

1 Amend 2 Cal. Code Regs. Section 18438.7 as follows:

2 **§ 18438.7. Prohibitions and Disqualification Under ~~Government Code~~ Section 84308.**

3 For purposes of ~~Government Code~~ Section 84308,

4 (a) An officer knows or has reason to know that a person has a financial interest in the  
5 decision in a proceeding if:

6 (1) The person is a party; or

7 (2) The person is a participant and reveals facts in a written or oral support or opposition  
8 before the agency which make the person's financial interest apparent, or the officer has actual  
9 knowledge of the financial interest.

10 (b) In determining whether facts revealed by a participant in written or oral support or  
11 opposition before the agency have made the participant's financial interest apparent, all relevant  
12 facts known by the official at the time of the decision must be considered including, but not  
13 limited to the following:

14 (1) Whether a financial effect on a participant's stated economic interests can be  
15 recognized as a realistic possibility and more than hypothetical or theoretical;

16 (2) The specificity with which the participant has described the proximity of the  
17 participant's real property interests to real property that is a subject of the proceeding. Where the  
18 participant's description expressly or reasonably implies a real property interest within 500 feet  
19 of the subject real property and there is no clear and convincing evidence the proceeding will not  
20 have any measurable impact on the participant's real property interest, a financial interest is  
21 apparent;

22 (3) The specificity and extent of the participant's description of potential financial effects  
23 on the participant's economic interests, including financial effects on:

24 (A) Development potential of real property;

1 (B) Income producing potential of real property;

2 (C) Highest and best use of real property;

3 (D) Character of real property by substantially altering traffic levels, intensity of use,  
4 parking, view, privacy, noise levels, or air quality;

5 (E) Market value of real property;

6 (F) Gross annual revenue of a business interest;

7 (G) Assets or liabilities of a business interest;

8 (H) Expenses of a business interest;

9 ~~(b)~~ (c) An officer knows, or should have known, about a proceeding pending before the  
10 agency if either:

11 (1) The officer has received notice of the license, permit or other entitlement proceeding.  
12 Notice includes receipt of an agenda or docket identifying the proceeding and the party or other  
13 persons affected by name; or

14 (2) The officer has actual knowledge of the proceeding.

15 ~~(c)~~ (d) An officer knows, or should have known about a contribution if:

16 (1) The contribution has been disclosed by the party pursuant to Section 84308(d)  
17 84308(e); or

18 (2) The officer has actual knowledge of the contribution.

19 (e) As used in Section 84308(c), the phrase “make, participate in making, or in any way  
20 attempt to use the officer’s official position to influence the decision” has the same meaning as  
21 specified in Regulation 18704.

22 (f) Return of Contributions. Where an officer would otherwise be disqualified under  
23 Section 84308 from taking part in a proceeding before the officer at a public meeting of a  
24 governing body or board, the officer may permissibly take part in the proceeding prior to

1 returning the contribution if:

2 (1) The officer does not know or have reason to know about the contribution and the  
3 proceeding prior to the public meeting.

4 (2) Prior to taking part in any discussion or decision, the officer discloses the fact of the  
5 disqualifying contribution on the record of the proceeding, as required by Section 84308,  
6 subdivision (c) and confirms that the return will occur within two working days.

7 (3) The contribution is returned within the two working days.

8 Note: Authority cited: Section 83112, Government Code. Reference: Section 84308,  
9 Government Code.