



## City of Long Beach

*Working Together to Serve*

### Office of the City Attorney

## Memorandum

**DATE:** August 2, 2022

**To:** Ethics Commission

**FROM:** Taylor M. Anderson, Deputy City Attorney

**SUBJECT:** FPPC and City of Long Beach Conflict of Interest Codes and Policies

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For your reference, please find the following Conflict of Interest Policies and Codes enclosed:

- Excerpts on Conflicts of Interest from Ethics Guide for Long Beach City Officials and Employees (Attachment 1)
- Sample Conflict of Interest Code approved by the City Council (Attachment 2)
- FPPC - "An Overview of Conflicts of Interest Under the Political Reform Act" (Attachment 3)
- FPPC - "An Overview of Section 1090 and FPPC Advice" (Attachment 4)
- FPPC - "A Quick Guide to Section 1090" (Attachment 5)

Please do not hesitate to reach out to my office if you have any questions.

TMA:ag A22-02029

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# ATTACHMENT **1**

## CONFLICTS OF INTERESTS

Conflict of interest rules exist to reinforce public confidence that City officials, employees and commissioners are acting in the best interests of the public, and not in furtherance of their own self-interests. As a general rule, you should avoid situations where your official actions may affect or appear to affect your private interests, financial or non-financial.

For purposes of this Handbook, reference to “board members” includes City councilmembers, commission members and committee members.

### **What is a Conflict of Interest?**

You have a conflict of interest if your public actions as a City official, employee or board member 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.

### **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 a 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.

## CONFLICTS OF INTERESTS

### **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.

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).

## CONFLICTS OF INTERESTS

- 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.

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.

### **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.

## CONFLICTS OF INTERESTS

### **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.)

# ATTACHMENT 2





# Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Airport Advisory Commission - LBA**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Belmont Shore Parking & Business Improvement Area Advisory Commission - CD**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Bixby Knolls Parking & Business Improvement Area Association - CD**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Board of Examiners, Appeals and Condemnation**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



# Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Board of Health and Human Services - HHS**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Citizen Police Complaint Commission - CM**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Citizens Advisory Commission on Disabilities - HR**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



## Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**  
**Agency: City Officials - Planning Commission**

Position	Disclosure Category	Files With

**Total: 0**

### OFFICIALS WHO ARE SPECIFIED IN GOVERNMENT CODE SECTION 87200

Officials who are specified in Government Code section 87200 (including officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701 (b)), are NOT subject to the Agency’s Conflict of Interest Code, but are subject to the disclosure requirements of the Political Reform Act, Government Code section 87100, et seq. Gov’t Code § 87203. These positions are listed here for informational purposes only.

The positions listed below are officials who are specified in Government Code section 87200:

Planning Commissioner Files with FPPC

The disclosure requirements for these positions are set forth in Government Code section 87200, et. seq. They require the disclosure of interests in real property in the agency’s jurisdiction, as well as investments, business positions and sources of income (including gifts, loans and travel payments).

**Entity: Boards and Commissions**  
**Agency: Civil Service Commission - CS**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**  
**Agency: Commission on Youth & Families**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



## Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**  
**Agency: Community Investment Company**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**  
**Agency: Cultural Heritage Commission**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk
Consultant	LBC-01	City Clerk

**Total: 2**

**Entity: Boards and Commissions**  
**Agency: Downtown Long Beach Associates - CC**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**  
**Agency: Economic Development Commission**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



# Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Equity and Human Relations Commission - HHS**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Ethics Commission**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Fourth Street Parking and Business Improvement Area**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Harbor Commission - HD**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



## Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Homeless Services Advisory Commission - HHS**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Housing Authority of the City of Long Beach, California**

Position	Disclosure Category	Files With
Commissioner/Board Member (except councilmembers)	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Independent Redistricting Commission**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Long Beach Area Convention and Visitor's Bureau - CC**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



# Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Long Beach Transit Board of Directors - LBT**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Magnolia Industrial Group Property & Business Improvement District - CC**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Marine Advisory Commission - PRM**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Midtown Property and Business Owners Association**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



# Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Parks and Recreation Commission - PRM**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Pedestrian Safety Advisory Committee - CM**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Port of Long Beach Community Grants Advisory Committee**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Public Corporation for the Arts (aka Arts Council for Long Beach)**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**





# Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Senior Citizen Advisory Commission - PRM**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Sustainable City Commission - CM**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Technology and Innovation Commission - TS**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Transactions and Use Tax Citizens' Advisory Committee**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



## Conflict of Interest Code EXHIBIT A

**Entity: Boards and Commissions**

**Agency: Uptown Property and Business Improvement District**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Veterans Affairs Commission**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Water Commission - WD**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**

**Entity: Boards and Commissions**

**Agency: Zaferia Parking and Business Improvement Area**

Position	Disclosure Category	Files With
Commissioner/Board Member	LBC-01	City Clerk

**Total: 1**



## Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: City Auditor Department**

Position	Disclosure Category	Files With
Assistant City Auditor	LBC-01	City Clerk
City Auditor	LBC-01	City Clerk
Deputy City Auditor	LBC-01	City Clerk

**Total: 3**

**Entity: City of Long Beach**

**Agency: City Clerk Department**

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Assistant City Clerk	LBC-01	City Clerk
City Clerk	LBC-01	City Clerk

**Total: 3**

**Entity: City of Long Beach**

**Agency: City Manager Department**

Position	Disclosure Category	Files With
Administrative Assistant - City Manager	LBC-01	City Clerk
Administrative Deputy to City Manager	LBC-01	City Clerk
Assistant City Manager	LBC-01	City Clerk
Assistant to City Manager - Administration	LBC-01	City Clerk
Assistant to City Manager - Special Projects	LBC-01	City Clerk
Assistant to the City Manager	LBC-01	City Clerk
Capital Projects Coordinator	LBC-01	City Clerk
Commissioner	LBC-01	City Clerk
Consultant	LBC-01	City Clerk
Deputy City Manager	LBC-01	City Clerk



# Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Manager - Cannabis Oversight	LBC-01	City Clerk
Manager - Citizens Police Complaint Commission	LBC-01	City Clerk
Manager - Government Affairs	LBC-01	City Clerk
Manager - Office of Civic Innovation	LBC-01	City Clerk
Manager - Special Events	LBC-01	City Clerk
Public Affairs Officer	LBC-01	City Clerk
Public Affairs Officer - City Manager	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Tidelands Development Officer	LBC-01	City Clerk

**Total: 19**

### OFFICIALS WHO ARE SPECIFIED IN GOVERNMENT CODE SECTION 87200

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The positions listed below are officials who are specified in Government Code section 87200:

City Manager Files with FPPC

The disclosure requirements for these positions are set forth in Government Code section 87200, et. seq. They require the disclosure of interests in real property in the agency’s jurisdiction, as well as investments, business positions and sources of income (including gifts, loans and travel payments).



# Conflict of Interest Code EXHIBIT A

**Entity:** City of Long Beach

**Agency:** City Officials - City Council

Position	Disclosure Category	Files With

**Total: 0**

**OFFICIALS WHO ARE SPECIFIED IN GOVERNMENT CODE SECTION 87200**

Officials who are specified in Government Code section 87200 (including officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701 (b)), are NOT subject to the Agency’s Conflict of Interest Code, but are subject to the disclosure requirements of the Political Reform Act, Government Code section 87100, et seq. Gov’t Code § 87203. These positions are listed here for informational purposes only.

The positions listed below are officials who are specified in Government Code section 87200:

Councilmember - 1st District	Files with	FPPC
Councilmember - 2nd District	Files with	FPPC
Councilmember - 3rd District	Files with	FPPC
Councilmember - 4th District	Files with	FPPC
Councilmember - 5th District	Files with	FPPC
Councilmember - 6th District	Files with	FPPC
Councilmember - 7th District	Files with	FPPC
Councilmember - 8th District	Files with	FPPC
Councilmember - 9th District	Files with	FPPC
Mayor	Files with	FPPC

The disclosure requirements for these positions are set forth in Government Code section 87200, et. seq. They require the disclosure of interests in real property in the agency’s jurisdiction, as well as investments, business positions and sources of income (including gifts, loans and travel payments).



## Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: City Prosecutor Department**

Position	Disclosure Category	Files With
Assistant City Prosecutor	LBC-01	City Clerk
Chief Assistant City Prosecutor	LBC-01	City Clerk
City Prosecutor	LBC-01	City Clerk
Deputy City Prosecutor	LBC-01	City Clerk
Deputy City Prosecutor - NC	LBC-01	City Clerk
Deputy City Prosecutor - Supv	LBC-01	City Clerk
Deputy City Prosecutor I-IV	LBC-01	City Clerk

**Total: 7**

**Entity: City of Long Beach**

**Agency: Civil Service Department**

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Deputy Director	LBC-01	City Clerk
Employment Services Officer	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Executive Director	LBC-01	City Clerk
Recruitment & Selection Officer	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk

**Total: 7**

**Entity: City of Long Beach**

**Agency: Development Services Department**

Position	Disclosure Category	Files With
Administrative Analyst	LBC-01	City Clerk
Administrative Analyst - NC	LBC-01	City Clerk



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Advance Planning Officer	LBC-01	City Clerk
Building Inspection Officer	LBC-01	City Clerk
Civil Engineer	LBC-01	City Clerk
Code Enforcement Officer	LBC-01	City Clerk
Combination Building Inspector	LBC-01	City Clerk
Combination Building Inspector Aide	LBC-01	City Clerk
Community Development Analyst	LBC-01	City Clerk
Community Information Officer	LBC-01	City Clerk
Community Program Specialist	LBC-01	City Clerk
Consultant	LBC-01	City Clerk
Current Planning Officer	LBC-01	City Clerk
Deputy Director of Development Services	LBC-01	City Clerk
Development Project Manager	LBC-01	City Clerk
Director of Development Services	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
General Supt - Development Services	LBC-01	City Clerk
Housing Development Officer	LBC-01	City Clerk
Housing Operations Officer	LBC-01	City Clerk
Manager - Admin & Financial Services	LBC-01	City Clerk
Manager - Code Enforcement	LBC-01	City Clerk
Manager - Housing and Neighborhood Services	LBC-01	City Clerk
Manager - Planning	LBC-01	City Clerk
Neighborhood Improvement Officer	LBC-01	City Clerk
Neighborhood Resources Officer	LBC-01	City Clerk
Plan Checker - Electrical	LBC-01	City Clerk
Plan Checker - Fire Prevention	LBC-01	City Clerk
Plan Checker - Mechanical	LBC-01	City Clerk
Plan Checker - Plumbing	LBC-01	City Clerk
Planner	LBC-01	City Clerk
Principal Building Inspector	LBC-01	City Clerk
Real Estate Project Coordinator	LBC-01	City Clerk



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Senior Civil Engineer	LBC-01	City Clerk
Senior Combination Building Inspector	LBC-01	City Clerk
Senior Electrical Inspector	LBC-01	City Clerk
Senior Mechanical Inspector	LBC-01	City Clerk
Senior Plumbing Inspector	LBC-01	City Clerk
Senior Structural Engineer	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Structural Engineer	LBC-01	City Clerk
Superintendent of Building and Safety	LBC-01	City Clerk

**Total: 44**

**Entity: City of Long Beach**

**Agency: Disaster Preparedness and Emergency Communications**

Position	Disclosure Category	Files With
Administration & Grants Officer	LBC-01	City Clerk
Communications Center Officer	LBC-01	City Clerk
Director	LBC-01	City Clerk
Disaster Preparedness Officer	LBC-01	City Clerk

**Total: 4**





## Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: Economic Development**

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Assistant Administrative Analyst	LBC-01	City Clerk
CD Analyst	LBC-01	City Clerk
Community Development Specialist	LBC-01	City Clerk
Deputy Director	LBC-01	City Clerk
Development Project Manager	LBC-01	City Clerk
Director	LBC-01	City Clerk
Economic Development Officer	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Executive Director - Regional Workforce Investment Network	LBC-01	City Clerk
Program Assistant	LBC-01	City Clerk
Program Manager	LBC-01	City Clerk
Program Specialist	LBC-01	City Clerk
Project Analyst	LBC-01	City Clerk
Project Manager	LBC-01	City Clerk
Property Services Officer	LBC-01	City Clerk
Workforce Development Officer	LBC-01	City Clerk

**Total: 17**

**Entity: City of Long Beach**

**Agency: Energy Resources Department**

Position	Disclosure Category	Files With
Administrative Analyst I-III	LBC-01	City Clerk
Administrative Officer	LBC-01	City Clerk
Chief Construction Inspector	LBC-01	City Clerk
Construction Inspector II	LBC-01	City Clerk
Consultant	LBC-01	City Clerk
Corrosion Control Supervisor	LBC-01	City Clerk



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Customer Services Officer	LBC-01	City Clerk
Department Safety Officer	LBC-01	City Clerk
Director	LBC-01	City Clerk
Division Engineer - Oil Properties	LBC-01	City Clerk
Energy Services Officer	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Gas Distribution Supervisor II	LBC-01	City Clerk
Gas Maintenance Supervisor II	LBC-01	City Clerk
Gas Pipeline Compliance Officer	LBC-01	City Clerk
General Maintenance Supervisor II	LBC-01	City Clerk
Manager - Business Operations	LBC-01	City Clerk
Manager - Construction & Pipeline Maintenance	LBC-01	City Clerk
Manager - Electric Generation	LBC-01	City Clerk
Manager - Engineering & Regulatory Compliance	LBC-01	City Clerk
Manager - Gas Services	LBC-01	City Clerk
Manager - Oil Planning & Operations	LBC-01	City Clerk
Principal Construction Inspector	LBC-01	City Clerk
Senior Mechanical Engineer	LBC-01	City Clerk
SERFF Operations Officer	LBC-01	City Clerk
Superintendent - Engineering	LBC-01	City Clerk
Superintendent - Operations	LBC-01	City Clerk
Superintendent - Pipeline Construction & Maintenance	LBC-01	City Clerk
Superintendent of Training	LBC-01	City Clerk
Supervisor - Stores and Property	LBC-01	City Clerk
Utility Services Officer	LBC-01	City Clerk

