

1 Repeal 2 Cal. Code Regs. Section 18707:

2 ~~§ 18707. Public Generally.~~

3 ~~(a) Introduction.~~

4 ~~Notwithstanding a determination that the reasonably foreseeable financial effect of a~~
5 ~~governmental decision on a public official's economic interests is material, a public official does~~
6 ~~not have a disqualifying conflict of interest in the governmental decision if the official can~~
7 ~~establish that the governmental decision will affect the public official's economic interests in a~~
8 ~~manner which is indistinguishable from the manner in which the decision will affect the public~~
9 ~~generally as set forth in 2 Cal. Code Regs. sections 18707.1-18707.10.~~

10 ~~(b) Steps to Determine Application of Public Generally. To determine if the effect of a~~
11 ~~decision is not distinguishable from the effect on the public generally as set forth in subdivision~~

12 ~~(a) of this regulation, apply Steps One through Four:~~

13 ~~(1) Step One: Identify each specific person or real property (economic interest) that is~~
14 ~~materially affected by the governmental decision.~~

15 ~~(2) Step Two: For each person or real property identified in Step One, determine the~~
16 ~~applicable "significant segment" rule according to the provisions of 2 Cal. Code Regs. section~~
17 ~~18707.1(b).~~

18 ~~(3) Step Three: Determine if the significant segment is affected by the governmental~~
19 ~~decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the~~
20 ~~analysis ends because the first prong of a two-part test set forth in 2 Cal. Code Regs. section~~
21 ~~18707.1(b) is not met, and the public official cannot participate in the governmental decision. If~~
22 ~~the answer is "yes," proceed to Step Four.~~

1 ~~(4) Step Four: Following the provisions of 2 Cal. Code Regs. section 18707.1(b)(2),~~
2 ~~determine if the person or real property identified in Step One is affected by the governmental~~
3 ~~decision in “substantially the same manner” as other persons or real property in the applicable~~
4 ~~significant segment. If the answer is “yes” as to each person or real property identified in Step~~
5 ~~One, then the effect of the decision is not distinguishable from the effect on the public generally~~
6 ~~and the public official may participate in the decision. If the answer is “no” as to any person or~~
7 ~~real property identified in Step One, the public official may not participate in the governmental~~
8 ~~decision unless one of the special rules set forth in 2 Cal. Code Regs. sections 18707.2 through~~
9 ~~18707.10 applies to each person or real property triggering the conflict of interest.~~

10 ~~(e) For purposes of Government Code section 87102.5 (Members of the Legislature) and~~
11 ~~Government Code section 87102.8 (elected state officers), Government Code section~~
12 ~~87102.6(b)(2) applies.~~

13 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
14 ~~Government Code.~~

1 Repeal 2 Cal. Code Regs. Section 18707.1:

2 ~~§ 18707.1. Public Generally. General Rule.~~

3 ~~(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material~~
4 ~~financial effect of a governmental decision on a public official's economic interests is~~
5 ~~indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of~~
6 ~~this regulation apply.~~

7 ~~(b) Significant Segments and Indistinguishable Effects.~~

8 ~~(1) Significant Segment. The governmental decision will affect a "significant segment" of~~
9 ~~the public generally if any of the following are affected as set forth below:~~

10 ~~(A) Individuals. For decisions that affect the personal expenses, income, assets, or~~
11 ~~liabilities of a public official or a member of his or her immediate family, or that affect an~~
12 ~~individual who is a source of income or a source of gifts to a public official, the decision also~~
13 ~~affects:~~

14 ~~(i) Ten percent or more of the population in the jurisdiction of the official's agency or the~~
15 ~~district the official represents; or~~

16 ~~(ii) 5,000 individuals who are residents of the jurisdiction.~~

17 ~~(B) Real Property. For decisions that affect a public official's interest in real property, the~~
18 ~~decision also affects:~~

19 ~~(i) Ten percent or more of all property owners or all residential property owners in the~~
20 ~~jurisdiction of the official's agency or the district the official represents; or~~

21 ~~(ii) 5,000 property owners or residential property owners in the jurisdiction of the~~
22 ~~official's agency.~~

1 ~~(iii) While the public official must identify ten percent or more of residential property~~
2 ~~owners or 5,000 residential property owners as provided above, and not residential properties, for~~
3 ~~purposes of subdivision (b)(1)(B) the official may choose to count each residential property~~
4 ~~affected as being owned by one property owner if, and only if, the official counts himself or~~
5 ~~herself as the sole owner of the public official's residential property regardless of his or her actual~~
6 ~~ownership interest.~~

