

Adopt 2 Cal. Code of Regs. Section 18702.3

18702.3. Material Financial Effect: Ownership Interest in Real Property Indirectly Involved in the Decision

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

(2) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or substantially improved services.

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

(b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision; unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a)(3)(A) or (a)(3)(B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the real property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

(c) For decisions which may affect an interest in real property but which do not involve a subject property from which the distances prescribed in subdivisions (a) and (b) can be determined, the monetary standards contained in subdivision (a)(3) (A) and (B) shall be applied.

(d) For a decision which is covered by subdivision (a)(3) or (b)(1) or (c), factors which ~~should~~ shall be considered in determining whether the decision will have the effects set forth in subdivision (a)(3)(A) or (B) include, but are not limited to:

(1) The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

(2) Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

(3) In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

(e) Redevelopment Decisions: For purposes of this section "the boundaries (or proposed boundaries) of the property which is the subject of the decision" are the boundaries (or proposed boundaries) of the redevelopment project area whenever the decision is a redevelopment decision to designate the survey area, to make findings of blight, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions.

AUTHORITY: Gov. Code Section 83112  
REFERENCE: Gov. Code Section 87103

## FINAL STATEMENT OF REASONS

### Adopt 2. Cal. Code of Regs. Section 18702.3

Situation Addressed: This regulation provides specific standards for determining the materiality of a decision's effect where it will affect real property in which an official has an ownership interest but which is not directly involved in the decision under Section 18702.1. Currently, the standard is much less detailed and is contained in Section 18702(b)(2), which is being repealed.

Purpose and Factual Basis: The most frequent types of decisions which must be analyzed as to whether their effects will be material involve circumstances where an official has an interest in real property which is not the subject of the decision. However, it is reasonably foreseeable that the property will be affected by a decision about some property nearby. The existing standard in Section 18702(b)(2) does not provide as much guidance as should be provided for analyzing these situations. The purpose of repealing that standard and adopting this regulation is to provide greater and more useful assistance in this regard.

The regulation contains a series of standards. Subdivision (a) requires disqualification when the decision involves real property located within a 300-foot radius of the official's property, unless the decision will have no financial effect on the official's property. The 300-foot radius is taken from planning law, which requires notice to owners of property whose property may be affected by a decision. Notice is required for properties situated within 300 feet of the subject property. (See, Government Code Sections 65854.5 and 66451.4.) An official would also be disqualified if the decision involves construction of or improvements to public facilities such as water, sewer or streets, which will result in the official's property receiving new or substantially improved services.

When a decision affects another's property which is more than 300 feet from the official's property, but within 2,500 feet of the official's property, the regulation provides standards for determining whether the effect will be material. The primary standard is the effect on the fair market value or the rental value of the official's property. The proposed regulation contains a range of values (\$2,000 to \$15,000). At the hearing on the regulations, the Commission will select one value as the standard. Subdivision (d) of the proposed regulation provides some factors to consider in determining whether the requisite change in value is likely to occur.

Subdivision (b) of the proposed regulation provides that a decision will not have a material financial effect when an official's property is located more than 2,500 feet from the subject property, unless certain criteria are met. First, there must be specific factors present which make it likely that the value of the official's property will be affected by the requisite amount. Furthermore, the official's property must be affected differently from most of the surrounding properties within a 2,500-foot radius of the official's property. This provision provides for some degree of certainty that an official is not disqualified from participating in decisions affecting another's property which is located a substantial distance from the official's property unless there are specific circumstances which dictate disqualification.

Subdivision (c) is a catch-all for dealing with those decisions affecting real property which are not site-specific or which directly involve an official's property but are excluded from coverage under Section 18702.1. For example, a decision to amend the set-back requirement for a particular zone would not have a "subject property" from which to measure a radius. Under such circumstances, the basic monetary test contained in subdivision (a)(3) would apply.

Studies and Reports Relied Upon: None

Cost Estimates: There is no potential cost impact on private persons or businesses; public agencies or school districts; small businesses; or local, state, or federal government.

Use of Specific Technologies or Equipment: None

Consideration of Alternatives: The Commission determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

Public Comments: Joan Gallo, the San Jose City Attorney wrote in support for the proposed changes to all of the materiality regulations (2 Cal. Code of Regs. 18702 et seq.). She indicated the proposed guidelines are significantly clearer and more readable than the prior regulations. She further urged the Commission to set dollar amounts in the materiality regulations which are reasonable in today's economic environment and substantial enough to be reasonably predictable.

The League of California Cities adopted a position of full support for the entire package of regulations. No changes were sought and none were necessary.

A joint comment was received from the Sunnyvale City Council and the League of California Cities. The comment expresses the two entities support for the entire package of regulations. At the hearing, Louis B. Green testified on behalf of both entities in support of the entire package.