**Total: 32**

**Entity: City of Long Beach**

**Agency: Financial Management Department**



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Accounting Operations Officer	LBC-01	City Clerk
Administrative Officer	LBC-01	City Clerk
Assistant City Controller	LBC-01	City Clerk
Asst. Buyer	LBC-01	City Clerk
Asst. Director - Financial Management	LBC-01	City Clerk
Budget Analysis Officer	LBC-01	City Clerk
Budget Management Officer	LBC-01	City Clerk
Business Services Officer	LBC-01	City Clerk
Buyer	LBC-01	City Clerk
City Controller	LBC-01	City Clerk
Customer Services Officer	LBC-01	City Clerk
Director of Financial Management	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Fleet Finance Officer	LBC-01	City Clerk
Grants Accounting Officer	LBC-01	City Clerk
Labor Compliance Officer	LBC-01	City Clerk
License Inspector	LBC-01	City Clerk
Manager - Budget & Performance Management Bureau	LBC-01	City Clerk
Manager - Business Relations	LBC-01	City Clerk
Manager - Commercial Services Bureau	LBC-01	City Clerk
Manager - Fleet Services	LBC-01	City Clerk
Payroll Officer	LBC-01	City Clerk
Purchasing Agent	LBC-01	City Clerk
Revenue Management Officer	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Superintendent - Fleet Acquisition	LBC-01	City Clerk
Superintendent - Fleet Maintenance	LBC-01	City Clerk
Superintendent - Towing Operations/Lien Sales	LBC-01	City Clerk
Treasury Operations Officer	LBC-01	City Clerk

**Total: 29**



# Conflict of Interest Code EXHIBIT A

## OFFICIALS WHO ARE SPECIFIED IN GOVERNMENT CODE SECTION 87200

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The positions listed below are officials who are specified in Government Code section 87200:

Treasurer Files with FPPC

The disclosure requirements for these positions are set forth in Government Code section 87200, et. seq. They require the disclosure of interests in real property in the agency’s jurisdiction, as well as investments, business positions and sources of income (including gifts, loans and travel payments).

**Entity: City of Long Beach**

**Agency: Fire Department**

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Assistant Fire Chief	LBC-01	City Clerk
Combination Building Inspector Aide - Fire Prevention	LBC-01	City Clerk
Deputy Fire Chief	LBC-01	City Clerk
Deputy Fire Marshal	LBC-01	City Clerk
Emergency Medical Education Coordinator	LBC-01	City Clerk
Fire Chief	LBC-01	City Clerk
Fire Prevention Battalion Chief	LBC-01	City Clerk
Fire Prevention Captain	LBC-01	City Clerk
Fire Prevention Fire Engineer	LBC-01	City Clerk
Fire Prevention Firefighter	LBC-01	City Clerk
Hazardous Materials Specialist	LBC-01	City Clerk
Manager - Fire Administration	LBC-01	City Clerk
Marine Safety Chief	LBC-01	City Clerk
Plan Checker - Fire Prevention	LBC-01	City Clerk

**Total: 15**

**Entity: City of Long Beach**



# Conflict of Interest Code EXHIBIT A

**Agency: Harbor Department**

Position	Disclosure Category	Files With
Account Executive	LBC-01	City Clerk
Assistant Director of Communications and Community Relations	LBC-01	City Clerk
Assistant Director of Construction Management	LBC-01	City Clerk
Assistant Director of Engineering Design	LBC-01	City Clerk
Assistant Director of Environmental Planning	LBC-01	City Clerk
Assistant Director of Finance	LBC-01	City Clerk
Assistant Director of Human Resources	LBC-01	City Clerk
Assistant Director of Information Systems	LBC-01	City Clerk
Assistant Director of Program Management	LBC-01	City Clerk
Assistant Director of Real Estate	LBC-01	City Clerk
Assistant Director of Security - Homeland	LBC-01	City Clerk
Assistant Director of Security Support	LBC-01	City Clerk
Assistant Director of Trade Development	LBC-01	City Clerk
Assistant Director, Business Development	LBC-01	City Clerk
Assistant Executive Officer to the Board	LBC-01	City Clerk
Assistant Managing Director	LBC-01	City Clerk
Assistant Marketing Manager I	LBC-01	City Clerk
Assistant Marketing Manager II	LBC-01	City Clerk
Assistant Marketing Manager III	LBC-01	City Clerk
Assistant Terminal Services Manager	LBC-01	City Clerk
Assistant to Executive Director	LBC-01	City Clerk
Assistant Traffic Manager	LBC-01	City Clerk
Capital Programs Executive	LBC-01	City Clerk
Capital Projects Coordinator	LBC-01	City Clerk
Chief Construction Inspector	LBC-01	City Clerk
Chief Executive	LBC-01	City Clerk
Chief Surveyor	LBC-01	City Clerk
Chief Wharfinger/Terminal Services Manager	LBC-01	City Clerk
Construction Inspector I	LBC-01	City Clerk
Construction Inspector II	LBC-01	City Clerk
Consultant	LBC-01	City Clerk
Deputy Chief Harbor Engineer I	LBC-01	City Clerk



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Deputy Chief Harbor Engineer II	LBC-01	City Clerk
Deputy Executive Director - Harbor	LBC-01	City Clerk
Deputy Executive Officer to the Board of Harbor Commission	LBC-01	City Clerk
Director of Alternate Project Delivery	LBC-01	City Clerk
Director of Business Development	LBC-01	City Clerk
Director of Communications and Community Relations	LBC-01	City Clerk
Director of Construction Management	LBC-01	City Clerk
Director of Engineering Design	LBC-01	City Clerk
Director of Environmental Planning	LBC-01	City Clerk
Director of Finance	LBC-01	City Clerk
Director of Governmental Affairs	LBC-01	City Clerk
Director of Human Resources - Harbor	LBC-01	City Clerk
Director of Information Management	LBC-01	City Clerk
Director of Maintenance	LBC-01	City Clerk
Director of Marketing	LBC-01	City Clerk
Director of Master Planning	LBC-01	City Clerk
Director of Program Management	LBC-01	City Clerk
Director of Project Controls	LBC-01	City Clerk
Director of Real Estate	LBC-01	City Clerk
Director of Risk Management	LBC-01	City Clerk
Director of Security	LBC-01	City Clerk
Director of Surveys	LBC-01	City Clerk
Director of Team Development	LBC-01	City Clerk
Director of Transportation Planning	LBC-01	City Clerk
Director, Tenant Services & Operations	LBC-01	City Clerk
Executive Director - Harbor	LBC-01	City Clerk
Executive Officer to the Board	LBC-01	City Clerk
Executive Secretary - Harbor	LBC-01	City Clerk
Financial Reporting/Control Officer	LBC-01	City Clerk
Harbor Marine Manager	LBC-01	City Clerk
Manager - Engineer Technology	LBC-01	City Clerk
Manager - Intermodal Operations	LBC-01	City Clerk
Manager - Utilities and Fleet	LBC-01	City Clerk



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Manager of Accounting	LBC-01	City Clerk
Manager of Air Quality Practices	LBC-01	City Clerk
Manager of Business Applications	LBC-01	City Clerk
Manager of Business Continuity/Safety	LBC-01	City Clerk
Manager of Business Development	LBC-01	City Clerk
Manager of Business Development - Free Trade Zone	LBC-01	City Clerk
Manager of CEQA/NEPA Practices	LBC-01	City Clerk
Manager of Commercial Trade - Import Cargo	LBC-01	City Clerk
Manager of Commercial Trade - Ocean Carrier	LBC-01	City Clerk
Manager of Contract Compliance	LBC-01	City Clerk
Manager of Cyber Security	LBC-01	City Clerk
Manager of Emergency Management	LBC-01	City Clerk
Manager of Environmental Remediation	LBC-01	City Clerk
Manager of Facilities Maintenance	LBC-01	City Clerk
Manager of Financial Planning and Analysis	LBC-01	City Clerk
Manager of Grants Administration	LBC-01	City Clerk
Manager of Infrastructure	LBC-01	City Clerk
Manager of Labor Compliance	LBC-01	City Clerk
Manager of Maritime Services	LBC-01	City Clerk
Manager of Master Planning	LBC-01	City Clerk
Manager of Network Operations	LBC-01	City Clerk
Manager of Port Projects	LBC-01	City Clerk
Manager of Procurement	LBC-01	City Clerk
Manager of Project Controls	LBC-01	City Clerk
Manager of Rail Transportation Systems	LBC-01	City Clerk
Manager of Security Operations	LBC-01	City Clerk
Manager of Strategic Planning	LBC-01	City Clerk
Manager of Sustainable Practices	LBC-01	City Clerk
Manager of Technical Security	LBC-01	City Clerk
Manager of Transportation Development	LBC-01	City Clerk
Manager of Water Quality Practices	LBC-01	City Clerk
Managing Director	LBC-01	City Clerk
Market Research Economist	LBC-01	City Clerk



# Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Marketing Manager	LBC-01	City Clerk
Port Administrative Officer	LBC-01	City Clerk
Port Commercial Appraisal	LBC-01	City Clerk
Port Communications Officer	LBC-01	City Clerk
Port Financial Analyst I	LBC-01	City Clerk
Port Financial Analyst II	LBC-01	City Clerk
Port Financial Analyst III	LBC-01	City Clerk
Port Leasing Sales Officer I	LBC-01	City Clerk
Port Leasing Sales Officer II	LBC-01	City Clerk
Port Leasing Sales Officer III	LBC-01	City Clerk
Port Leasing Sales Officer IV	LBC-01	City Clerk
Port Leasing Sales Officer V	LBC-01	City Clerk
Principal Construction Inspector	LBC-01	City Clerk
Revenue Manager	LBC-01	City Clerk
Senior Civil Engineer	LBC-01	City Clerk
Senior Director	LBC-01	City Clerk
Senior Electrical Inspector	LBC-01	City Clerk
Senior Executive Supply Chain Optimization	LBC-01	City Clerk
Senior Port Leasing Officer	LBC-01	City Clerk
Senior Program Manager	LBC-01	City Clerk
Senior Structural Engineer	LBC-01	City Clerk
Senior Traffic Engineer	LBC-01	City Clerk
Supervisor of Store & Property	LBC-01	City Clerk
Terminal Services Manager	LBC-01	City Clerk
Traffic Manager	LBC-01	City Clerk
Transportation Development Manager	LBC-01	City Clerk

**Total: 124**

**Entity: City of Long Beach**

**Agency: Health and Human Services Department**





## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Administrative & Financial Services Bureau Manager	LBC-01	City Clerk
Administrative Analyst	LBC-01	City Clerk
Administrative Officer	LBC-01	City Clerk
City Health Officer	LBC-01	City Clerk
Clinical Services Officer	LBC-01	City Clerk
Collective Impact Bureau Manager	LBC-01	City Clerk
Communicable Disease & Emergency Response Bureau Manager	LBC-01	City Clerk
Community Health Bureau Manager	LBC-01	City Clerk
Community Program Specialist V	LBC-01	City Clerk
Deputy Director	LBC-01	City Clerk
Director of Health & Human Services	LBC-01	City Clerk
Environmental Health Bureau Manager	LBC-01	City Clerk
Environmental Health Operations Officer	LBC-01	City Clerk
Environmental Health Specialist IV	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Funding Development Specialist	LBC-01	City Clerk
Homeless Services Bureau Manager	LBC-01	City Clerk
Homeless Services Officer	LBC-01	City Clerk
Housing Administrative Programs Officer	LBC-01	City Clerk
Housing Assistance Coordinator	LBC-01	City Clerk
Housing Operations Officer	LBC-01	City Clerk
Laboratory Services Officer	LBC-01	City Clerk
Manager- Housing Authority	LBC-01	City Clerk
Nursing Services Officer	LBC-01	City Clerk
Nutrition Services Officer	LBC-01	City Clerk
Physician Assistant	LBC-01	City Clerk
Physician Services Bureau Manager	LBC-01	City Clerk
Preventive Health Manager	LBC-01	City Clerk
Public Affairs Officer	LBC-01	City Clerk
Public Health Physician	LBC-01	City Clerk
Public Health Professional III	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk

**Total: 32**



# Conflict of Interest Code EXHIBIT A

**Entity:** City of Long Beach

**Agency:** Human Resources Department

Position	Disclosure Category	Files With
City Safety Officer	LBC-01	City Clerk
Consultant	LBC-01	City Clerk
Deputy Director-Human Resources	LBC-01	City Clerk
Director of Human Resources	LBC-01	City Clerk
Employee Benefits and Services Officer	LBC-01	City Clerk
Equal Opportunity/ADA Officer	LBC-01	City Clerk
Human Resource Officer	LBC-01	City Clerk
Manager - Administration	LBC-01	City Clerk
Manager - Labor Relations	LBC-01	City Clerk
Manager - Personnel Operations	LBC-01	City Clerk
Manager - Risk and Occupational Health Services	LBC-01	City Clerk
Occupational Health Services Officer	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk

**Total: 13**



# Conflict of Interest Code EXHIBIT A

**Entity:** City of Long Beach

**Agency:** Law Department

Position	Disclosure Category	Files With
Assistant City Attorney	LBC-01	City Clerk
Deputy City Attorney	LBC-01	City Clerk
Legal Administrator	LBC-01	City Clerk
Manager - Worker's Compensation	LBC-01	City Clerk
Principal Deputy City Attorney	LBC-01	City Clerk
Senior Deputy City Attorney	LBC-01	City Clerk

**Total: 6**

### **OFFICIALS WHO ARE SPECIFIED IN GOVERNMENT CODE SECTION 87200**

Officials who are specified in Government Code section 87200 (including officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701 (b)), are NOT subject to the Agency's Conflict of Interest Code, but are subject to the disclosure requirements of the Political Reform Act, Government Code section 87100, et seq. Gov't Code § 87203. These positions are listed here for informational purposes only.