7 ~~(iv) For purposes of this subdivision, residential property means any real property that~~
8 ~~contains a single family home, or a multi-family structure of four units or fewer, on a single lot,~~
9 ~~or a condominium unit.~~

10 ~~(C) Business Entities. For decisions that affect a business entity in which a public official~~
11 ~~has an economic interest, the decision also affects either 2,000 or twenty five percent of all~~
12 ~~business entities in the jurisdiction or the district the official represents, so long as the effect is on~~
13 ~~persons composed of more than a single industry, trade, or profession. For purposes of this~~
14 ~~subdivision, a not for profit entity other than a governmental entity is treated as a business entity.~~

15 ~~(D) Governmental Entities. For decisions that affect a federal, state or local government~~
16 ~~entity in which the public official has an economic interest, the decision will affect all members~~
17 ~~of the public under the jurisdiction of that governmental entity.~~

18 ~~(E) Exceptional Circumstances. The decision will affect a segment of the population~~
19 ~~which does not meet any of the standards in subsections (b)(1)(A) through (b)(1)(D), however,~~
20 ~~due to exceptional circumstances regarding the decision, it is determined such segment~~
21 ~~constitutes a significant segment of the public generally.~~

22 ~~(2) Substantially the Same Manner: The governmental decision will financially affect a~~
23 ~~public official's economic interest in substantially the same manner as it will affect the~~

1 significant segment identified in subdivision (b)(1) of this regulation. The financial effect need
2 not be identical for the official's economic interest to be considered "financially affected" in
3 "substantially the same manner."

4 (A) ~~Comparing Financial Effects on Real Property: For a decision that affects a public~~
5 ~~official's economic interest in his or her real property, financial effects are measured in terms of~~
6 ~~the overall dollar amount of the increase or decrease in the value of the property and not by a~~
7 ~~percentage increase or decrease affecting property values as a whole. Factors to be considered in~~
8 ~~determining the financial effect on the official's property in comparison with the financial effect~~
9 ~~on the public generally include, but are not limited to, the following:~~

10 (i) ~~The magnitude of the financial effect of the governmental decision on the official's~~
11 ~~property as compared with other properties contained within the significant segment;~~

12 (ii) ~~The lot size of the official's property compared with other properties contained within~~
13 ~~the significant segment (e.g., one acre versus 10 acres);~~

14 (iii) ~~The square footage of the building space of the property compared with the square~~
15 ~~footage of the building space of other properties contained within the significant segment;~~

16 (iv) ~~The proximity of the official's property to the property that is the subject of the~~
17 ~~governmental decision compared with the proximity of other properties contained within the~~
18 ~~significant segment;~~

19 (v) ~~The number of units/parcels owned by the official compared to others in the~~
20 ~~significant segment;~~

21 (vi) ~~The physical characteristics or permitted use of the property (i.e., historical,~~
22 ~~commercial, residential) as compared to other properties in the significant segment;~~

1 ~~(vii) The location of the official's property compared with the location of other properties~~
2 ~~contained within the significant segment;~~

3 ~~(viii) The neighborhood in which the official's property is located is comparable to the~~
4 ~~neighborhoods in which other properties contained within the significant segment are located;~~

5 ~~(ix) The quality of the structure contained on the official's property compared with the~~
6 ~~quality of other structures contained on properties within the significant segment;~~

7 ~~(x) The current fair market value of the property as compared to other properties in the~~
8 ~~significant segment;~~

9 ~~(xi) Improvements made to the official's property as compared with other properties~~
10 ~~contained within the significant segment;~~

11 ~~(xii) The developmental potential or income producing potential of the real property in~~
12 ~~which the official has an economic interest compared with other properties contained within the~~
13 ~~significant segment; and~~

14 ~~(xiii) The character of the effects on the neighborhood of the property in which the~~
15 ~~official has an economic interest including, but not limited to, substantial effects on: traffic,~~
16 ~~view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood~~
17 ~~compared with the neighborhoods of other properties contained within the significant segment.~~

18 ~~Comment: The term "affect all members of the public" as used in subdivision (b)(1)(D)~~
19 ~~above, is intended to cover decisions affecting the public in general but to exclude decisions that~~
20 ~~uniquely benefit a public official.~~

21 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
22 ~~Government Code.~~

1 Repeal 2 Cal. Code Regs. Section 18707.2:

2 ~~§ 18707.2. Special Rule for Rates, Assessments, and Similar Decisions.~~

3 ~~The financial effect of a governmental decision on the official's economic interest is~~
4 ~~indistinguishable from the decision's effect on the public generally if any of the following apply:~~