At the hearing, Donald Clark, President of the County Counsel Association, testified on behalf of the Association in support of the entire package of regulations.

Lewis E. Graham, II, the mayor of the City of Brisbane wrote urging the Commission to select a value at a higher range of the scale to reflect the high property values in certain areas. The range noticed for consideration by the Commission was \$2,000 to \$15,000. The Commission selected the value of \$10,000 as the standard for determining whether the effect of a decision will be material.

Mayor Graham's second comment is in regard to defining what is a "significant segment of the public." This term is defined in 2 Cal. Code of Regs. Section 18703, which is a separate regulation that is not a part of this rulemaking proceeding.

The Commission may, in the future, revise 2 Cal. Code of Regs. Section 18703 to further define the term "significant segment of the public," but that is a separate matter.

Mayor Graham's last comment expresses the view that a distinction should be made between decisions which affect an official's principal office or residence.

The statute provides for no such distinction. In fact, financial effects on those types of real property interests are most likely to affect the impartiality of an official. Consequently, the Commission did not act to create such a distinction in the regulation.

Mayor Graham's last comment also raises the issue (again) of the "public generally" exception which is addressed in a separate regulation (2 Cal. Code of Regs. Section 18703).

Councilmember Charles D. B. Curry of Pacifica wrote with several comments. Councilmember Curry's first comment is that the Commission's regulations focus on the financial nature of conflicts of interest rather than philosophical or other subjective motives (such as "settlement of scores").

He is correct. The Political Reform Act's statutory conflict of interest provisions focus exclusively on financial

conflicts of interest. (Government Code Sections 87100 and 87103.) Consequently, the regulations focus on that subject. Thus, the Commission took no action to broaden the scope of the regulations to take into account philosophical conflicts.

Councilmember Curry's second comment (recommendation (1)), like Mayor Graham's comments, relates to the issue of defining a "significant segment of the public." This term is used in a separate regulation which is not part of this rulemaking proceeding. As stated in response to Mayor Graham's comments, the Commission may at a future date revise 2 Cal. Code of Regs. Section 18703.

Councilmember Curry's third comment (recommendation (2)) is similar to that expressed by Mayor Graham (whose letter seems to have been prompted by Councilmember Curry's earlier correspondence, which is attached to his statement). Again, it expresses the view that a distinction should be made between decisions affecting an official's principal residence and decisions affecting investment property.

Again, the statute provides for no such distinction and the Commission did not try to create one in the regulations.

Councilmember Curry's next comment (recommendation (3)) urges that in adopting 2 Cal. Code of Regs. Section 18702.3 the Commission select \$10,000 as the amount for an effect on real property to be considered material. The Commission selected \$10,000 as the amount.

Councilmember Curry's next comment (recommendation (4)) objects to the linear distance standard in 2 Cal. Code of Regs. Section 18702.3. He states that he is confused by and cannot understand the distance rule.

However, as can be seen from the comments received from the League of California Cities, the City of San Jose and the City of Sunnyvale, these regulations are praised as being much more understandable.

It appears that Councilmember Curry simply doesn't like the result when the rule is applied to his circumstance. The Commission has determined that within the 300-foot distance there is a strong likelihood of a material financial effect on an official's real property interests. The 300-foot rule is based on notice requirements in planning and zoning law. (Government Code Section 65091.)

Councilmember Curry further fears that the rule creates a "huge loophole" for owners of investment property in undeveloped areas. His dislike for developers is expressed throughout his statement.

Councilmember Curry's concerns about a "huge loophole" are not well-founded. It is unlikely that his hypothetical situation will occur. First, the Commission has determined that it is unlikely that a property situated a substantial distance (more than one-half mile) away will be impacted to a significant degree, unless special circumstances exist.

Those circumstances tie the nature of the decision to the particular property in which an official has an interest. It is unlikely that a decision with such special effects will impact on other surrounding properties in the same fashion, unless it impacts on all properties in between, as well.

The type of situation which Councilmember Curry is concerned with is much more likely to arise when the decision involves construction of improvements which will benefit the developer's undeveloped property. Such a situation would require disqualification under 2 Cal. Code of Regs. Section 18702.3(a)(2). The "linear foot" situation discussed by Councilmember Curry (2 Cal. Code of Regs. Section 18702.3(b)) would not be controlling in such a situation.

The Commission has chosen reasonable and rational guidelines for implementing the law. They are based upon standards which can be understood and applied, and are tied to standards in use elsewhere in planning law. The Commission's standards go to the heart of the purpose of the disqualification requirements.

It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties.

Witt v. Morrow (1977)  
70 Cal. App. 3d 817, 823

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