The positions listed below are officials who are specified in Government Code section 87200:

City Attorney

Files with FPPC

The disclosure requirements for these positions are set forth in Government Code section 87200, et. seq. They require the disclosure of interests in real property in the agency's jurisdiction, as well as investments, business positions and sources of income (including gifts, loans and travel payments).



## Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: Legislative Department**

Position	Disclosure Category	Files With
Administrative Aide	LBC-01	City Clerk
Administrative Analyst	LBC-01	City Clerk
Chief of Staff - City Council	LBC-01	City Clerk
Chief of Staff - Office of the Mayor	LBC-01	City Clerk
Legislative Assistant	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk

**Total: 6**

**Entity: City of Long Beach**

**Agency: Library Services Department**

Position	Disclosure Category	Files With
Accounting Clerk	LBC-01	City Clerk
Administrative Analyst III	LBC-01	City Clerk
Administrative Officer	LBC-01	City Clerk
Director of Library Services	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Manager - Automated Services Bureau	LBC-01	City Clerk
Manager - Branch Library Services Bureau	LBC-01	City Clerk
Manager - Main Library Services Bureau	LBC-01	City Clerk

**Total: 8**



# Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: Long Beach Airport Department**

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Airport Engineering Officer	LBC-01	City Clerk
Commercial Management Officer	LBC-01	City Clerk
Consultant	LBC-01	City Clerk
Deputy Director	LBC-01	City Clerk
Director	LBC-01	City Clerk
Facilities Maintenance Officer	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Manager - Administration and Financial Services	LBC-01	City Clerk
Manager - Airport Operations	LBC-01	City Clerk
Noise Abatement Officer	LBC-01	City Clerk
Public Affairs Officer	LBC-01	City Clerk
Senior Civil Engineer	LBC-01	City Clerk
Special Projects Officer - Airport	LBC-01	City Clerk
Superintendent - Airport Operations	LBC-01	City Clerk
Superintendent - Safety and Security	LBC-01	City Clerk

**Total: 16**



## Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: Long Beach Transit**

Position	Disclosure Category	Files With
Buyer	LBC-01	City Clerk
Deputy Chief Executive Officer	LBC-01	City Clerk
Executive Director/Vice President - Financial Services	LBC-01	City Clerk
Executive Director/Vice President - Information Technology	LBC-01	City Clerk
Executive Director/VP - Maintenance & Infrastructure	LBC-01	City Clerk
Executive Director/VP - Organizational Development & Admin.	LBC-01	City Clerk
Executive Director/VP - Transit Services Delivery & Planning	LBC-01	City Clerk
Executive Director/VP Customer Relations & Communications	LBC-01	City Clerk
Manager - Infrastructure	LBC-01	City Clerk
Manager - Purchasing	LBC-01	City Clerk
President and Chief Executive Officer	LBC-01	City Clerk
Regulatory Compliance and Civil Rights Officer	LBC-01	City Clerk

**Total: 12**

**Entity: City of Long Beach**

**Agency: My Own Private Agency change**

Position	Disclosure Category	Files With
new position	LBC-01	City Clerk
new position x	LBC-01	City Clerk

**Total: 2**



# Conflict of Interest Code EXHIBIT A

**Entity:** City of Long Beach

**Agency:** Parks, Recreation and Marine Department

Position	Disclosure Category	Files With
Administrative Analyst	LBC-01	City Clerk
Community Information Officer	LBC-01	City Clerk
Contract Management Officer	LBC-01	City Clerk
Department Safety Officer	LBC-01	City Clerk
Director	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Manager - Animal Care Services	LBC-01	City Clerk
Manager - Business Operations	LBC-01	City Clerk
Manager - Maintenance Operations	LBC-01	City Clerk
Manager - Marine Operations	LBC-01	City Clerk
Manager - Park Planning	LBC-01	City Clerk
Manager - Recreation Services	LBC-01	City Clerk
Park Development Officer	LBC-01	City Clerk
Recreation Superintendent	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Superintendent - Marina Operations	LBC-01	City Clerk
Superintendent - Park Maintenance	LBC-01	City Clerk
Superintendent - Personnel and Training	LBC-01	City Clerk

**Total: 19**



## Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: Police Department**

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Assistant Chief of Police	LBC-01	City Clerk
Chief Financial Officer	LBC-01	City Clerk
Chief of Police	LBC-01	City Clerk
Deputy Chief of Police	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Forensic Science Services Administrator	LBC-01	City Clerk
Jail Administrator	LBC-01	City Clerk
Police Admin Bureau Chief	LBC-01	City Clerk
Police Commander	LBC-01	City Clerk
Police Records Administrator	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk

**Total: 12**

**Entity: City of Long Beach**

**Agency: Public Works Department**

Position	Disclosure Category	Files With
Administrative Officer - Budget Services	LBC-01	City Clerk
Administrative Officer - Personnel Services	LBC-01	City Clerk
Assistant City Engineer	LBC-01	City Clerk
Assistant City Traffic Engineer	LBC-01	City Clerk
Capital Projects Coordinator	LBC-01	City Clerk
City Engineer	LBC-01	City Clerk
City Traffic Engineer	LBC-01	City Clerk
Community Projects Officer	LBC-01	City Clerk
Community Relations Officer	LBC-01	City Clerk
Construction Services Officer	LBC-01	City Clerk
Consultant	LBC-01	City Clerk





## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Customer Relations Officer	LBC-01	City Clerk
Department Safety Officer	LBC-01	City Clerk
Director	LBC-01	City Clerk
Environmental Compliance/Stormwater Officer	LBC-01	City Clerk
Executive Assistant	LBC-01	City Clerk
Facilities Management Officer	LBC-01	City Clerk
General Superintendent - Operations	LBC-01	City Clerk
Manager - Business Operations	LBC-01	City Clerk
Manager - Environmental Services	LBC-01	City Clerk
Manager - Project Management	LBC-01	City Clerk
Manager - Public Services	LBC-01	City Clerk
Mobility and Healthy Living Programs Officer	LBC-01	City Clerk
Recycling & Sustainability Officer	LBC-01	City Clerk
Senior Civil Engineer	LBC-01	City Clerk
Senior Traffic Engineer	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Superintendent - Refuse & Street Sweeping	LBC-01	City Clerk
Superintendent - Street Maintenance	LBC-01	City Clerk
Superintendent - Street Sweeping	LBC-01	City Clerk
Superintendent - Traffic Operations	LBC-01	City Clerk
Waste Management Officer	LBC-01	City Clerk

**Total: 32**



## Conflict of Interest Code EXHIBIT A

**Entity:** City of Long Beach

**Agency:** Technology & Innovation Department

Position	Disclosure Category	Files With
Administrative Officer	LBC-01	City Clerk
Business Information Technology Officer	LBC-01	City Clerk
Customer Services Officer	LBC-01	City Clerk
Cyber Security Officer	LBC-01	City Clerk
Data Center Officer	LBC-01	City Clerk
Deputy Director	LBC-01	City Clerk
Director of Technology & Innovation	LBC-01	City Clerk
Financial Services Officer	LBC-01	City Clerk
Information Systems Officer	LBC-01	City Clerk
Manager, Business Operations	LBC-01	City Clerk
Manager, Digital Services	LBC-01	City Clerk
Manager, Enterprise Information Services	LBC-01	City Clerk
Manager, Infrastructure Services	LBC-01	City Clerk
Manager, Technology Engagement and Support	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Telecommunications Officer	LBC-01	City Clerk
Video Communications Officer	LBC-01	City Clerk
Wireless Communications Officer	LBC-01	City Clerk

**Total: 18**

**Entity:** City of Long Beach

**Agency:** Test Agency for Training

Position	Disclosure Category	Files With
super supe	LBC-01	City Clerk
Test - Form 800s	LBC-01	City Clerk
Test Position	LBC-01	City Clerk

**Total: 3**



# Conflict of Interest Code EXHIBIT A

**Entity: City of Long Beach**

**Agency: Water Department**

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



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Executive Assistant to the Board of Water Commissioners	LBC-01	City Clerk
Executive Assistant to the General Manager	LBC-01	City Clerk
Executive Secretary	LBC-01	City Clerk
Garage Supervisor I	LBC-01	City Clerk
Garage Supervisor II	LBC-01	City Clerk
General Manager - Water	LBC-01	City Clerk
Laboratory Services Officer	LBC-01	City Clerk
Manager, Administration	LBC-01	City Clerk
Manager, Budget and Rates	LBC-01	City Clerk
Manager, Business Development	LBC-01	City Clerk
Manager, Engineering	LBC-01	City Clerk
Manager, Finance	LBC-01	City Clerk
Manager, Government & Public Affairs	LBC-01	City Clerk
Manager, Information Services	LBC-01	City Clerk
Manager, Planning	LBC-01	City Clerk
Manager, Security and Emergency Preparedness	LBC-01	City Clerk
Manager, Water Process	LBC-01	City Clerk
Manager, Water Quality	LBC-01	City Clerk
Manager, Water Quality & Process	LBC-01	City Clerk
Manager, Water Resources	LBC-01	City Clerk
Network Administrator	LBC-01	City Clerk
Office Administrator	LBC-01	City Clerk
Principal Construction Inspector	LBC-01	City Clerk
Procurement & Warehouse Officer	LBC-01	City Clerk
Public Information Officer	LBC-01	City Clerk
Safety Specialist I	LBC-01	City Clerk
Safety Specialist II	LBC-01	City Clerk
Safety Specialist III	LBC-01	City Clerk
Senior Civil Engineer	LBC-01	City Clerk
Senior Program Manager - Water	LBC-01	City Clerk
Special Projects Officer	LBC-01	City Clerk
Superintendent of Sewer Operations	LBC-01	City Clerk
Superintendent of Support Services	LBC-01	City Clerk



## Conflict of Interest Code EXHIBIT A

Position	Disclosure Category	Files With
Superintendent of Water Construction	LBC-01	City Clerk
Superintendent of Water Services	LBC-01	City Clerk
Superintendent of Water Treatment	LBC-01	City Clerk
Supervisor - Facilities Maintenance	LBC-01	City Clerk
Supervisor - Stores & Property	LBC-01	City Clerk
Water Support Services Supervisor	LBC-01	City Clerk

**Total: 70**

# ATTACHMENT **3**



# An Overview of Conflicts of Interest Under the Political Reform Act

May 2022

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## I. The Basic Prohibition

Government Code Section 87100 of the Political Reform Act (the “Act”)<sup>1</sup> 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. Government Code Section 87103 provides that an official has a “financial interest” within the meaning of Section 87100 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 Section 87103 distinguishable from the decision’s effect on the public generally.

## II. Making, Participating in Making, or Attempting to Influence a Decision

Regulation 18704 defines “making a decision,” “participating in a decision,” and “using official position to attempt to influence a decision” for purposes of the Act’s conflict of interest provisions. If an official has a disqualifying conflict of interest under Section 87100, the official is prohibited from making, participating in making, or attempting in any way to use the official’s official position to influence the decision.

### A. General Definitions

**Making a Decision:** An official makes 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. (Regulation 18704(a).)

**Participating in a Decision:** An official participates 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. (Regulation 18704(b).)

**Using Official Position to Attempt to Influence a Decision:** An official uses an official position 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. (Regulation 18704(c).)



## B. Exceptions

Regulation 18704(d) provides that “making, participating in, or using official position to influence a decision” do not include any of the following:

**Ministerial:** Actions that are solely ministerial, secretarial, or clerical. (Regulation 18704(d)(1).)

**Appearances as a Member of the General Public:** An appearance by an 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 official’s personal interests, including interests in:

- Real property owned entirely by the official, members of the official’s immediate family, or the official and members of the official’s immediate family;
- A business owned entirely by the official, members of the official’s immediate family, or the official and members of the official’s immediate family; or
- A business over which the official, members of the official’s immediate family, or the official and members of the official’s immediate family solely or jointly exercise full direction and control. (Regulation 18704(d)(2).)

**Terms of Employment:** Actions by an official relating to the official’s compensation or the terms or conditions of the official’s 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 the official’s immediate family, or set a salary for the official or the official’s immediate family different from salaries paid to other employees of the agency in the same job classification or position. (Regulation 18704(d)(3).)

**Public Speaking:** Communications by an official to the general public or media. (Regulation 18704(d)(4).)

**Academic Decisions:** Teaching decisions, including an instructor’s selection of books or other educational materials at the official’s own school or institution, or other similar decisions incidental to teaching; or decisions by an official who has teaching or research responsibilities at an institution of higher education relating to the official’s professional responsibilities, including applying for funds, allocating resources, and all decisions relating to the manner or methodology with which the official’s academic study or research will be conducted. (Regulation 18704(d)(5).) However, this exception does not apply to an official who has institution-wide administrative responsibilities as to the approval or review of academic study or research at the institution unrelated to the official’s own work. (*Ibid.*)

**Architectural and 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. (Regulation 18704(d)(6)(A).)

Also, 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 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 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. (Regulation 18704(d)(6)(B).)

