

1 Repeal 2 Cal. Code Regs. Section 18704.1:

2 **~~§ 18704.1. Determining When A Public Official is Making a Governmental Decision.~~**

3 ~~(a) A public official "makes a governmental decision," except as provided in Regulation~~
4 ~~18704.4, when the official, acting within the authority of his or her office or position:~~

5 ~~(1) Votes on a matter;~~

6 ~~(2) Appoints a person;~~

7 ~~(3) Obligates or commits his or her agency to any course of action;~~

8 ~~(4) Enters into any contractual agreement on behalf of his or her agency;~~

9 ~~(5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or~~

10 ~~(a)(4), unless such determination is made because of his or her financial interest. When the~~

11 ~~determination not to act occurs because of the official's financial interest, the official's~~

12 ~~determination may be accompanied by an oral or written disclosure of the financial interest.~~

13 ~~(b) When an official with a disqualifying conflict of interest abstains from making a~~
14 ~~governmental decision in an open session of the agency and the official remains on the dais or in~~
15 ~~his or her designated seat during deliberations of the governmental decision in which he or she is~~
16 ~~disqualified, his or her presence shall not be counted toward achieving a quorum.~~

17 ~~(c) During a closed meeting of the agency, a disqualified official shall not be present~~
18 ~~when the decision is considered or knowingly obtain or review a recording or any other~~
19 ~~nonpublic information regarding the governmental decision.~~

20 ~~(d) Notwithstanding subdivision (a) of this regulation, to determine if a public official~~
21 ~~who holds an office specified in Section 87200 is making, participating in making, or using or~~
22 ~~attempting to use his or her official position to influence a governmental decision relating to an~~
23 ~~agenda item which is noticed for a meeting subject to the provisions of the Bagley Keene Act~~

1 ~~(Section 11120 et seq.) or the Brown Act (Section 54950 et seq.) apply Regulations~~
2 ~~18704.1(a)(1) (a)(4), 18704.2, 18704.3, 18704.4, and 18704.5.~~
3 ~~Comment: Nothing in this section authorizes or prohibits an agency by local rule or custom from~~
4 ~~requiring a disqualified member to step down from the dais and/or leave the chambers.~~
5 ~~Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003,~~
6 ~~87100, 87101, 87105 and 87200, Government Code.~~

1 Repeal 2 Cal. Code Regs. Section 18704.2:

2 ~~§ 18704.2. Determining When a Public Official is Participating in Making a Governmental~~
3 ~~Decision.~~

4 A public official "~~participates in making a governmental decision,~~" except as provided in
5 Regulation 18702.4, ~~when, acting within the authority of his or her position, the official:~~

6 (a) ~~Negotiates, without significant substantive review, with a governmental entity or~~
7 ~~private person regarding a governmental decision referenced in Regulation 18704.6; or~~

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

10 (1) ~~Conducting research or making any investigation which requires the exercise of~~
11 ~~judgment on the part of the official and the purpose of which is to influence a governmental~~
12 ~~decision referenced in Regulation 18704.6; or~~

13 (2) ~~Preparing or presenting any report, analysis, or opinion, orally, or in writing, which~~
14 ~~requires the exercise of judgment on the part of the official and the purpose of which is to~~
15 ~~influence a governmental decision referenced in Regulation 18704.6.~~

16 Note: Authority cited: Section 83112, Government Code. Reference: Section 87100,
17 Government Code.

1 Repeal 2 Cal. Code Regs. Section 18704.3:

2 ~~§ 18704.3. Determining When a Public Official is Using or Attempting to Use His or Her~~
3 ~~Official Position to Influence a Governmental Decision.~~

4 ~~(a) With regard to a governmental decision that is within or before an official's agency or~~
5 ~~an agency appointed by or subject to the budgetary control of his or her agency, the official is~~
6 ~~attempting to use his or her official position to influence the decision if, for the purpose of~~
7 ~~influencing the decision, the official contacts, or appears before, or otherwise attempts to~~
8 ~~influence, any member, officer, employee or consultant of the agency. Attempts to influence~~
9 ~~include, but are not limited to, appearances or contacts by the official on behalf of a business~~
10 ~~entity, client, or customer.~~

11 ~~(b) With regard to a governmental decision which is within or before an agency not~~
12 ~~covered by subsection (a), the official is attempting to use his or her official position to influence~~
13 ~~the decision if, for the purpose of influencing the decision, the official acts or purports to act on~~
14 ~~behalf of, or as the representative of, his or her agency to any member, officer, employee or~~
15 ~~consultant of an agency. Such actions include, but are not limited to the use of official stationery.~~

16 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87100,~~
17 ~~Government Code.~~

1 Repeal 2 Cal. Code Regs. Section 18704.4:

2 **~~§ 18704.4. Exceptions.~~**

3 ~~(a) Making or participating in making a governmental decision does not include:~~

4 ~~(1) Actions of public officials which are solely ministerial, secretarial, manual, or~~
5 ~~clerical;~~

6 ~~(2) Appearances by a public official as a member of the general public before an agency~~
7 ~~in the course of its prescribed governmental function to represent himself or herself on matters~~
8 ~~related solely to the official's personal interests as defined in Regulation 18704.4; or~~

9 ~~(3) Actions by public officials relating to their compensation or the terms or conditions of~~
10 ~~their employment or contract. In the case of public officials who are “consultants,” as defined in~~
11 ~~Regulation 18704.6, this includes actions by consultants relating to the terms or conditions of the~~
12 ~~contract pursuant to which they provide services to the agency, so long as they are acting in their~~
13 ~~private capacity.~~

