

1 Amend 2 Cal. Code Regs. Section 18705.2 to read:

2 **§ 18705.2. Materiality Standard: Economic Interests in Real Property. Material Financial**

3 **Effect on a Real Property – Standard.**

4 ~~(a) Directly involved real property.~~

5 ~~(1) Real property, other than leaseholds. The financial effect of a governmental decision~~
6 ~~on the real property is presumed to be material. This presumption may be rebutted by proof that~~
7 ~~it is not reasonably foreseeable that the governmental decision will have any financial effect on~~
8 ~~the real property.~~

9 ~~(2) Real property, leaseholds. The financial effect of a governmental decision on the real~~
10 ~~property in which an official holds a leasehold interest is presumed to be material. This~~
11 ~~presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental~~
12 ~~decision will have any effect on any of the following:~~

13 ~~(A) The termination date of the lease;~~

14 ~~(B) The amount of rent paid by the lessee for the leased real property, either positively or~~
15 ~~negatively;~~

16 ~~(C) The value of the lessee's right to sublease the real property, either positively or~~
17 ~~negatively;~~

18 ~~(D) The legally allowable use or the current use of the real property by the lessee; or~~

19 ~~(E) The use or enjoyment of the leased real property by the lessee.~~

20 ~~(b) Indirectly involved real property interests.~~

21 ~~(1) Real property, other than leaseholds. The financial effect of a governmental decision~~
22 ~~on real property which is indirectly involved in the governmental decision is presumed not to be~~
23 ~~material. This presumption may be rebutted by proof that there are specific circumstances~~

1 regarding the governmental decision, its financial effect, and the nature of the real property in
2 which the public official has an economic interest, which make it reasonably foreseeable that the
3 decision will have a material financial effect on the real property in which the public official has
4 an interest. Examples of specific circumstances that will be considered include, but are not
5 limited to, circumstances where the decision affects:

6 (A) The development potential or income producing potential of the real property in
7 which the official has an economic interest;

8 (B) The use of the real property in which the official has an economic interest;

9 (C) The character of the neighborhood including, but not limited to, substantial effects
10 on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the
11 neighborhood.

12 (2) Real property, leaseholds. The financial effect of a governmental decision on real
13 property in which a public official has a leasehold interest and which is indirectly involved in the
14 governmental decision is presumed not to be material. This presumption may be rebutted by
15 proof that there are specific circumstances regarding the governmental decision, its financial
16 effect, and the nature of the real property in which the public official has an economic interest,
17 which make it reasonably foreseeable that the governmental decision will:

18 (A) Change the legally allowable use of the leased real property, and the lessee has a
19 right to sublease the real property;

20 (B) Change the lessee's actual use of the real property;

21 (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of the
22 leased real property;

1 ~~(D) Increase or decrease the amount of rent for the leased real property by 5+ percent~~
2 ~~during any 12-month period following the decision; or~~

3 ~~(E) Result in a change in the termination date of the lease.~~

4 ~~Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,~~
5 ~~87102.6, 87102.8 and 87103, Government Code.~~

6 (a) Except as provided in subdivision (c) below, the reasonably foreseeable financial
7 effect of a governmental decision (listed below in (a)(1) through (a)(13) on a parcel of real
8 property in which an official has a financial interest, other than a leasehold interest, is material
9 whenever the governmental decision:

10 (1) Involves the adoption of or amendment to a general (except as provided below) or
11 specific plan, and the parcel is located within the proposed boundaries of the plan;

12 (2) Determines the parcel's zoning or rezoning (other than a zoning decision applicable to
13 all properties designated in that category), annexation or de-annexation, or inclusion in or
14 exclusion from any city, county, district, or other local government subdivision, or other
15 boundaries, other than elective district boundaries as determined by the California Citizen's
16 Redistricting Commission or any other agency where the governmental decision is to determine
17 boundaries for elective purposes;

18 (3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the
19 parcel;

20 (4) Authorizes the sale, purchase, or lease of the parcel;

21 (5) Involves the issuance, denial or revocation of a license, permit or other land use
22 entitlement authorizing a specific use of or improvement to the parcel or any variance that
23 changes the permitted use of, or restrictions placed on, that real property. For purposes of this

1 paragraph, any financial effect resulting from a governmental decision regarding permits or
2 licenses issued to the official's business entity when operating on the official's real property shall
3 be conclusively analyzed under Regulation 18705.1, rather than this paragraph, without any
4 separate consideration for any material financial affects on the official's real property as a result
5 of the decision;

6 (6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or
7 similar facilities, and the parcel in which the official has an interest will receive new or improved
8 services that are distinguishable from improvements and services that are provided to or received
9 by other similarly situated properties in the official's jurisdiction or where the official will
10 otherwise receive a disproportionate benefit or detriment by the decision;

11 (7) Would change the development potential of the parcel of real property;

12 (8) Would change the income producing potential of the parcel of real property in which
13 an official has a financial interest. However, if the real property contains a business entity,
14 including rental property, and the nature of the business entity remains unchanged, the
15 materiality standards under Regulation 18705.1 applicable to business entities would apply
16 instead;