**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. (Regulation 18704(d)(7).)

### III. Financial Interests

The first step in determining whether an official has a disqualifying conflict of interest under the Act is identifying the official's financial interests with respect to the decision at issue. Section 87103 identifies the following financial interests which may give rise to an official's disqualifying conflict of interest under the Act:

- A business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- Real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- A source of income totaling \$500 or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made. (Section 87103(c).)
- A giver of a gift or gifts totaling \$500<sup>2</sup> or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made. (Section 87103(e).)
- The official's personal finances and those of "immediate family," defined in Section 82029 as the spouse and dependent children. (Section 87103.)

## IV. Foreseeability of Financial Effect

### A. 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. (Regulation (18701(a).) 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.<sup>3</sup> Additionally, an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6), discussed further below. (*Ibid.*)

### B. 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. (Regulation 18701(b).)

Factors to be considered 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). (Regulation 18701(b)(1).)
- 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. (Regulation 18701(b)(2).)
- Whether the official has an interest of the type that would typically be affected by the terms of the decision. (Regulation 18701(b)(3).)
- 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. (*Ibid.*)
- 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. (Regulation 18701(b)(4).)
- Whether the decision will provide or deny an opportunity, or create an advantage for one of the official's financial interests. (Regulation 18701(b)(5).)

- 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. (Regulation 18701(b)(6).)

## V. Materiality Standards

Regulation 18702(a) provides that the next step in the analysis is 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, then apply the materiality standards of Regulation 18702.1. (Regulation 18702(a)(1).)
- A real property, then apply the materiality standards of Regulation 18702.2. (Regulation 18702(a)(2).)
- A source of income, then apply the materiality standards of Regulation 18702.3. (Regulation 18702(a)(3).)
- A source of a gift or gifts, then apply the materiality standards of 18702.4. (Regulation 18702(a)(4).)
- Their personal finances or those of immediate family, then apply materiality standard of 18702.5. (Regulation 18702(a)(5).)

### A. Business Entity Interests

Regulation 18702.1 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on a business in which an official has an interest, and provides that the effect is material if any of the following standards is met:

- The business is explicitly involved in the decision, meaning that the business is "a named party in, or the subject of, the decision, including any decision in which the business:
  - Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the business with the official's agency. (Regulation 18702.1(a)(1)(A).)
  - Offers to sell a product or service to the official's agency. (Regulation 18702.1(a)(1)(B).)
  - Bids on, or enters into, a contract with the official's agency, or is identified as a subcontractor on a bid or contract with the agency. (Regulation 18702.1(a)(1)(C).)
  - Is the named or intended manufacturer or vendor of any products to be purchased by the official's agency with an aggregate cost of \$1,000 in any 12-month period. (Regulation 18702.1(a)(1)(D).)

- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the official's agency. (Regulation 18702.1(a)(1)(E).)
- Is the subject of any inspection, action, or proceeding under the regulatory authority of the official's agency. (Regulation 18702.1(a)(1)(F).)
- Is subject to an action taken by the official's agency that is directed at the entity. (Regulation 18702.1(a)(1)(G).)
- The decision may result in an increase or decrease of the business's annual gross revenues, or the value of its assets and liabilities, in an amount equal to or more than:
  - \$1,000,000; or
  - Five percent of the business's annual gross revenues, and the increase or decrease is \$10,000 or more. (Regulation 18702.1(a)(2).)
- The decision may cause the business to incur or avoid additional expenses or to reduce or eliminate expenses in amount equal to or more than:
  - \$250,000; or
  - One percent of the business's annual gross revenues, and the increase or decrease is at least \$2,500. (Regulation 18702.1(a)(3).)
- The official knows or has reason to know that business has an interest in real property and:
  - The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or
  - There is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.1(a)(4).)

Thus, if the decision's reasonably foreseeable financial effect on an official's business interest meets any of the four standards above, that effect is material, and the official is disqualified from taking part in the decision.

**Small Shareholder Exception:** Regulation 18702.1(b) sets forth the "Small Shareholder Exception," which provides that a decision's reasonably foreseeable financial effect on an official's financial interest in a business is not material under Regulation 18702.1(a)(1) or (a)(4)(A) if both:

- The official's only financial interest in the business is an "investment interest" under Section 87103(a) valued at \$25,000 or less; and
- The official's interest in the business is less than one percent of the business's shares.

If the Small Shareholder Exception applies, the official is not disqualified.

## B. Real Property Interests

Regulation 18702.2 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on real property in which an official has an interest as either an owner or lessee.

**Explicitly Involved Real Property Interest:** It is reasonably foreseeable a decision will have a material financial effect on an official's interest in real property any time the interest is explicitly involved in the decision. Therefore, the decision's reasonably foreseeable effect is material in any of the types of decisions described in Regulation 18702.2(a)(1) to (6), including a decision that:

- Involves the adoption of or amendment to a development plan or criteria applying to the property. (Regulation 18702.2(a)(1).)
- Determines the property's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries. (Regulation 18702.2(a)(2).)
- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the property. (Regulation 18702.2(a)(3).)
- Authorizes the sale, purchase, or lease of the property. (Regulation 18702.2(a)(4).)
- Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on, the property. (Regulation 18702.2(a)(5).)
- Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. (Regulation 18702.2(a)(6).)

**Not Explicitly Involved Real Property Interest:** A decision's reasonably foreseeable financial effect on an official's interest in real property is material if it is of a type described in Regulation 18702.2(a)(7) through (8), (b) or (c), including a decision that:

- Involves property located 500 feet or less from the official's property unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)
- Involves property located more than 500 feet but less than 1,000 feet from the official's property, and the decision would change the official's property's: development potential; income producing potential; highest and best use; character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or market value (Regulation 18702.2(a)(8)(A) through (E).)

- Involves property located 1,000 feet or more from the property line of the official's property if there is clear and convincing evidence the decision would have a substantial effect on the official's property. (Regulation 18702.2(b).)
- Involves property leased by the official and the decision will:
  - Change the termination date of the lease;
  - Increase or decrease the potential rental value of the property;
  - Change the official's actual or legally allowable use of the property; or
  - Change the official's use and enjoyment of the property. (Regulation 18702.2(c)(1) through (4).)

**Real Property Interest 1,000 Feet or More from Property Involved in Decision:** As mentioned above, Regulation 18702.2(b) sets forth a presumption that the financial effect of a decision involving property located 1,000 feet or more from the property line of the official's property is not material. That presumption, however, may be rebutted with clear and convincing evidence the decision would have a substantial effect on the official's real property interest.

**Exceptions for Planning Objectives or Policy:** A decision's reasonably foreseeable financial effect on an official's real property interest is not material, and therefore the official is not disqualified from the decision, if the decision solely concerns:

- Repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities. (Regulation 18702.2(d)(1).)
- Adoption or amendment of a general plan, as defined in Regulation 18702.2(e)(2), if certain specified conditions are met. (See Regulation 18702.2(d)(2).)

**Common Area Exception to the Definition of Interest in Real Property:** Regulation 18702.2(e)(4) provides that an "interest in real property," as defined in Section 82033, does not include "any common area as part of the official's ownership interest in a common interest development as defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq.)"

### C. Source of Income Interests

Regulation 18702.3 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on a source of income to an official, and provides that the effect is material if any of the following criteria is met:

- The source is explicitly involved in the decision because it is "a named party in, or the subject of, the decision," including a claimant, applicant, respondent, or contracting party. (Regulation 18702.3(a)(1).)
- The source is an individual and any of the following applies:

- The decision may affect the individual's income, investments, or other assets or liabilities by \$1,000 or more (excluding an interest in a business entity or real property). (Regulation 18702.3(a)(2)(A).)
- The official knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the materiality standards applicable to a business set forth in Regulation 18702.1. (Regulation 18702.3(a)(2)(B).)
- The official knows or has reason to know that the individual: (i) has a real property interest and the property is explicitly involved in the decision; or (ii) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(2)(C).)
- The source is a nonprofit organization and any of the following applies:
  - The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than: (i) \$1,000,000; or (ii) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).)
  - The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: (i) \$250,000; or (ii) one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500. (Regulation 18702.3(a)(3)(B).)
  - The official knows or has reason to know that the organization has a real property interest and: (i) the property is explicitly involved in the decision; (ii) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)
- The source is a business that will be financially affected under the materiality standards applicable to a business set forth in Regulation 18702.1 (Regulation 18702.3(a)(4).)
- If there is a nexus between the decision and income received by the official or official's spouse. Otherwise referred to as the nexus test, any reasonably foreseeable financial effect on an official's source of income interest is material if the decision "will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receive or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

**Exception for Retail Sales:** Section 87103.5(a) provides that a retail customer of a business engaged in retail sales of good or services to the public generally is not a source of income to an official who owns a 10-percent or greater interest in the business if: the retail customers of the business constitute a significant segment of the public generally, and the amount of income received from an individual customer is not distinguishable from the amount of income received from its other customers.



Section 87103.5(b) sets forth a similar retail sales exception for a jurisdiction with a population of 10,000 or less that is located within a county with 350 or fewer retail businesses.

For purposes of applying Section 87103.5, Regulation 18702.3(c) provides that the retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction. (Regulation 18702.3(c)(1).)

Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the other customers of the business. (Regulation 18702.3(c)(2).) An official is unable to recognize a significant monetary difference when the business:

- Is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or
- Has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer. (*Ibid.*)

**Income from a Government Entity:** The materiality standards of Regulation 18702.3 do not apply where a government entity qualifies as a source of income as defined in Section 82030, including where an official is paid by the entity as a consultant or contractor. (Regulation 18702.3(d).) Under Regulation 18703(e)(7), an official with an interest in such an entity is disqualified from taking part in a decision only if there is a unique effect on the official. (*Ibid.*)

## D. Source of Gift Interests

Regulation 18702.4 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on the source of a gift to an official, and provides that the decision's effect is material if:

- The source is explicitly involved in the decision because the source "is named or otherwise identified as the subject of the proceeding," including a claimant, applicant, respondent, or contracting party. (Regulation 18702.4(a).)
- The source is an individual that will be financially affected under the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's personal finances set forth in Regulation 18702.5 or the official knows or has reason to know that the individual has an interest in a business or real property that will be financially affected under the materiality standards provided in Regulation 18702.1 or 18702.2, respectively. (Regulation 18702.4(b))

- The source is a nonprofit organization that will receive a measurable financial benefit or loss as a result of the decision or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the materiality standards in Regulation 18702.2. (Regulation 18702.4(c).)
- The source is a business that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.4(d).)

## E. Interest in Personal Finances

Regulation 18702.5(a) provides the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's personal finances, including those of immediate family. Also known as the personal financial effect rule, a reasonably foreseeable effect on the official's personal finances is material if the decision may result in the official or the official's immediate family receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision.

**Exceptions:** Under Regulation 18702.5(b), however, a decision's effect on an official's personal finances and those of immediate family is not material if the decision would:

- Affect only the salary, per diem, or reimbursement for expenses the official or their immediate family member receives from a federal, state, or local government agency, unless the decision is:
  - To appoint (except as specified), hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or their immediate family; or
  - To set a salary for the official or a member of their immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the mem of the official's immediate family is the only person in the job classification or position. (Regulation 18702.5(b)(1).)
- Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meeting of the group or body aggregating \$500 or more in any 12-month period, the effect is material unless the appointing body posts all of the following on its website:
  - A list of each appointed position and its term. (Regulation 18702.5(b)(2)(A).)
  - The amount of the stipend for each appointed position. (Regulation 18702.5(b)(2)(B).)
  - The name of the official who has been appointed to the position. (Regulation 18702.5(b)(2)(C).)

- The name of any official who has been appointed to be an alternate for the position. (Regulation 18702.5(b)(2)(D).)
- Appoint the official to be an officer of the governing body of which the official is already a member (such as a decision to appoint a city councilmember to be the city’s mayor.) (Regulation 18702.5(b)(3).)
- Establish or change the benefits or retirement plan of the official or the official’s immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group. (Regulation 18702.5(b)(4).)
- Result in the payment of any travel expenses incurred by the official or their immediate family while attending a meeting as an authorized representative of an agency. (Regulation 18702.5(b)(5).)
- Permit the official’s use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official’s duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty. (Regulation 18702.5(b)(6).)
- Result in the official’s receipt of any personal reward from their use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official’s approved travel expenses and is no different from the reward offered to the public. (Regulation 18702.5(b)(7).)

**Effect on Personal Finances and a Business or Real Property Interest:** If a decision would have a reasonably foreseeable financial effect on a business or real property interest of an official, any related effect on the official’s personal finances is not considered separately, and the effect is only analyzed under the respective materiality standards for business and real property interests, i.e. Regulations 18702.1 and 18702.2. (Regulation 18702.5(c).)

## VI. The Public Generally Exception

Under Section 87103, 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. Regulation 18703 sets forth the “Public Generally Exception.”

**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. (Regulation 18703(a).)

A “significant segment” of the public is defined as:

- At least 25 percent of:
  - All businesses or nonprofit entities within the official’s jurisdiction;
  - All real property, commercial real property, or residential real property within the official’s jurisdiction; or
  - All individuals within the official’s jurisdiction. (Regulation 18703(b)(1).)
- At least 15 percent of residential real property within the official’s jurisdiction if the only interest the official has in the decision is the official’s primary residence. (Regulation 18703(b)(2).)

A unique effect on an official’s financial interest includes a disproportionate effect on:

- The development potential or use of the official’s real property, or the income producing potential of the official’s real property or business;
- An official’s business or real property resulting from the proximity of a project that is the subject of a decision;
- An official’s interests in business entities or real properties resulting from the cumulative effect of the official’s multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;
- An official’s interest in a business or real property resulting from the official’s substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;
- A person’s income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; and
- An official’s personal finances or those of immediate family. (Regulation 18703(c)(1)-(6).)