5 ~~(a) The decision is to establish or adjust assessments, taxes, fees, charges, or rates or~~
6 ~~other similar decisions which are applied on a proportional basis on the official's economic~~
7 ~~interest and on a significant segment of the jurisdiction, as defined in 2 Cal. Code of Regulations,~~
8 ~~section 18707.1(b).~~

9 ~~(b) The decision is made by the governing board of a landowner voting district and~~
10 ~~affects the official's economic interests and ten percent of the landowners or water users subject~~
11 ~~to the jurisdiction of the district in proportion to their real property interests or by the same~~
12 ~~percentage or on an "across the board" basis for all classes.~~

13 ~~(c) The decision is made by the governing board of a water, irrigation, or similar district~~
14 ~~to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions, such as~~
15 ~~the allocation of services, which are applied on a proportional or "across the board" basis on the~~
16 ~~official's economic interests and ten percent of the property owners or other persons receiving~~
17 ~~services from the official's agency.~~

18 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
19 ~~Government Code.~~

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1 Repeal 2 Cal. Code Regs. Section 18707.4:

2 ~~§ 18707.4. Public Generally: Appointed Members of Boards and Commissions.~~

3 ~~(a) For the purposes of Government Code section 87103, the "public generally" exception~~
4 ~~applies to appointed members of boards and commissions who are appointed to represent a~~
5 ~~specific economic interest, as specified in section 87103(a) through (d), if all of the following~~
6 ~~apply:~~

7 ~~(1) The statute, ordinance, or other provision of law which creates or authorizes the~~
8 ~~creation of the board or commission contains a finding and declaration that the persons appointed~~
9 ~~to the board or commission are appointed to represent and further the interests of the specific~~
10 ~~economic interest.~~

11 ~~(2) The member is required to have the economic interest the member represents.~~

12 ~~(3) The board's or commission's decision does not have a reasonably foreseeable material~~
13 ~~financial effect on any other economic interest held by the member, other than the economic~~
14 ~~interest the member was appointed to represent.~~

15 ~~(4) The decision of the board or commission will financially affect the member's~~
16 ~~economic interest in a manner that is substantially the same or proportionately the same as the~~
17 ~~decision will financially affect a significant segment of the persons the member was appointed to~~
18 ~~represent. For purposes of this regulation, a significant segment constitutes fifty percent of the~~
19 ~~persons the member was appointed to represent.~~

20 ~~(b) In the absence of an express finding and declaration or requirement of the types~~
21 ~~described in 2 Cal. Code Regs. section 18707.4(a)(1) and (2), the "public generally" exception~~
22 ~~only applies if such a finding and declaration or requirement is implicit, taking into account the~~
23 ~~language of the statute, ordinance, or other provision of law creating or authorizing the creation~~

1 of the board or commission, the nature and purposes of the program, any applicable legislative
2 history, and any other relevant circumstance.

3 Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,
4 Government Code.

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1 Repeal 2 Cal. Code Regs. Section 18707.5:

2 ~~§ 18707.5. Sources of Income to Owners of Retail Business Entities.~~

3 (a) Significant Segment Test

4 (1) ~~For purposes of Government Code section 87103.5(a), as to a business entity located~~
5 ~~in a jurisdiction with a population of more than 10,000 or which is located in a county with more~~
6 ~~than 350 retail businesses, the retail customers constitute a significant segment of the public~~
7 ~~generally if either of the following applies:~~

8 (A) ~~The retail customers of the business entity during the preceding 12 months are~~
9 ~~sufficient in number to equal 10 percent or more of the population or households of the~~
10 ~~jurisdiction; or~~

11 (B) ~~The retail customers of the business entity during the preceding 12 months number at~~
12 ~~least 10,000.~~

13 (2) ~~For purposes of Government Code section 87103.5(b), as to a business entity located~~
14 ~~in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or~~
15 ~~fewer retail businesses, the retail customers constitute a significant segment of the public~~
16 ~~generally if the retail customers of the business entity during the preceding 12 months are~~
17 ~~sufficient in number to equal 10 percent or more of the population or households of the~~
18 ~~jurisdiction.~~

19 (3) ~~For purposes of this subdivision, a customer of a retail business entity is each separate~~
20 ~~and distinct purchaser of goods or services, whether an individual, household, business or other~~
21 ~~entity. If records are not maintained by customer name, a good faith estimate shall be made to~~
22 ~~determine what percentage of sales transactions represent multiple transactions by repeat~~

1 customers. The total number of sales transactions shall then be reduced by the estimated
2 percentage of repeat customers to yield the number of customers for purposes of applying this
3 subdivision.