17 (9) Would change the highest and best use of the parcel of real property in which the
18 official has a financial interest;

19 (10) Would change the character of the parcel of real property by substantially altering
20 traffic levels or intensity of use, including parking, of property surrounding the official's real
21 property parcel, the view, privacy, noise levels, or air quality, including odors, or any other
22 factors that would affect the market value of the real property parcel in which the official has a
23 financial interest;

1 **[OPTION]:** (11) (Regional Impacts) Would consider the land use designation, location
2 or development of a large scale project such as an entertainment center or park, stadium, arena,
3 concert venue, race track, and the property that is the subject of the decision is located within
4 **Option** [one/two/five] miles of the property lines of the real property, other than commercial
5 property containing a business entity where the materiality standards are analyzed under
6 Regulation 18705.1, unless there are facts indicating that there would be no reasonably
7 foreseeable measurable impact on the official's property;

8 (12) (Neighborhood Impacts) Would consider the land use designation, location or
9 development of a commercial center, housing development, industrial park, recreational park or
10 similar scale land use project and the property that is the subject of the decision is located within
11 one-half mile of the property lines of an official's real property, other than commercial property
12 other than commercial property containing a business entity where the materiality standards are
13 analyzed under Regulation 18705.1, unless there are facts indicating that there would be no
14 reasonably foreseeable measurable impact on the official's property;

15 (13) (Localized Impacts) Would consider a permit or license for an ongoing operational
16 activity on real property located either within one-half mile driving distance on any route to or
17 from the official's real property, other than commercial property containing a business entity
18 where the materiality standards are analyzed under Regulation 18705.1, unless there are facts
19 indicating that there would be no reasonably foreseeable measurable impact on the official's
20 property.

21 (14) Would consider any decision affecting real property value located within 500 feet of
22 the property line of the official's real property, other than commercial property containing a
23 business entity where the materiality standards are analyzed under Regulation 18705.1.

1 Notwithstanding this prohibition, the Commission may provide written advice allowing an
2 official to participate under these circumstances if the Commission determines that there are
3 sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the
4 official's property;

5 (15) Would cause a reasonably prudent person, using due care and consideration under
6 the circumstances, to believe that the governmental decision was of such a nature that its
7 reasonably foreseeable effect would influence the market value of the official's property.

8 (b) Leasehold Interests. Except as provided in subdivision (d) below, the reasonably
9 foreseeable financial effects of a governmental decision on any real property in which a
10 governmental official has a leasehold financial interest is material whenever: governmental
11 decision will:

12 (1) Change the termination date of the lease;

13 (2) Increase or decrease the potential rental value of the property;

14 (3) Increase or decrease the rental value of the property, and the official has a right to
15 sublease the property;

16 (4) Change the official's actual or legally allowable use of the real property;

17 (5) Impact the official's use and enjoyment of the real property.

18 (c) Exceptions:

19 (1) The decision solely concerns repairs, replacement or maintenance of existing streets,
20 water, sewer, storm drainage or similar facilities.

21 (2) The decision solely concerns the adoption or amendment of a general plan and all of
22 the following apply:

1 (A) The decision only identifies planning objectives or is otherwise exclusively one of
2 policy. A decision will not qualify under this subdivision if the decision is initiated by the public
3 official, by a person that is a financial interest to the public official, or by a person representing
4 either the public official or a financial interest to the public official.

5 (B) The decision requires a further decision or decisions by the public official's agency
6 before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or
7 the approval of or change to a zoning variance, land use ordinance, or specific plan or its
8 equivalent.

9 (C) The decision does not concern an identifiable parcel or parcels or development
10 project. A decision does not "concern an identifiable parcel or parcels" solely because, in the
11 proceeding before the agency in which the decision is made, the parcel or parcels are merely
12 included in an area depicted on a map or diagram offered in connection with the decision,
13 provided that the map or diagram depicts all parcels located within the agency's jurisdiction and
14 economic interests of the official are not singled out.

15 (D) The decision does not concern the agency's prior, concurrent, or subsequent approval
16 of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or
17 specific plan or its equivalent.

18 (d) Definitions -- General Plans. The definitions below apply to this regulation:

19 (1) A decision "solely concerns the adoption or amendment of a general plan" when the
20 decision, in the manner described in Sections 65301 and 65301.5, grants approval of, substitutes
21 for, or modifies any component of, a general plan, including elements, a statement of
22 development policies, maps, diagrams, and texts, or any other component setting forth
23 objectives, principles, standards, and plan proposals, as described in Sections 65302 and 65303.

1 (2) "General plan" means "general plan" as used in Sections 65300, et seq.

2 (3) "Specific plan" or its equivalent means a plan adopted by the jurisdiction to meet the
3 purposes described in Sections 65450, et seq.

4 (4) Real property in which an official has a financial interest does not include any
5 common area as part of the official's ownership interest in a common interest development as
6 defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 1350 et
7 seq.)

8 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,
9 87102.6, 87102.8 and 87103, Government Code.

10
11
12
13
14
15
16
17
18
19
20
21
22
23