

1 **§ 18702.2. Determining When a Public Official is Participating in Making a Governmental**
2 **Decision Materiality Standard: Financial Interest in Real Property.**

3 [Moved to Regulation 18704.2]

4 A public official "participates in making a governmental decision," except as provided in
5 Title 2, California Code of Regulations, section 18702.4, when, acting within the authority of his
6 or her position, the official:

7 (a) ~~Negotiates, without significant substantive review, with a governmental entity or~~
8 ~~private person regarding a governmental decision referenced in Title 2, California Code of~~
9 ~~Regulations, section 18701(a)(2)(A); or~~

10 (b) ~~Advises or makes recommendations to the decisionmaker either directly or without~~
11 ~~significant intervening substantive review, by:~~

12 (1) ~~Conducting research or making any investigation which requires the exercise of~~
13 ~~judgment on the part of the official and the purpose of which is to influence a governmental~~
14 ~~decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or~~

15 (2) ~~Preparing or presenting any report, analysis, or opinion, orally, or in writing, which~~
16 ~~requires the exercise of judgment on the part of the official and the purpose of which is to~~
17 ~~influence a governmental decision referenced in Title 2, California Code of Regulations, section~~
18 ~~18701(a)(2)(A).~~

19 [Moved from Regulation 18705.2]

20 (a) Except as provided in subdivision (c) below, the reasonably foreseeable financial
21 effect of a governmental decision (listed below in (a)(1) through (a)(12)) on a parcel of real
22 property in which an official has a financial interest, other than a leasehold interest, is material
23 whenever the governmental decision:

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

26 (2) Determines the parcel's zoning or rezoning (other than a zoning decision applicable to
27 all properties designated in that category), annexation or de-annexation, or inclusion in or
28 exclusion from any city, county, district, or other local government subdivision, or other

1 boundaries, other than elective district boundaries as determined by the California Citizen's
2 Redistricting Commission or any other agency where the governmental decision is to determine
3 boundaries for elective purposes;

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

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

7 (5) Involves the issuance, denial or revocation of a license, permit or other land use
8 entitlement authorizing a specific use of or improvement to the parcel or any variance that
9 changes the permitted use of, or restrictions placed on, that real property. For purposes of this
10 paragraph, any financial effect resulting from a governmental decision regarding permits or
11 licenses issued to the official's business entity when operating on the official's real property shall
12 be conclusively analyzed under Regulation ~~18705.1~~ 18702.1, rather than this paragraph, without
13 any separate consideration for any material financial effects on the official's real property as a
14 result of the decision;

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

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

21 (8) Would change the income producing potential of the parcel of real property.

22 However, if the real property contains a business entity, including rental property, and the nature
23 of the business entity remains unchanged, the materiality standards under Regulation 18705.1
24 applicable to business entities would apply instead;

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

27 (10) Would change the character of the parcel of real property by substantially altering
28 traffic levels or intensity of use, including parking, of property surrounding the official's real

1 property parcel, the view, privacy, noise levels, or air quality, including odors, or any other
2 factors that would affect the market value of the real property parcel in which the official has a
3 financial interest;

4 (11) Would consider any decision affecting real property value located within 500 feet of
5 the property line of the official's real property, other than commercial property containing a
6 business entity where the materiality standards are analyzed under Regulation ~~18705.1~~ 18702.1.
7 Notwithstanding this prohibition, the Commission may provide written advice allowing an
8 official to participate under these circumstances if the Commission determines that there are
9 sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the
10 official's property; or

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

14 (b) Leasehold Interests. Except as provided in subdivision (c) below, the reasonably
15 foreseeable financial effects of a governmental decision on any real property in which a
16 governmental official has a leasehold financial interest is material whenever: governmental
17 decision will:

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

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

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

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

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

24 (c) Exceptions:

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

27 (2) The decision solely concerns the adoption or amendment of a general plan and all of
28 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
13 decision, provided that the map or diagram depicts all parcels located within the agency's
14 jurisdiction and 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. 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 65303.5

24 (2) “General plan” means “general plan” as used in Sections 65300, et seq.

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

27 (4) Real property in which an official has a financial interest does not include any
28 common area as part of the official's ownership interest in a common interest development as

1 defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et
2 seq.)

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

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