4 (b) ~~Indistinguishable Income Test~~

5 (1) ~~For purposes of Government Code section 87103.5(a), as to a business entity located~~
6 ~~in a jurisdiction with a population of more than 10,000 or which is located in a county with more~~
7 ~~than 350 retail businesses, the amount of income received from a retail customer is not~~
8 ~~distinguishable from the amount of income received from its other retail customers if the amount~~
9 ~~spent by the customer in question is less than one-tenth of one percent of the gross sales~~
10 ~~revenues that the business entity earned during the 12 months prior to the time the decision is~~
11 ~~made.~~

12 (2) ~~For purposes of Government Code section 87103.5(b), as to a business entity located~~
13 ~~in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or~~
14 ~~fewer retail businesses, the amount of income received from a retail customer is not~~
15 ~~distinguishable from the amount of income received from its other retail customers if the amount~~
16 ~~spent by the customer in question does not exceed one percent of the gross sales revenues that~~
17 ~~the business entity earned during the 12 months prior to the time the decision is made.~~

18 (c) ~~For purposes of Government Code section 87100, an official who owns 10 percent or~~
19 ~~more of a retail business entity, whose retail customers meet the criteria in either subdivision~~
20 ~~(a)(1)(A), (a)(1)(B) or (a)(2), does not "have reason to know" that a decision will affect a source~~
21 ~~of income to the retail business entity when either of the following applies:~~

22 (1) ~~If all of the following are true:~~

1 ~~(A) The customer does not have a charge account or open book account with the retail~~
2 ~~business;~~

3 ~~(B) The retail business does not maintain records for noncharge customer transactions by~~
4 ~~customer name or other method for tracking transactions which would provide the customer~~
5 ~~name; and~~

6 ~~(C) The fact that the person is a customer is not personally known to the official; or~~

7 ~~(2) If all of the following are true:~~

8 ~~(A) The accounts and books of the retail business entity are maintained by someone other~~
9 ~~than the official or a member of the official's immediate family; and~~

10 ~~(B) The fact that the person is a customer is not personally known to the official.~~

11 ~~(d) For purposes of subdivision (c), a credit card transaction utilizing a credit card not~~
12 ~~issued by the retail business entity is considered a "noncharge customer transaction."~~

13 ~~(e) Subdivision (c) shall not be utilized in determining whether an official "knows" of a~~
14 ~~financial interest in a decision within the meaning of Government Code section 87100. When~~
15 ~~such knowledge exists, or the fact that a person is a source of income is brought to the attention~~
16 ~~of the official prior to the governmental decision, the provisions of subdivision (c) shall have no~~
17 ~~effect on the official's duty to disqualify.~~

18 ~~Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103 and~~
19 ~~87103.5, Government Code.~~

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1 Repeal 2 Cal. Code Regs. Section 18701.6:

2 ~~§ 18707.6. States of Emergency.~~

3 ~~Notwithstanding Title 2, California Code of Regulations, sections 18707 through~~
4 ~~18707.5, inclusive, the financial effect of a governmental decision on an official is~~
5 ~~indistinguishable from its financial effect on the public generally if both of the following apply:~~

6 ~~(a) The decision will affect an economic interest of the official, other than an economic~~
7 ~~interest as defined in section 87103(e), in substantially the same manner as other persons subject~~
8 ~~to a state of emergency, proclaimed by the Governor pursuant to Government Code section 8625,~~
9 ~~or proclaimed by the governing body of a city or county.~~

10 ~~(b) The decision is required to mitigate against the effects directly arising out of the~~
11 ~~emergency, and strict adherence to the Act will prevent, hinder, or delay the mitigation of the~~
12 ~~effects of the emergency.~~

13 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
14 ~~Government Code.~~

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1 Repeal 2 Cal. Code Regs. Section 18707.7:

2 ~~§ 18707.7. Public Generally: Industries, Trades, or Professions.~~

3 ~~Where a decision will affect an industry, trade, or profession in substantially the same~~
4 ~~manner as the decision will affect an official's economic interest, the industry, trade, or~~
5 ~~profession constitutes a "significant segment" of the jurisdiction only as set forth below:~~

6 ~~(a) In the case of an elected state officer, an industry, trade, or profession constitutes a~~
7 ~~significant segment of the public generally, as set forth in section 87102.6 of the Government~~
8 ~~Code.~~