14 ~~(b) Notwithstanding Regulation 18704.3(a), an official is not attempting to use his or her~~
15 ~~official position to influence a governmental decision of an agency covered by that subsection if~~
16 ~~the official:~~

17 ~~(1) Appears in the same manner as any other member of the general public before an~~
18 ~~agency in the course of its prescribed governmental function solely to represent himself or~~
19 ~~herself on a matter which is related to his or her personal interests. An official's “personal~~
20 ~~interests” include, but are not limited to:~~

21 ~~(A) An interest in real property which is wholly owned by the official or members of his~~
22 ~~or her immediate family.~~

23 ~~(B) A business entity wholly owned by the official or members of his or her immediate~~

1 Repeal 2 Cal. Code Regs. Section 18704.5:

2 **§ 18704.5. Public Identification of a Conflict of Interest for Section 87200 Filers.**

3 ~~(a) Section 87105 and this regulation apply when a public official who holds an office~~
4 ~~specified in Section 87200 has a financial interest in a decision within the meaning of Section~~
5 ~~87100, and the governmental decision relates to an agenda item which is noticed for a meeting~~
6 ~~subject to the provisions of the Bagley Keene Act (Section 11120 et seq.) or the Brown Act~~
7 ~~(Section 54950 et seq.).~~

8 ~~(b) Content & Timing of Identification: The public official shall, following the~~
9 ~~announcement of the agenda item to be discussed or voted upon but before either the discussion~~
10 ~~or vote commences, do all of the following:~~

11 ~~(1) The public official shall publicly identify:~~

12 ~~(A) Each type of economic interest held by the public official which is involved in the~~
13 ~~decision and gives rise to the conflict of interest (i.e. investment, business position, interest in~~
14 ~~real property, personal financial effect, or the receipt or promise of income or gifts), and~~

15 ~~(B) The following details identifying the economic interest(s):~~

16 ~~(i) if an investment, the name of the business entity in which each investment is held;~~

17 ~~(ii) if a business position, a general description of the business activity in which the~~
18 ~~business entity is engaged as well as the name of the business entity;~~

19 ~~(iii) if real property, the address or another indication of the location of the property,~~
20 ~~unless the property is the public official's principal or personal residence, in which case,~~
21 ~~identification that the property is a residence;~~

22 ~~(iv) if income or gifts, then identification of the source; and~~

1 ~~(v) if personal financial effect, then identification of the expense, liability, asset or~~
2 ~~income affected.~~

3 ~~(2) Form of Identification: If the governmental decision is to be made during an open~~
4 ~~session of a public meeting, the public identification shall be made orally and shall be made part~~
5 ~~of the official public record.~~

6 ~~(3) Recusal/Leaving the Room: The public official must recuse himself or herself and~~
7 ~~leave the room after the identification required by subdivisions (b)(1) and (b)(2) of this~~
8 ~~regulation is made. He or she shall not be counted toward achieving a quorum while the item is~~
9 ~~discussed.~~

10 ~~(e) Special Rules for Closed Session: If the governmental decision is made during a~~
11 ~~closed session of a public meeting, the public identification may be made orally during the open~~
12 ~~session before the body goes into closed session and shall be limited to a declaration that his or~~
13 ~~her recusal is because of a conflict of interest under Section 87100. The declaration shall be~~
14 ~~made part of the official public record. The public official shall not be present when the decision~~
15 ~~is considered in closed session or knowingly obtain or review a recording or any other non-~~
16 ~~public information regarding the governmental decision.~~

17 ~~(d) Exceptions:~~

18 ~~(1) Uncontested Matters: The exception from leaving the room granted in Section~~
19 ~~87105(a)(3) for a "matter [that] has been placed on the portion of the agenda reserved for~~
20 ~~uncontested matters" shall mean agenda items on the consent calendar. When the matter in which~~
21 ~~the public official has a financial interest is on the consent calendar, the public official must~~
22 ~~comply with subdivisions (b)(1) and (b)(2) of this regulation, and recuse himself or herself from~~

1 ~~discussing or voting on that matter, but the public official is not required to leave the room~~
2 ~~during the consent calendar.~~

3 ~~(2) Absence: If the public official is absent when the agenda item subject to subdivision~~
4 ~~(a) of this regulation is considered, then Section 87105 and this regulation impose no public~~
5 ~~identification duties on the public official for that item at that meeting.~~

6 ~~(3) Speaking as a Member of the Public Regarding an Applicable Personal Interest:~~

7 ~~When a personal interest found in Regulation 18702.4(b) is present, a public official may speak~~
8 ~~as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of~~
9 ~~this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak~~
10 ~~from the same area as the members of the public. He or she may listen to the public discussion of~~
11 ~~the matter with the members of the public.~~

12 ~~Comment: Nothing in the provisions of this regulation is intended to cause an agency or~~
13 ~~public official to make any disclosure that would reveal the confidences of a closed session or~~
14 ~~any other privileged information as contemplated by law including but not limited to the~~
15 ~~recognized privileges found in Regulation 18740.~~

16 ~~Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87105 and~~
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9 ~~announcement of the agenda item to be discussed or voted upon but before either the discussion~~
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12 ~~(A) Each type of economic interest held by the public official which is involved in the~~
13 ~~decision and gives rise to the conflict of interest (i.e. investment, business position, interest in~~
14 ~~real property, personal financial effect, or the receipt or promise of income or gifts), and~~

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21 ~~identification that the property is a residence;~~

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