“Jurisdiction” means:

- The jurisdiction of the state or local government agency as defined in Section 82035;
- The designated geographical area the official was elected to represent; or
- The area to which the official’s authority and duties are limited if not elected. (Regulation 18703(d).)

**Specific Rules for Special Circumstances:** Regulation 18703(e) also provides seven Specific Rules for Special Circumstances which govern the Public Generally Exception’s applicability in those special circumstances. Under these rules, 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:

- **Public Services and Utilities:** The decision sets or adjusts the amount of an assessment, tax, fee, or rate for water, utility, or other similar public services that is applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. However, an official is not permitted to take part in a decision that would impose the assessment, tax, or fee, or determine the boundaries of a property or who is subject to the assessment, tax, or fee. An official is only permitted to take part in setting or adjusting the assessment, tax, or fee amount, once other related decisions have already been made. (Regulation 18703(e)(1).)
- **General Use or Licensing Fees:** The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction. (Regulation 18703(e)(2).)
- **Limited Neighborhood Effects:** The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent, of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at a specific location. (Regulation 18703(e)(3).)
- **Rental Properties:** The decision is limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property, including a decision regarding a rent control ordinance or tenant protection measures, provided all of the following criteria are met:
  - The decision applies to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.). (Regulation 18703(e)(4)(A).)
  - The official owns three or fewer residential rental units. (Regulation 18703(e)(4)(B).)
  - Only interests resulting from the official's leasehold interest as a lessor of residential real property and the lessee or owner of the official's primary residence are affected by the decision. (Regulation 18703(e)(4)(C).)
- **Required Representative Interest:** The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented. (Regulation 18703(e)(5).)

- **State of Emergency:** The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency. (Regulation 18703(e)(6).)
- **Governmental Entities:** The decision affects a federal, state, or local government entity in which the official has an interest. (Regulation 18703(e)(7).)

## VII. Legally Required Participation

Section 87101 provides that the prohibition of Section 87100 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. However, the existence of a tied vote does not make the disqualified official's participation legally required.

**No Alternative Source of Decision:** Regulation 18705(a) provides that an official who is financially interested in a decision may establish that the official is legally required to make or to participate in the making of a decision within the meaning of Section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

**“Quorum” Defined:** Regulation 18705(d) provides that a “quorum” is the minimum number of members required to conduct business. 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:** Regulation 18705(c) 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 Section 87100 to vote to break a tie. (Regulation 18705(c)(1).)
- To allow a member of any agency who is otherwise disqualified under Section 87100 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. (Regulation 18705(c)(2).)

**Random Means of Selection:** Regulation 18705(c)(3) requires participation by the smallest number of officials with a conflict that are “legally required” for the decision to be made under Section 87101 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. (Regulation 18705(c)(3).)

## **Public Identification of an Otherwise Disqualified Official's Financial Interests in a Decision:**

Regulation 18705(b) 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 as follows:

- The official must disclose the existence of the conflict of interest and describe with particularity the nature of the official's disqualifying financial interest or interests. This requirement is satisfied if the official discloses:
  - The type of financial interest or interests involved in the decision, and;
  - Other specified information identifying the interest depending on the type of interest at issue.
- The official or another officer or employee of the agency must summarize the circumstances under which the conflict may arise.
- The official or another officer or employee of the agency must disclose the legal basis for the determination that there is no alternative source of decision.

**Manner of Disclosure:** The disclosures required by Regulation 18705(b) must be disclosed as follows:

- If the decision is made during an open session of a public meeting, the disclosures must be made orally before the decision is made;
- If the decision is made during a closed session of a public meeting, the disclosures must be made orally during open session either before the body goes into closed session or immediately thereafter;
- If the decision takes place outside of a public meeting, the disclosures must be made in writing; and
- In all three circumstances immediately above, the disclosures must be made part of the public record, as specified. (Regulation 18705(b)(4).)

## **VIII. Segmentation**

Under the Act's conflict of interest provisions, each governmental decision must be analyzed independently to determine if the decision will have a disqualifying effect on an official's financial interest. (*In re Owen* (1976) 2 FPPC Ops. 77.) Accordingly, 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 Regulation 18706.

**Required Conditions for Segmentation:** Regulation 18706(a) provides that an agency may segment a decision in which an official is financially interested, to allow the official

to participate in associated decisions in which the official is not financially interested, provided all the following conditions are met:

- The decision in which the official is financially interested can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
- The decision in which the official is financially interested is segmented from the other decisions;
- The decision in which the official is financially interested is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- Once the decision in which the official is financially interested has been made, the official's participation in associated decisions does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

**“Inextricably Interrelated”:** Regulation 18706(b) provides that decisions are “inextricably interrelated” when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

**Budget and General Plan Decisions Affecting Entire Jurisdiction:** Regulation 18706(c) provides that once all separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the official may participate in the final vote to adopt or reject the agency's budget or general plan.

## IX. Disqualification Requirements

Section 87105 governs the recusal of a public official specified in Section 87200 from a decision from which the official has been disqualified. Subdivisions (a)(1)-(3) of that section require 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. Subdivision (a)(4) excludes members of the Legislature from these recusal requirements.

Regulation 18707 provides further direction and guidance on the recusal requirements applicable to a public official specified in Section 87200 who is disqualified from a decision relating to an agenda item noticed for consideration at a public meeting subject to open meeting laws (i.e. the Bagley-Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.)).

**Form and Content of Public Identification:** The disqualified official must publicly identify each type of financial interest, identified in Section 87103, held by the official



that gives rise to the disqualifying conflict of interest. (Regulation 18707(a)(1).) The identification must be oral and part of the public record (Regulation 18707(a)(1)(B)), and provide the following information, as applicable:

- For a business interest: the name of the business, a general description of its activities, and any position held by the official. (Regulation 18707(a)(1)(A)(i).)
- For a real property interest: the property's address, assessor's number, or identification that the property is the official's personal residence. (Regulation 18707(a)(1)(A)(ii).)
- For a source of income interest: the name of the source of income. (Regulation 18707(a)(1)(A)(iii).)
- For a source of gift interest: the name of the source of gift. (Regulation 18707(a)(1)(A)(iv).)
- For all interests: the nature of the expense, liability, asset, or income affected. (Regulation 18707(a)(1)(A)(v).)

**Timing:** The public identification required by Regulation 18707(a)(1) must be made immediately prior to consideration of the agenda item. (Regulation 18707(a)(2).)

- Partial absence from a meeting does not excuse the disqualified official's public identification requirement. (*Ibid.*)
- If the official leaves a meeting in advance of an agenda item from which the official is disqualified, the official must provide the public identification required by Regulation 18707(a)(1) prior to leaving the meeting. (Regulation 18707(a)(2).)
- If the official first joins a meeting after consideration of the agenda item, the official must provide the public identification immediately upon joining the meeting. (*Ibid.*)

**Recusal and Leaving the Room:** The disqualified official must recuse, leave the room after the public identification required by Regulation 18707(a)(1), and refrain from participation in the decision. (Regulation 18707(a)(3).) The disqualified official does not count toward achieving a quorum while the item is discussed. (*Ibid.*)

- For an agenda item on a consent calendar (uncontested items), the official may remain in the room during the consent calendar. (Regulation 18707(a)(3)(A).)
- If the official has a "personal interest" in the agenda item, as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, the official may leave the dais and speak or observe from the area reserved for members of the public after making the public identification required by Regulation 18707(a)(1) and recusing. (Regulation 18707(a)(3)(B).)

**Special Rules for Closed Session:** The public identification required by Regulation 18707(a)(1) must be made orally during the open session before the body goes into

closed session and may be limited to a declaration that the official's recusal is because of a conflict of interest under Section 87100. (Regulation 18707(a)(4).) The declaration must be made part of the official public record. (*Ibid.*) The 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 decision. (*Ibid.*)

**Other Decisions:** For a decision other than an agenda item involving a public official specified in Section 87200 (governed by Regulation 18707(a)), Regulation 18707(b) provides the following:

- If the official determines not to act because of a financial interest, the official's determination may be accompanied by an oral or written disclosure of the interest.
- The official's presence will not be counted toward achieving a quorum.
- 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 decision.
- An agency may adopt a local rule requiring the official to step down from the dais or leave the chambers.

**Confidential Information:** Regulation 18707(c) expressly provides that nothing in Regulation 18707 is intended to cause any disclosure that would reveal the confidences of a closed session or any other privileged information contemplated by law, including privileged information under Regulation 18740.

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<sup>1</sup> 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 (the "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.

<sup>2</sup> We note that the annual gift limit is adjusted biennially. The current gift limit is prescribed in Regulation 18940.2. The adjusted annual gift limit amount in effect for the period January 1, 2021, to December 31, 2022, is \$520.

<sup>3</sup> For an official's interest in a business entity or real property, Regulation 18702.1(a) and Regulation 18702.2(a)(1)-(6), provide additional guidance for determining if the interest is explicitly involved.

# ATTACHMENT **4**



# An Overview of Section 1090 and FPPC Advice

October 2020

## I. Preliminary Matters

Government Code section 1090<sup>1</sup> prohibits an officer or employee from entering into or participating in making contracts in which they have a financial interest:

(a) 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.<sup>1</sup>

Section 1090 is a conflict of interest prohibition which has historically been subject to criminal penalties (if the violation is willful). As of January 1, 2014, Assembly Bill 1090 authorized the Fair Political Practices Commission (the "Commission") to seek and impose Administrative and Civil penalties against 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.<sup>2</sup>

Importantly, the Commission is now authorized to issue an opinion or advice to those persons subject to Section 1090.<sup>3</sup> However, it is prohibited from issuing an opinion or advice where it relates to past conduct.<sup>4</sup>

Upon receipt of a request for an opinion or advice, the Commission is required to forward a copy of each request for an opinion or advice to the Attorney General's office and the appropriate district attorney's office.<sup>5</sup> The Commission will forward the response, if any, to the requestor or advise that no response was received.<sup>6</sup> The lack of any response does not indicate that those entities concur with the Commission's advice or opinion.<sup>7</sup>

Any opinion or advice issued by the Commission can be "offered as evidence of good faith conduct by the requester in an enforcement proceeding, if the requester truthfully disclosed all material facts and committed the acts complained of in reliance on the opinion or advice."<sup>8</sup> The opinion or advice is only admissible as to the requester in a proceeding brought by the Commission pursuant to Section 1097.1.<sup>9</sup>

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<sup>1</sup> All subsequent statutory references are to the California Government Code, unless otherwise stated.

## II. Purpose

In *Thomson v. Call* (1985) 38 Cal.3d 633, the California Supreme Court explained the purpose underlying Section 1090:

[E]xamination of the goals and policy concerns underlying section 1090 convinces us of the logic and reasonableness of the trial court's solution. In *San Diego v. S.D. & L.A.R.R. Co.*, *supra*, 44 Cal. 106, we recognized the conflict-of-interest statutes' origins in the general principle that "no man can faithfully serve two masters whose interests are or may be in conflict": "The law, therefore, will not permit one who acts in a fiduciary capacity to deal with himself in his individual capacity. . . . For even if the honesty of the agency is unquestioned. . . yet the principal has in fact bargained for the exercise of all the skill, ability and industry of the agent, and he is entitled to demand the exertion of all this in his own favor." (44 Cal. at p. 113.) We reiterated this rationale more recently in *Stigall v. City of Taft*, *supra*, 58 Cal.2d 565: "The instant statutes [§ 1090 et seq.] are concerned with *any* interest, other than perhaps a remote or minimal interest, which would prevent the officials from exercising absolute loyalty and undivided allegiance to the best interests of the city." (58 Cal.2d at p. 569.)<sup>10</sup>

Furthermore, Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety."<sup>11</sup> A contract that violates Section 1090 is void.<sup>12</sup> 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.<sup>13</sup>

Courts have recognized that Section 1090's prohibition must be broadly construed and strictly enforced.<sup>14</sup> "An important, prophylactic statute such as Section 1090 should be construed broadly to close loopholes; it should not be constricted and enfeebled."<sup>15</sup>

Apart from voiding the contract, where a prohibited interest is found, the official who engaged in its making is subject to a host of civil and (if the violation was willful) criminal penalties, including imprisonment and disqualification from holding public office in perpetuity.<sup>16</sup>

## III. Application

### A. Historical and Modern Applications

Section 1090 codified the common law prohibition as to contracts in 1970 and has been broadly interpreted to cover most officials. On the other hand, the Political Reform Act (the “Act”) largely covers people who file Annual Statements of Economic Interests (Form 700). However, both laws are focused on people with influence over making, participating or influencing decisions.

Case law dating back to 1851, and Attorney General Opinions provide guidance as to interpretation of the law under Section 1090. In addition, the California Supreme Court has applied the “*in pari materia*” canon of statutory construction and concluded that Section 1090 should be harmonized with the Act’s conflict of interest provisions when possible.<sup>17</sup>

#### Advice Letters Issued

Since obtaining jurisdiction to provide advice under Section 1090 on January 1, 2014, the Commission has issued over [400](#) advice letters pertaining to Section 1090.

### B. Steps of Analysis

When providing advice, the Commission’s Legal Division generally uses a six-step analysis<sup>2</sup> 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?

We will discuss each of these analytical steps in detail below.

#### Step One: Is the official subject to the provisions of Section 1090?

Section 1090 provides, in part, that “[m]embers 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.” This means that Section 1090 applies to virtually all state and local officers, employees, and multimember bodies, whether elected or appointed, at both the state and local level. It also applies to certain consultants and independent contractors.

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<sup>2</sup> Typically, however, the analysis will focus on one step that is determinative of whether a prohibitory conflict exists.