9 ~~(b) In the case of any other official, an industry, trade, or profession constitutes a~~
10 ~~significant segment of the public generally if that industry, trade, or profession is a predominant~~
11 ~~industry, trade, or profession in the official's jurisdiction or in the district represented by the~~
12 ~~official. An industry, trade, or profession that constitutes fifty percent or more of business~~
13 ~~entities in the jurisdiction of the official's agency or the district the official represents is a~~
14 ~~"predominant" industry, trade, or profession for purposes of this regulation. For purposes of this~~
15 ~~subdivision, a not for profit entity other than a governmental entity is treated as a business entity.~~

16 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
17 ~~Government Code.~~

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1 Repeal 2 Cal. Code Regs. Section 18707.9:

2 ~~§ 18707.9. Public Generally – Residential Properties.~~

3 ~~(a) For purposes of this regulation, the effect of a governmental decision on a public~~
4 ~~official's real property interests is indistinguishable from the effect on the public generally if~~
5 ~~5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the~~
6 ~~official's agency or the district the official represents are affected by the decision and the official~~
7 ~~owns three or fewer residential property units. A public official's principal residence does not~~
8 ~~count as one of these residential property units.~~

9 ~~(b) The effect of a governmental decision on any of a public official's economic interests~~
10 ~~(including real property and business interests) is indistinguishable from the effect on the public~~
11 ~~generally if all of the following apply:~~

12 ~~(1) The decision is to establish, eliminate, amend, or otherwise affect the respective rights~~
13 ~~or liabilities of tenants and owners of residential property pursuant to a resolution, rule,~~
14 ~~ordinance, or other law of general application;~~

15 ~~(2) No economic interest of the public official other than one created by ownership of~~
16 ~~residential real property, or the rental of that property, is analyzed under this regulation;~~

17 ~~(3) The official's economic interests are not directly involved in the decision;~~

18 ~~(4) The decision affects at least ten percent of the residential property units in the~~
19 ~~jurisdiction of the public official or district he or she represents; and~~

20 ~~(5) The decision will affect the official's economic interests in substantially the same~~
21 ~~manner as it will affect other residential property owners or owners of residential rental property.~~

22 ~~A public official will be affected in substantially the same manner for purposes of this~~
23 ~~subdivision if the decision will be applied on a proportional or “across the board” basis on the~~

1 ~~official's economic interests as on other residential property owners or other owners of~~
2 ~~residential rental property affected by the decision.~~

3 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
4 ~~Government Code.~~

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1 Repeal 2 Cal. Code Regs. Section 18707.10:

2 ~~§ 18707.10. Public Generally, Small Jurisdictions; Effects on Official's Domicile.~~

3 ~~(a) The effect of a governmental decision on the residential real property that is the~~
4 ~~domicile of a public official is not distinguishable from the effect on the public generally if all of~~
5 ~~the following conditions are met:~~

6 ~~(1) The jurisdiction of the public official's agency has a population of 30,000 or less and~~
7 ~~covers a geographic area of ten square miles or less;~~

8 ~~(2) The public official is required to live within the jurisdiction;~~

9 ~~(3) The public official, if elected, has been elected in an at large jurisdiction;~~

10 ~~(4) The official's property is more than 300 feet from the boundaries of the property that~~
11 ~~is the subject of the governmental decision;~~

12 ~~(5) The official's property is located on a lot not more than one quarter acre in size or not~~
13 ~~larger than 125 percent of the median residential lot size for the jurisdiction; and~~

14 ~~(6) There are at least 20 other properties under separate ownership within a 500 foot~~
15 ~~radius of the boundaries of the property that is the subject of the governmental decision that are~~
16 ~~similar in value.~~

17 ~~(b) For purposes of this regulation, "domicile" means the real property upon which the~~
18 ~~official makes his or her true, fixed, and permanent residence and the place to which he or she~~
19 ~~has the intention of returning after any absence. A person may have more than one residence but~~
20 ~~only one domicile. With respect to an ownership interest in any real estate containing the~~
21 ~~official's domicile where portions of the real estate are designated for separate ownership and~~
22 ~~portions are designated for common ownership solely by the owners of the separate portions, the~~

1 ~~official's domicile is the unit, area, or space in which the official has a separate ownership~~
2 ~~interest.~~

3 ~~(c) Nothing contained in this regulation shall preclude the application of the public~~
4 ~~generally provisions of regulation 18707.1 or any other regulations not applicable solely to small~~
5 ~~jurisdictions.~~

6 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87103,~~
7 ~~Government Code.~~

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