST Political Reform Act

MATERIALITY STANDARDS

- ▶ The Regulations provide that the next step in the analysis to determine if the decision's reasonably foreseeable financial effect on the official's financial interest is material. If the official's interest is in:
 - ▶ A business entity
 - ▶ A real property
 - ▶ A source of income
 - ▶ A source of a gift or gifts
 - ▶ Their personal finances or those of immediate family
- ▶ A materiality standard in the CCRs will then be applied. The standard is dependent on which interest the official has.

FPPC CONFLICTS OF INTEREST

Political Reform Act

THE PUBLIC GENERALLY EXCEPTION

- ▶ If a decision's financial effect on an official's financial interest is indistinguishable from the decision's effect on the public generally, the official is not disqualified from taking part in the decision
- ▶ **The General Rule:** A decision's financial effect on an official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a "significant segment" of the public is affected and the "effect on the official's interest is not unique" compared to the effect on the significant segment.

FPPC CONFLICTS OF INTEREST Political Reform Act

THE PUBLIC GENERALLY EXCEPTION – SPECIFIC RULES FOR SPECIAL CIRCUMSTANCES

- ▶ A decision's financial effect is deemed indistinguishable from its effect on the public generally if there is no unique effect on the official's interest and the official establishes any of the following, subject to certain criteria:
- ▶ Public services and utilities
- ▶ General use or licensing fees that apply to the entire jurisdiction
- ▶ Limited neighborhood effects
- ▶ Rental properties
- ▶ Required representative interest where the effect is on industry, trade, or profession or other identified interest represented
- ▶ State of emergency
- ▶ Governmental entities

FPPC CONFLICTS OF INTEREST Political Reform Act

LEGALLY REQUIRED PARTICIPATION

- ▶ The prohibition in the Act does not prevent an official from making or participating in the making of a decision to the extent the official's participation is legally required for the action or decision to be made.
- ▶ NOTE: A tied vote does not make the disqualified official's participation legally required.

FPPC CONFLICTS OF INTEREST Political Reform Act

LEGALLY REQUIRED PARTICIPATION

- ▶ **No Alternative Source of Decision:** Participation is allowed only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.
- ▶ **“Quorum” Defined:** A “quorum” under the Regs is defined as the minimum number of members required to conduct business. Participation is allowed when the vote of a supermajority is required to adopt an item, a “quorum” is the minimum number of members needed to adopt the item.
- ▶ **Narrowly Construed:** Requires the regulation be narrowly construed, and specifically provides that the regulation shall not to be construed:
 - ▶ To permit an official who is otherwise disqualified under the Act to vote to break a tie.
 - ▶ To allow a member of any agency who is otherwise disqualified under the Act to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not those other members are actually present at the time of the disqualification.

FPPC CONFLICTS OF INTEREST Political Reform Act

LEGALLY REQUIRED PARTICIPATION

- ▶ **Random Means of Selection:** The Act requires participation by the smallest number of officials with a conflict that are “legally required” for the decision to be made and permits a “random means of selection” (e.g. drawing straws) to be used to select only the number of officials necessary to make the decision. When an official is selected, that official is selected for the duration of the proceedings in all related matters until their participation is no longer legally required, or the need for invoking the exception no longer exists.
- ▶ **Public Identification of an Otherwise Disqualified Official’s Financial Interests in a Decision:** The Act provides that when an official who has a financial interest in a decision is legally required to make or participate in making that decision, the official must state the existence of the potential conflict in accordance with the Act’s disclosure regulations.
- ▶ **Manner of Disclosure:** The disclosures required by the Act must be made orally on the public record if the decision is in an open meeting or closed session OR in writing if the decision takes place outside a public meeting.

FPPC CONFLICTS OF INTEREST Political Reform Act

SEGMENTATION

- ▶ An agency may segment a decision in which an official has a disqualifying conflict of interest to allow the official to participate in associated decisions which would not have a disqualifying effect on the official's interests under Act, subject to certain conditions.

FPPC CONFLICTS OF INTEREST Political Reform Act

DISQUALIFICATION REQUIREMENTS

- ▶ The Act requires the disqualified official to: identify the potential conflict of interest to publicly identify the official's financial interest or interests at issue; recuse from voting, discussing or attempting to influence the matter; and leave the room until after the matter is concluded.
- ▶ FPPC Regulations provide further direction and guidance on the recusal requirements applicable to a public official specified in the Act who is disqualified from a decision relating to an agenda item noticed for consideration at a public meeting subject to open meeting laws or the Brown Act.

GOV. CODE SECTION 1090

FPPC CONFLICTS OF INTEREST

Gov. Code Section 1090

- ▶ Government Code section 10901 prohibits an officer or employee from entering into or participating in making contracts in which they have a financial interest:
 - ▶ Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.
- ▶ Intended to “not only strike actual impropriety but also strike at the appearance impropriety”
- ▶ The prohibition applies even when the terms of the proposed contract are demonstrably fair and equitable or are plainly to the public entity’s advantage
- ▶ Prohibition must be broadly construed and strictly enforced

FPPC CONFLICTS OF INTEREST

Gov. Code Section 1090

- ▶ The FPPC is authorized to issue opinions or advice to persons subject to Gov. Code section 1090. The FPPC is prohibited from issuing an opinion or advice where it relates to past conduct
- ▶ Violations are subject to:
 - ▶ Criminal penalties if the violation is willful, including imprisonment and disqualification from holding public office in perpetuity
 - ▶ Administrative and civil penalties by the FPPC if the violation is by a public official who violates this prohibition against being financially interested in a contract, or who causes another person to violate the prohibition, only upon written authorization from the district attorney of the county in which the alleged violation occurred.

FPPC CONFLICTS OF INTEREST

Gov. Code Section 1090

When providing advice, the FPPC's Legal Division generally uses a six-step analysis to determine whether an official has a disqualifying conflict of interest under Section 1090:

- ▶ 1. Is the official subject to the provisions of Section 1090?
- ▶ 2. Does the decision at issue involve a contract?
- ▶ 3. Is the official making or participating in making a contract?
- ▶ 4. Does the official have a financial interest in the contract?
- ▶ 5. Does either a remote-interest or non-interest exception apply?
- ▶ 6. Does the rule of necessity apply?

FPPC CONFLICTS OF INTEREST

Political Reform Act

- ▶ Prohibits a public official at any level of state or local government from making, participating in making, or attempting to use the official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.
- ▶ "Public official" means every member, officer, employee, or consultant of a state or local government agency

Gov. Code section 1090

- ▶ Prohibits City officers or employee from entering into or participating in making contracts in which they have a financial interest