Additionally, members of government boards are presumed to have made any contract executed by the board or an agency under its jurisdiction, even if the board member has disqualified themselves from participation in the making of the contract. If a board member is financially interested in the contract, and no exception applies, Section 1090 prohibits the contract from being made with the governmental entity even if the conflicted member recuses himself or herself.

When an employee of an agency, as opposed to a board member, has a financial conflict the employee's agency may enter into the contract as long as the employee plays no role in the contracting process.

### Independent Contractors

The California Supreme Court has affirmed that Section 1090's reference to "officers" applies to "outside advisors [independent contractors, including corporate consultants] with responsibilities for public contracting similar to those belonging to formal officers . . . ." <sup>18</sup> In other words, liability extends only to independent contractors who can be said to have been entrusted with "transact[ing] on behalf of the government." <sup>19</sup>

Occasionally, the Commission receives a request for advice asking whether a public entity that has entered a contract with an independent contractor to perform one phase of a project may enter a second contract with that independent contractor for a subsequent phase of the same project. In these situations, we generally employ a two-step test.

The first step, just discussed, is a determination of whether the independent contractor had responsibilities for public contracting on behalf of the public entity under the initial contract. If the answer is "no," the independent contractor is not subject to Section 1090 and the public entity may enter the subsequent contract with them for the same project. However, if any part of their contractual duties or responsibilities under the first contract involved public contracting, then the independent contractor is subject to Section 1090, and the analysis proceeds to the second step.

Under the second step, the analysis focuses on whether the independent contractor participated in making the subsequent contract for purposes of Section 1090, as discussed below, through its performance of the initial contract. If the answer is "no," the public entity may enter the subsequent contract with them for the same project. However, if the independent contractor is found to have participated in the making of the contract for purposes of Section 1090, the public entity may not enter into the subsequent contract.

### Example 1 (*Webber* Advice Letter, No. A-15-127)

A city had employed a consultant for several years that provided advice and assistance relating to sales and use tax. The consultant was a key source of information for certain sales tax agreements and helped develop one of the city's tax revenue sharing policies. We advised that the consultant performed a public function and exerted a sufficient amount of influence in those areas; therefore, the consultant was an employee of the city and Section 1090 applied to him.

### Example 2 (*Burns* Advice Letter, No. A-14-060)

A contract interim finance manager and a contract treasurer both participated in making governmental decisions and performed the same or substantially 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. Therefore, both positions were government employees subject to Section 1090.

### Example 3 (*Nakamura* Advice Letter, No. A-20-033)

An independent contractor was subject to Section 1090 where an initial contract required the contractor to provide both the concept design and 60% design documents that would be used as part of the City's design-build Request for Proposals with respect to a building restoration project. However, Section 1090 did not prohibit the City from entering a subsequent contract for design-build services with the independent contractor on the same project because the firm did not have an opportunity to influence the subsequent contract, and therefore did not participate in the making of that contract.

### Example 4 (*Shulz* Advice Letter, No. A-19-054)

The general contractor for a university wanted to hire a subcontractor to provide architectural design services for a project where the subcontractor performed a feasibility study under a previous contract with the university for the same project. Under the initial contract, it had no decision-making authority and had only performed conceptual design work for a new multi-use stadium at the direction of the University, which had been informed by years of internal university analysis and studies. Based on these facts, the subcontractor was not subject to Section 1090 in the first instance because it had no public contracting duties under the initial contract.



## Step Two: Does the decision involve a contract?

To determine whether a contract is involved in a decision, the Section 1090 analysis looks to general principles of contract law<sup>20</sup>, while keeping in mind that “specific rules applicable to Sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of ‘contract.’”<sup>21</sup> Under general principles of law, a contract is made on the mutual assent of the parties and consideration. If an agency agrees to a purchase, there is mutual assent by the parties and consideration. A basic element of a contract is consideration. If an entity provides a good or service without receiving any compensation, or other consideration, there is no contract.<sup>22</sup>

### Example 1 (*Bettenhausen* Advice Letter, No. A-16-229)

In the *Bettenhausen* Advice Letter, citing Attorney General opinions and case law, we advised that development agreements are contracts:

*A development agreement contemplates that both the city or county and the developer will agree to do or not to do certain things. Both parties will mutually consent to terms and conditions allowable under the law. Both will receive consideration. The developer will essentially receive the local agency’s assurance that he can complete the project. The local agency in turn will reap the benefit of the development, with all the conditions it might legitimately require, such as streets, parks, and other public improvements or facilities. (78 Ops.Cal.Atty.Gen. 230.)*

Also in *Bettenhausen*, we advised that decisions that are regulatory in nature do not necessarily involve contracts subject to Section 1090. For example, a corporation’s certificate of public convenience and necessity issued by the city to operate an ambulance service without a fee upon the service provider was determined to be a license and regulatory permit and therefore, not a contract.<sup>23</sup>

### Example 2 (*Diaz* Advice Letter, No. A-15-235)

A city council decision to adopt an ordinance to allow the city to participate in a community choice aggregation program through a JPA was akin to the certificate of public convenience and necessity described in Attorney General Opinion 84 Ops.Cal.Atty.Gen. 34, cited above. Like the certificate, the ordinance authorized a service provider to provide a service within the municipality’s jurisdiction without the imposition of a fee upon the service provider. Therefore, the ordinance was more like a license or regulatory permit and not a contract for purposes of Section 1090.

### Example 3 (*Hammond* Advice Letter, No. A-15-134)

A member of a Board of Supervisors owned a gas station that county employees used to fill their vehicles. Once a month the receipts were tallied and the county billed. There was no contract with the county for the gas and the price charged was the same for the general public. County employees made the decision to fill their tanks at the station. We advised that this situation did not constitute the type of contractual situation normally covered by Section 1090.

### Example 4 (*Burns* Advice Letter, No. A-16-223)

Like the purchase of a tank of gas, there was no contract between the county and a local bookstore owned by a member of the Board of Supervisors when for approximately 30 years several county department staff had chosen to purchase books from the bookstore. The decision to purchase books was made by staff within each department with no input from the Board of Supervisors. There was no contract between the county and the bookstore for books at a certain rate – nor was either party proposing to negotiate one. And presumably, the series of small purchases occasionally made by county staff, without input from the Board of Supervisors, were made on the same terms and conditions as those made by members of the general public.

## **Step Three: Is the official making or participating in making a contract?**

Section 1090 reaches beyond the officials who participate personally in the actual execution of the contract to capture those officials who participate in any way in the making of the contract:

The decisional law, therefore, has not interpreted section 1090 in a hypertechnical manner, but holds that an official (or a public employee) may be convicted of violation no matter whether he actually participated personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests.<sup>24</sup>

Therefore, participation in the making of a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids.<sup>25</sup> Additionally, resigning from a governmental position may not be sufficient to avoid a violation.<sup>26</sup> Furthermore, individuals in advisory positions can influence the development of a contract during

these early stages of the contracting process even though they have no actual power to execute the final contract.<sup>27</sup>

#### Example 1 (*Chadwick* Advice Letter, No. A-16-090)

Where an independent contractor prepared a city's traffic signal Master Plan, the contractor was prohibited under Section 1090 from entering a subsequent contract with the city to provide as-needed consulting services for a project to implement proposals it developed for the Master Plan. In this regard, the independent contractor participated in the preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications for the subsequent contract.

#### Example 2 (*Asuncion* Advice Letter, No. A-14-062)

Where the planning commission had no input into the city council's decision-making process at any stage with respect to a specific contract to be made by the city, the planning commission, and each of its members, will not be considered to have participated in the making of the contract. Therefore, Section 1090 would not prohibit the city council from approving a contract between the city and a planning commissioner in his private capacity on behalf of his business.<sup>28</sup>

#### Example 3 (*Webber* Advice Letter, No. A-15-127)

A long-time city consultant advised the city on issues concerning sales and use tax, including the city's economic development incentive program that provides for sales tax sharing. The consultant played an integral role in shaping the policies for city's program. Section 1090 prohibits the city from entering a sales tax sharing agreement with a corporation, contingent on the city also entering a separate agreement with the consultant's company, where such contract would result in financial gain for the consultant as a direct result of the program he helped to create.

When members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract.<sup>29</sup> And when Section 1090 applies to a member of a governing body of a public entity, in most cases, the prohibition cannot be avoided by having the interested board member abstain from the decision. Rather, the entire governing body is precluded from entering the contract.<sup>30</sup> Moreover, a body such as a city council cannot avoid application of Section 1090 by delegating its contracting authority to another individual or body.<sup>31</sup> However, a governmental board may avoid violating Section 1090 when the contract is made by an "independent" government official and that official does not have a conflict of interest.<sup>32</sup>

A decision to modify, extend, or renegotiate a contract constitutes involvement in the making of a contract under section 1090.<sup>33</sup>

#### Example 1 (*Headding* Advice Letter, No. A-16-219)

A City councilmember owned a pharmacy. Without involvement from the city council, staff from the fire department made all decisions regarding the purchase of morphine sulfate and versed. This arrangement was not sufficient to avoid a violation of Section 1090 in a contract between the fire department and pharmacy where the city council, who had the ultimate authority to approve city contracts, had delegated its authority to the fire department.<sup>34</sup>

#### Example 2 ( *Walter* Advice Letter, No. A-15-050)

No violation of Section 1090 occurred where the city manager, who had independent authority to enter contracts for specified professional services on behalf of the city, contracted with a company that employed the spouse of a councilmember.

Conversely, when an employee, rather than a board member, is financially interested in a contract, the employee's agency is prohibited from making the contract by Section 1090 only if the employee was involved in the contract-making process. Therefore, if the employee plays no role whatsoever in the contracting process (either because such participation is outside the scope of the employee's duties or because the employee disqualifies himself or herself from all such participation), the employee's agency is not prohibited from contracting with the employee or the business entity in which the employee is interested.<sup>35</sup>

### **Step Four: Does the official have a financial interest in the contract?**

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest," and officials are deemed to have a financial interest in a contract if they might profit from it in any way.<sup>36</sup> Although Section 1090 does not specifically define the term "financial interest," case law and Attorney General Opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain.<sup>37</sup> Therefore, "[h]owever devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void."<sup>38</sup>

Employees have been found to have a financial interest in a contract that involves their employer, even where the contract would not result in a change in income or directly involve the employee, because an employee has an overall interest in the financial success of the firm and continued employment.<sup>39</sup>

### Example 1 (*Gallien* Advice Letter, No. A-16-263)

A board member considered taking an employment position with a company that had current contracts with the board on which the official served. Because the board member could be influenced by a desire to maintain a favorable ongoing relationship and foster the prospect of future business opportunities with his future employer, Section 1090 prohibited both the board member and board from making further contracts or renegotiating existing contracts with the company.

### Example 2 (*Khuu* Advice Letter, No. I-14-107)

A councilmember worked for a firm that provided various consulting services to clients of the firm, some of whom had contracts with the city that would likely need to be renewed during the councilmember's term. Section 1090 prohibited the city council from renewing these contracts, as the councilmember would be influenced by a desire to "maintain favorable ongoing relationships" with not only the firm that employs him or her but also the clients of the firm seeking to renew a contract with the city, especially where the firm provides him a commission based upon clients brought in, and a year-end bonus based upon company-wide profits.

Generally, a member of a board or commission always has a financial interest in his or her spouse's source of income for purposes of Section 1090.<sup>40</sup>

### Example (*Kellner* Advice Letter, No. A-15-021)

Section 1090 prohibited a city councilmember and city council from approving a contract between the city and the firm that employs the councilmember's spouse where the contract could have affected the financial health of the firm and impact, among other things, the spouse's year-end bonus.<sup>41</sup>

## **Step 5: Does a statutory exception apply, such as a remote or noninterest exception?**

To determine whether an official has a "financial interest" in a contract within the meaning of Section 1090, it is appropriate to look to the provisions of the remote and noninterest exceptions contained in sections 1091 and 1091.5, respectively.<sup>42</sup>

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed a "remote interest" under Section 1091 or a "noninterest" under Section 1091.5. If a "remote interest" is present, the contract may be made if (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the officer abstains from any participation in the making of the

contract.<sup>43</sup> If a “noninterest” is present, the contract may be made without the officer’s abstention, and generally, a noninterest does not require disclosure.<sup>44</sup>

Below, we discuss some of the most frequently applicable exceptions:

*Remote Interest Exceptions (apply to members of multi-member bodies)*

**Section 1091(b)(1)** provides that an officer shall not be deemed to be interested in a contract if the officer has only a remote interest, which includes “[t]hat of an officer or employee of a . . . nonprofit corporation . . . .”

Example (*Becnel* Advice Letter, No. A-16-097)

A councilmember was executive director of a non-profit, 501(c)(3), which intended to enter into an agreement with the city. Based on the exception under Section 1091(b)(1), the councilmember could abstain and the city could enter into the agreement without her participation.

**Section 1091(b)(2)** provides that there is a “remote interest” when: (1) the private contracting party has 10 or more employees other than the officer; (2) the officer was employed by the private contracting party at least three years prior to initially joining the public body; (3) the officer owns less than 3% of the stock in the private contracting party; (4) the officer is not an officer or director of the private contracting party; and (5) the officer did not directly participate in formulating the bid of the private contracting party.

Example 1 (*Scully* Advice Letter, No. A-16-086)

A director of a board had not been employed by company for at least three years prior to becoming a director so he did not have a remote exception in potential future contracts between the district and the company.<sup>45</sup>

Example 2 (*Kellner* Advice Letter, No. A-15-021)

Although the company employing her spouse had more than 10 employees and the spouse had worked there for more than three years prior to councilmember taking office, the councilmember did not have a remote exception in future contracts between the city and her spouse’s employer because the spouse owned more than 3 percent of the shares of the company’s stock.

**Section 1091(b)(5)** provides that a public official who is a landlord or tenant of a contracting party has a remote interest in the contracts of that party.

Example (*Devaney* Advice Letter, No. A-14-142)

A councilmember owned a cottage that was leased to a tenant. A sewer back up resulted in property damage for the tenant who filed a claim with the city. The city council could approve reimbursement of and settlement with the councilmember's tenant for his property and displacement claims as long as the councilmember disclosed his remote financial interest, the interest was noted in the city council's official records, and the councilmember did not participate in making the agreement.

**Section 1091(b)(8)** provides that an official has a remote interest in a contract entered into by the body or board of which they are a member if he or she is a "supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office." Thus, a councilmember would have a financial interest in a contract entered into by the city council if he or she provides services to the party contracting with the city, but only a remote interest if those services were provided for at least five years prior to election to the City Council.

Example (*Khuu* Advice Letter, No. I-14-107)

A councilmember was employed by a firm that provided various services to clients who might enter into contracts with the city in the future. The remote interest under Section 1091(b)(8) did not apply where the councilmember had not been employed by the firm, and thus had not been providing services to the clients, for at least five years prior to his election to the city council.

**Section 1091(b)(15)** provides that an official has a remote interest when he or she is "a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

- (A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.
- (B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.
- (C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

### Example (*Van Ligten* Advice Letter, No. A-15-038)

A councilmember owned a condo that sat adjacent to and had views of a fairway on a golf course. The golf course sued the city over its deterioration due to the city's significant extraction of water from an aquifer used to water the golf course. The councilmember had only a remote interest in any future settlement agreement so long as the factors set forth in subdivisions (A) - (C) were satisfied. Although the councilmember was not technically a party to the lawsuit, it was clear from the legislative intent that a settlement agreement in which an official has a financial interest should be allowed where the three specified factors are satisfied.

### *Non-Interest Exceptions*

**Section 1091.5(a)(1)** provides that a public officer shall not be deemed to be interested in a contract if his or her interest meets the following criteria:

The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

### Example (*Sodergren* Advice Letter, No. A-16-155)

A mayor had no financial interest under Section 1090 in development-related agreements between the city and Costco where he owned 24 shares of Costco (which met the less than 3 percent threshold), and his total annual income from Costco dividends, or other payments, did not exceed 5 percent of his total annual income.

**Section 1091.5(a)(3)** provides an officer or employee is deemed not interested in a contract if his or her interest is “[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.”

The phrase “on the same terms and conditions” requires there be no special treatment of an official, either express or implied, because of that person's status as an official.<sup>46</sup> Accordingly, the public services exception generally will not apply when the provision of the service involves an exercise of discretion by the public body that would allow favoritism toward officials, or occurs on terms tailored to an official's particular circumstances.<sup>47</sup>



### Example 1 (*Hentschke* Advice Letter, No. A-14-187)

Board members had no financial interest in contracts with their agency stemming from a turf replacement program where the program was applied to each applicant in an identical manner. The method of choosing applicants was on a first-come, first-served basis, for as long as the program had funds available. Each applicant was required to be a current retail water customer, participate in a training course, replace existing turf with qualifying plants, and fill out the standard application form and agreement to program terms. While the program administrator did have some decision-making authority to determine that the replacement met all the program requirements (such as the amount of turf replaced and whether qualifying plants are used), the determination was essentially ministerial and did not involve discretion to pick and choose among applicants or to vary benefits from one applicant to the next.

### Example 2 (*Hodge* Advice Letter, No. A-14-012)

The exception to Section 1090 for “public services generally provided” did not apply to permit a councilmember to enter into a property tax savings contract with the city where the program required administering officials to exercise judgment and discretion not only in negotiating the terms of each contract, but also in the continued enforcement of those terms for the duration of the contract.

**Section 1091.5(a)(6)** provides that an officer or employee shall not be deemed to be interest in a contract if his or her interest is “[t]hat of a spouse of an officer or employee of a public agency in his or her spouse’s employment or officeholding if his or her spouse’s employment or officeholding has existed for at least one year prior to his or her election or appointment.”

This exception applies to a spouse who maintains “status quo” employment for over one year, but does not apply to changes in employment status beyond mere restructuring of a current position.

### Example (*Schwab* Advice Letter, No. A-19-193)

A county board of supervisors was prohibited, under Section 1090, from promoting a public officer from Assistant Director to Director of a county agency where that officer was married to one of the members of the county board of supervisors and the employment contract would constitute a change in status quo, such that the employment no longer “existed for at least one year prior to” the board member’s election to office.

**Section 1091.5(a)(8)** provides that an officer or employee shall not be deemed to be interested in a contract if his or her interest is:

That of a noncompensated officer of a nonprofit tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

#### Example 1 (*Sullivan* Advice Letter, No. A-15-121)

A vice-mayor, who was an uncompensated officer of a nonprofit, tax-exempt, organization that was determined to support an important function of the city, had a noninterest in a lease agreement between the city and the nonprofit organization.

#### Example 2 (*Parra* Advice Letter, No. A-19-100)

A city councilmember who worked as a non-compensated board member of nonprofit corporation with the objective of providing comprehensive health services to the medically underserved in a region that included the councilmember's city. Given that the nonprofit's primary purpose supported the functions of the city (as the city had an interest in achieving the same objective of maintaining the health of its citizens), the councilmember could permissibly take part in the city's negotiations and sale of property to the non-profit.

### Step Six: Does the rule of necessity apply?

In limited cases, the “rule of necessity” has been applied to allow the making of a contract that Section 1090 would otherwise prohibit.<sup>48</sup> The rule has been applied where public policy concerns authorize the contract and “ensures that essential government functions are performed even where a conflict of interest exists.”<sup>49</sup> The rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so.<sup>50</sup>

The rule of necessity has been applied in at least two specific types of situations:

1. In procurement situations for essential supplies or services when no source other than the one that triggers the conflict is available.
2. In non-procurement situations to carry out essential duties of the office when the official or board is the only one authorized to act.

It is important to note that the rule of necessity has only been applied in very limited situations. A city could obtain emergency nighttime services from a service station owned by a member of the city council, where the town was isolated and the

council member’s station was the only one in the area that was open.<sup>51</sup> A healthcare district in a remote area could advertise its services on a local radio station, even though one of the district’s directors was employed at the station. After exploring other outlets, it was clear that the radio station was the only source that would deliver the necessary information in an efficient, cost-effective, and timely manner.<sup>52</sup> What these situations have in common is the exigency of the circumstances such that delaying action to contract with a non-conflicted source would be to the detriment of the affected people.<sup>53</sup>

It is also important to note that “in the event that disqualifications are so numerous as to preclude attainment of a quorum, special rules may come into play. If a quorum is no longer available, the minimum necessary number of conflicted members may participate, with drawing lots or some other impartial method employed to select them.”<sup>54</sup>

#### Example 1 (*Ramos* Advice Letter, No. A-14-105)

A city was advised that the rule of necessity applied to some purchases made from the mayor’s hardware store in emergency situations. For the purchases, the city made efforts to explore all other avenues in most situations, including purchasing from and contracting with larger hardware stores that were out of the area. In some situations, however, emergencies could arise and the mayor’s hardware store would be the only option. Therefore, we advised the rule of necessity would allow the city to enter into the contracts with the mayor’s hardware store in such emergency situations, but the rule still prevented the mayor from participating in the decisions.

#### Example 2 (*Headding* Advice Letter, No. A-16-219)

A mayor owned a pharmacy that was the city fire department’s only source for purchasing specific quantities of life-saving medications. If the fire department was unable to purchase a specific quantity of the medications the fire department would have had to stop carrying them and lose certain certifications. We advised that the fire department was providing an essential emergency service to the public by carrying those medications - saving lives. Therefore, the “rule of necessity” exception applied to allow the fire department to purchase the medications from the mayor’s pharmacy despite the conflict of interest under Section 1090.

### Example 3 (*Devaney* Advice Letter, No. A-14-142)

A councilmember had a claim against the city for property damage caused by the city's sewer system. Only the city council had the authority to approve claims and settlements for larger amounts. If the city could not approve a settlement the parties would be forced to litigate a claim that could be settled outside of court. The settlement of claims deemed in their best interest is an essential and necessary function of any city. No other body or person was authorized to act. Looking to relevant case law we noted that the Supreme Court had "recognized a century ago that settlement agreements are highly favored as productive of peace and good will in the community, as well as 'reducing the expense and persistency of litigation. The need for settlements is greater than ever before. Without them our system of civil adjudication would quickly break down.'"<sup>55</sup> The rule of necessity applied and the city council could act on the councilmember's claim so long as the councilmember disqualified himself from participating in the decision in his official capacity.

### Example 4 (*Schroeter* Advice Letter, No. A-19-006)

A city council would ordinarily have been prohibited, under Section 1090, from contracting for airport repairs where the repairs would have affected a council member's business that leased property and operated out of the airport. Under the rule of necessity, the city council was permitted to proceed with the contracting process, without the financially interested council member's participation, so that the airport could meet FAA standards and continue to operate safely.

### Example 5 (*Dietrick* Advice Letter, No. A-15-174)

A councilmember had a financial interest in a contract between the city and a co-op involving an eroding hillside owned partially by the co-op and partially by the city. A report on a geotechnical inspection of the hillside concluded that the biggest immediate concern was the potential for falling debris to injure pedestrians or damage parked vehicles. The report noted that "there are several areas where slope failure or rockfall may be imminent" and that "[i]mmediate and decisive action is strongly recommended to avoid potentially serious injury to people and damage to property."

The city charter provided that the city council had the power to undertake all actions appropriate to the general welfare of its inhabitants that are not otherwise prohibited by State law. Because the protection and promotion of the general welfare of the City's inhabitants was an essential duty of the city council, and because the hillside erosion put the general welfare of the city's inhabitants at risk, we concluded that the rule of necessity applied, and the council could enter into one or more contracts with the co-op to stabilize the hillside. However, it was advised that the interested councilmember abstain from participating in the making of the contract or contracts.

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- <sup>1</sup> Gov. Code, § 1090, subd. (a).
- <sup>2</sup> Gov. Code, § 1097.1, subds. (a) & (b).
- <sup>3</sup> Gov. Code, § 1097.1, subd. (c)(2).
- <sup>4</sup> *Ibid.*
- <sup>5</sup> Gov. Code, § 1097.1, subd. (c)(3).
- <sup>6</sup> *Id.* at subd. (c)(4).
- <sup>7</sup> *Ibid.*
- <sup>8</sup> Gov. Code, § 1097.1, subd. (d).
- <sup>9</sup> Gov. Code, § 1097.1, subd. (d).
- <sup>10</sup> *Thomson v. Call* (1985) 38 Cal.3d 633, 647-648.
- <sup>11</sup> *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.
- <sup>12</sup> *Thomson, supra*, 38 Cal.3d at p. 646.
- <sup>13</sup> *Id.* at pp. 646-649.
- <sup>14</sup> *Stigall v. Taft* (1962) 58 Cal.2d 565, 569-571; *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 579-580; *City Council v. McKinley* (1978) 80 Cal.App.3d 204, 213.
- <sup>15</sup> *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1334.
- <sup>16</sup> See Gov. Code, § 1097; *People v. Honig* (1996) 48 Cal.App.4th 289, 317; 89 Ops.Cal.Atty.Gen. 121, 123 (2006).
- <sup>17</sup> *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090-91 (*in pari materia* means “of the same matter” or “on the same subject”).
- <sup>18</sup> *People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 237-240.
- <sup>19</sup> *Id.* at p. 240.
- <sup>20</sup> 84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234 (1995).
- <sup>21</sup> *Honig, supra*, 48 Cal.App.4th at p. 351, citing *Stigall, supra*, 58 Cal.2d at 569, 571; see also *Wilson Advice Letter No. A-16-269*.
- <sup>22</sup> *Webber Advice Letter, No. A-16-007*.
- <sup>23</sup> 84 Ops.Cal.Atty.Gen. 34; see also *Subriar v. City of Bakersfield* (1976) 59 Cal.App.3d 175; *Motor Transit Co. v. Railroad Commission* (1922) 189 Cal. 573, 580; *Copt-Air v. City of San Diego* (1971) 15 Cal.App.3d 984, 987.
- <sup>24</sup> *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.
- <sup>25</sup> *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.
- <sup>26</sup> See, e.g., *Stigall, supra*, 58 Cal.2d at pp. 569-571 (city councilmember involved in the making of a contract based on his involvement in the preliminary stages of the planning and negotiating process on the contract, even though he had resigned from the council prior to its vote on the contract); 81 Ops.Cal.Atty.Gen. 317 (1998) (council member could not participate in the establishment of a loan program and then leave office and apply for a loan); 66 Ops.Cal.Atty.Gen. 156, 159 (1983) (county employees could not propose agreement for consultant services, then resign, and provide such consulting services).
- <sup>27</sup> See, e.g., *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278, 291; *City Council v. McKinley* (1978) 80 Cal.App.3d 204 (member of Park and Recreation Board who owned a landscape architectural firm participated in the making of a contract in violation of Section 1090 where he was also a member of a committee created to advise the Board on the design, architecture, landscaping and technical planning of a Japanese garden).
- <sup>28</sup> See also *Williams Advice Letter, No. A-15-029* (CUSD Board of Trustees has no authority over and provides no input for contracts MiraCosta College enters into. Therefore, CUSD trustee may enter into a contract with MiraCosta in her private capacity as she will not be participating in the making of the contract in her official capacity for purposes of Section 1090).
- <sup>29</sup> *Thomson, supra*, 38 Cal.3d at pp. 645, 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).
- <sup>30</sup> *Thomson, supra*, at pp. 647-649; *Stigall, supra*, 58 Cal.2d at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).
- <sup>31</sup> See 87 Ops.Cal.Atty.Gen. 9 (2004); 88 Ops.Cal.Atty.Gen. 122 (2005).

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- <sup>32</sup> See, e.g., 81 Ops.Cal.Atty.Gen. 274 (1998); 57 Ops.Cal.Atty.Gen. 458 (1974).
- <sup>33</sup> See, e.g., *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191 (exercising a renewal option and adjusting the payment rates is making a contract within the meaning of Section 1090).
- <sup>34</sup> See also *Jernigan* Advice Letter, No. A-14-173 (city councilmember and city council do not avoid a violation of Section 1090 where city staff, upon authority delegated by the city council, makes the determination when to purchase glass from councilmember's business).
- <sup>35</sup> See 80 Ops.Cal.Atty.Gen. 41 (1997) (no Section 1090 violation where two firefighters, in their individual capacities, enter a contract with the city [upon recommendation of the fire chief] for the purchase of protective masks developed entirely on their own time and without the use of city materials).
- <sup>36</sup> *Honig, supra*, 48 Cal. App. 4th at p. 333.
- <sup>37</sup> *Thomson, supra*, 38 Cal.3d at pp. 645, 651-652; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002).
- <sup>38</sup> *People v. Deysher* (1934) 2 Cal.2d 141, 146.
- <sup>39</sup> 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).
- <sup>40</sup> See 78 Ops.Cal.Atty.Gen. 230, 235 (1995).
- <sup>41</sup> *Kellner* Advice Letter, No. A-15-021.
- <sup>42</sup> See, e.g., 85 Ops.Cal.Atty.Gen. 34, 36 (2002).
- <sup>43</sup> Section 1091(a); 88 Ops.Cal.Atty.Gen. 106, 108 (2005); 83 Ops.Cal.Atty.Gen. 246, 248 (2000).
- <sup>44</sup> *City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515; 84 Ops.Cal.Atty.Gen. 158, 159-160 (2001).
- <sup>45</sup> *Scully* Advice Letter, No. A-16-086.
- <sup>46</sup> *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1101.
- <sup>47</sup> *Lexin, supra* at 1088, 1100 n.28.
- <sup>48</sup> *Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal. App. 3d 311, 322.
- <sup>49</sup> *Ibid.*; See also 69 Ops.Cal.Atty.Gen. 102, 109 (1986).
- <sup>50</sup> *Lexin, supra*, at p. 1097.
- <sup>51</sup> 4 Ops.Cal.Atty.Gen. 264 (1944).
- <sup>52</sup> 88 Ops.Cal.Atty.Gen. 106 (2005).
- <sup>53</sup> See *Ramos* Advice Letter, No. A-14-105.
- <sup>54</sup> See 94 Ops. Cal. Atty. Gen. 100 n.43.
- <sup>55</sup> *Salmon Protection & Watershed Network v. County of Marin* (2012) 205 Cal. App. 4th 195, 201.

# ATTACHMENT **5**



# A Quick Guide to Section 1090

October 2020

## What is “Section 1090”?

Government Code Section 1090 provides, in part, that “[m]embers 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.”<sup>1</sup>

## What is the purpose of Section 1090?

Section 1090 “codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.”<sup>2</sup>

The prohibition is based on the rationale that a person cannot effectively serve two masters at the same time.<sup>3</sup> Therefore, Section 1090 is designed to apply to any situation that “would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the [public entity concerned].”<sup>4</sup> Section 1090’s goals include eliminating temptation, avoiding the appearance of impropriety, and assuring the public of the official’s undivided and uncompromised allegiance.<sup>5</sup>

Furthermore, Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.”<sup>6</sup>

## What if a contract violates Section 1090?

A contract that violates Section 1090 is void.<sup>7</sup> 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.<sup>8</sup>

## What are the consequences of a violation?

Apart from voiding the contract, where a prohibited interest is found, the official who engaged in its making is subject to a host of civil and (if the violation was willful) criminal penalties, including imprisonment and disqualification from holding public office in perpetuity.<sup>9</sup> The FPPC also may impose administrative penalties for violations of Section 1090.<sup>10</sup>



## How is Section 1090 applied and analyzed?

Courts have recognized that Section 1090's prohibition must be broadly construed and strictly enforced.<sup>11</sup> "An important, prophylactic statute such as Section 1090 should be construed broadly to close loopholes; it should not be constricted and enfeebled."<sup>12</sup> With this in mind, the determination of whether Section 1090 prohibits a particular contract generally requires the following questions to be analyzed:

### 1. Is the official subject to the provisions of Section 1090?

Section 1090 applies to virtually all state and local officers, employees, and multimember bodies, whether elected or appointed, at both the state and local level.

#### ***Independent Contractors***

In addition, the California Supreme Court recently affirmed that Section 1090's reference to "officers" applies to "outside advisors [independent contractors, including corporate consultants] with responsibilities for public contracting similar to those belonging to formal officers."<sup>13</sup> In other words, liability extends only to independent contractors who can be said to have been entrusted with "transact[ing] on behalf of the Government."<sup>14</sup>

Occasionally, the Commission receives a request for advice asking whether a public entity that has entered a contract with an independent contractor to perform one phase of a project may enter a second contract with that independent contractor for a subsequent phase of the same project. In these situations, we generally employ a two-step test.

The first step, just discussed, is a determination of whether the independent contractor had responsibilities for public contracting on behalf of the public entity under the initial contract. If the answer is "no," the independent contractor is not subject to Section 1090 and the public entity may enter the subsequent contract with them for the same project. However, if any part of their contractual duties or responsibilities under the first contract involved public contracting, then the independent contractor is subject to Section 1090, and the analysis proceeds to the second step.

Under the second step, the analysis focuses on whether the independent contractor participated in making the subsequent contract for purposes of Section 1090, as discussed below, through its performance of the initial contract. If the answer is "no," the public entity may enter the subsequent contract with them for the same project. However, if the independent contractor is found to have participated in the making of the contract for purposes of Section 1090, the public entity may not enter into the subsequent contract.

## 2. Does the decision involve a contract?

To determine whether a contract is involved in a decision, the Section 1090 analysis applies general principles of contract law<sup>15</sup>, while keeping in mind that “specific rules applicable to Sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of ‘contract.’”<sup>16</sup> Under general principles of law, a contract is made on the mutual assent of the parties and consideration.

## 3. Is the official making or participating in the making of a contract?

Section 1090 reaches beyond the officials who participate personally in the execution of the contract to include officials who participate in the making of the contract.

In *Sahlolbei, supra*, the Supreme Court explained that Section 1090 is to be construed broadly, including the meaning of what constitutes the “making” of a contract:

Recognizing the prophylactic purposes of conflicts statutes, the case law makes clear that section 1090 should be construed broadly to ensure that the public has the official’s “absolute loyalty and undivided allegiance.” (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) The focus is on the substance, not the form, of the challenged transaction, “disregard[ing] the technical relationships of the parties and look[ing] behind the veil which enshrouds their activities.” (*People v. Watson* (1971) 15 Cal.App.3d 28, 37.) To that end, we have held that the “making” of a contract for the purposes of section 1090 includes “planning, preliminary discussions, compromises, drawing of plans and specifications and solicitation of bids,” and not just the moment of signing. (*Stigall*, at p. 571.) Building on *Stigall*, the Courts of Appeal have explained that officials can be liable if they “had the opportunity to, and did, influence execution [of the contract] directly or indirectly to promote [their] personal interests.” (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.)<sup>17</sup>

Therefore, “the test is whether the officer or employee participated in the making of the contract in (their) official capacity.”<sup>18</sup>

A decision to modify, extend or renegotiate a contract constitutes involvement in the making of a contract under section 1090.<sup>19</sup>

When members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member participates in the making of the contract.<sup>20</sup> In most cases, this presumption cannot be avoided by having the interested board member abstain from the decision. Rather, the entire governing body is precluded from entering the contract.<sup>21</sup> However, if an agency

employee is financially interested in a contract, the employee's agency is not prohibited from making the contract so long as the employee does not participate in his or her official capacity.<sup>22</sup>

A governing body cannot avoid application of Section 1090 by delegating its contracting authority to another individual or body.<sup>23</sup> However, it may avoid violating Section 1090 if the contract is made by an "independent" government official and that official does not have a conflict of interest.<sup>24</sup>

Resigning from a governmental position may not be sufficient to avoid a violation.<sup>25</sup>

#### **4. Does the official have a financial interest in the contract?**

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest," and officials are deemed to have a financial interest in a contract if they might profit from it in any way.<sup>26</sup> Although Section 1090 does not specifically define the term "financial interest," case law and Attorney General Opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain.<sup>27</sup> "However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void."<sup>28</sup>

Employees generally have a financial interest in a contract that involves their employer, even where the contract would not result in a change in income or directly involve the employee, because an employee has an overall interest in the financial success of the firm and continued employment.<sup>29</sup> A member of a governing body always has a financial interest in his or her spouse's source of income for purposes of Section 1090.<sup>30</sup>

#### **5. Does a statutory exception apply, such as a remote or noninterest exception?**

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed a "remote interest" under Section 1091, or a "noninterest" under Section 1091.5. If a "remote interest," is present, the contract may be made if (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the officer abstains from any participation in the making of the contract.<sup>31</sup> If a "noninterest" is present, the contract may be made without the officer's abstention, and generally, a noninterest does not require disclosure.<sup>32</sup>

Remote interests apply only to members of multi-member bodies. Common remote interests in contracts include those situations where an official is:

- An officer or employee of a nonprofit corporation.

- Employed by a private contracting party that has 10 or more employees (other than the official) where he or she has been employed for at least three years prior to initially joining the public body, owns less than 3% of the stock, is not an officer or director, and did not directly participate in formulating the bid of the private contracting party.
- A landlord or tenant of a contracting party.
- A supplier of goods or services that have been supplied to the contracting party by the official for at least five years prior to his or her election or appointment to office.

Common noninterests in contracts include those situations where an official is:

- A recipient of public services generally provided by the public body or board of which they are a member, on the same terms and conditions as all other recipients.
- A noncompensated officer of a nonprofit tax-exempt corporation, which has at least one primary purpose that supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration.

## **6. Does the “Rule of Necessity” Apply?**

In limited cases, the “rule of necessity” has been applied to allow the making of a contract that Section 1090 would otherwise prohibit.<sup>33</sup> The rule has been applied where public policy concerns authorize the contract and “ensures that essential government functions are performed even where a conflict of interest exists.”<sup>34</sup> The rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so.<sup>35</sup>

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<sup>1</sup> Gov. Code Section 1090(a).

<sup>2</sup> *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1072.

<sup>3</sup> See *id.*, at p. 1073 (“If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality”).

<sup>4</sup> *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.

<sup>5</sup> *Thomson v. Call* (1985) 38 Cal.3d 633, 648.

<sup>6</sup> *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.

<sup>7</sup> *Thomson, supra*, 38 Cal.3d at p. 646.

<sup>8</sup> *Id.*, at pp. 646-649.

<sup>9</sup> See Gov. Code Section 1097; *People v. Honig* (1996) 48 Cal.App.4th 289, 317.

<sup>10</sup> Gov. Code Section 1097.1.

<sup>11</sup> *Stigall, supra*, 58 Cal.2d at pp. 569-571.

<sup>12</sup> *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1334.

<sup>13</sup> *People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 237-240.

<sup>14</sup> *Id.* at p. 240.

<sup>15</sup> 84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234 (1995).

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- <sup>16</sup> *People v. Honig*, *supra*, 48 Cal.App.4th at p. 351 citing *Stigall*, *supra*, 58 Cal.2d at pp. 569, 571.
- <sup>17</sup> *Id.* at p. 239.
- <sup>18</sup> *People v. Gnass* (2002) 101 Cal.App.4th 1271, 1292, quoting *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 236-237.
- <sup>19</sup> *City of Imperial Beach*, *supra*, 103 Cal.App.3d at p. 191.
- <sup>20</sup> *Thomson*, *supra*, 38 Cal.3d at pp. 645, 649.
- <sup>21</sup> *Id.* at pp. 647-649.
- <sup>22</sup> See, e.g., *County of Marin v. Dufficy* (1956) 144 Cal.App.2d 30, 37 (Section 1090 would not apply to a county physician's lease of office space to the county because the physician did not act in his official capacity with respect to the lease).
- <sup>23</sup> See 87 Ops.Cal.Atty.Gen. 9 (2004); 88 Ops.Cal.Atty.Gen. 122 (2005).
- <sup>24</sup> See e.g., 81 Ops.Cal.Atty.Gen. 274 (1998); 57 Ops.Cal.Atty.Gen. 458 (1974).
- <sup>25</sup> See, e.g., 66 Ops.Cal.Atty.Gen. 156, 159 (1983) (county employees could not propose agreement for consultant services, then resign, and provide such consulting services).
- <sup>26</sup> *People v. Honig*, *supra*, 48 Cal. App. 4th at p. 333.
- <sup>27</sup> *Thomson*, *supra*, 38 Cal.3d at pp. 645, 651-652.
- <sup>28</sup> *People v. Deysher* (1934) 2 Cal.2d 141, 146.
- <sup>29</sup> 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).
- <sup>30</sup> See 78 Ops.Cal.Atty.Gen. 230, 235 (1995).
- <sup>31</sup> Section 1091(a); 88 Ops.Cal.Atty.Gen. 106, 108 (2005).
- <sup>32</sup> *City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.
- <sup>33</sup> *Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal. App. 3d 311, 322.
- <sup>34</sup> *Ibid.*; see also 69 Ops.Cal.Atty.Gen. 102, 109 (1986).
- <sup>35</sup> *Lexin*, *supra*, 47 Cal.4th at p. 1097.