

LEMOORE PLANNING COMMISSION  
ORGANIZATION, RULES AND RESPONSIBILITIES

The following "Rules of Procedures", "Selection and Responsibilities of Chairperson and Vice Chairperson" and "Procedures for Chairing Meetings" are adopted by the Lemoore Planning Commission.

RULES OF PROCEDURES

I. ORGANIZATION AND OFFICERS:

A. Organization

The Planning Commission shall consist of seven members and shall be organized and exercise such powers as prescribed by the City Code and by ordinance of the City of Lemoore.

B. Officers

1. Election

- a. A Chairperson and Vice-Chairperson shall be elected annually from among the Commission's membership at the first meeting in January to serve at the pleasure of the Commission.
- b. The Vice-Chairperson shall succeed the Chairperson if Chairperson vacates the office before his/her term is completed. A new Vice-Chairperson shall be elected at the next regular meeting.
- c. In the absence of the Chairperson and Vice-Chairperson, any other member shall call the Commission to order, whereupon a chairperson shall be elected from the members present to preside.

2. Responsibilities

The responsibilities and powers of the officers of the Planning Commission shall be as follows:

a. Chairperson

- (1) Preside at all meetings of the Commission.
- (2) Call special meetings of the Commission in accordance with legal requirements and the Rules of Procedure.
- (3) Sign documents of the Commission.
- (4) See that all actions of the Commission are properly taken.
- (5) Assist staff in determining agenda items.
- (6) The Chairperson shall be an ex-officio member of all committees with voice but not vote.

b. Vice-Chairperson

During the absence, disability or disqualification of the Chairperson, the Vice-Chairperson shall exercise or perform all the duties and be subject to all the responsibilities of the Chairperson.

C. Powers and Duties

1. **General Plan:** It shall be the function and duty of the Planning Commission to make and adopt, subject to the provisions of law, a General Plan for the physical development of the City and of any land outside the boundaries thereof which, in the Commission's judgement, bears relation to the planning thereof.



2. **Additional Powers and Duties:** The Planning Commission shall have such other powers and duties as are prescribed by law and shall be governed by the procedure provided by law.
3. **Governing the Planning Commission:** The powers, duties and procedures of the Planning Commission may be so prescribed by ordinance or resolution of the City Council as well as by applicants State and Federal Law.
4. If any Commissioner should be absent for three consecutive regular meetings of the Planning Commission, the Commission will notify the City Council and may advise that the member be replaced.

**D. Rules of Order**

Except as otherwise provided in State law and these Rules of Procedure, "Robert's Rules of Order" shall be used as a guide to the conduct of the meetings of the Planning Commission provided, however, that the failure of the Commission to conform to said rules of order shall not, in any instance, be deemed to invalidate the action taken.

**II. MEETINGS:**

**A. Public Meetings**

All meetings shall be held in full compliance with the provisions of state law, ordinances of the City, and these Rules of Procedures.

**B. Regular Meetings**

1. Regular meetings shall be held at 7:00 p.m. on the second and fourth Mondays of each month in the Council Chambers of the City Hall unless otherwise determined by the Commission. Regular meetings may include "Study Sessions" at the direction of the Commission.
2. Whenever a regular meeting falls on a public holiday, no regular meeting shall be held on that day. Such regular meeting may be rescheduled to another business day, or cancelled by motion adopted by the Planning Commission.

**C. Adjourned Meetings**

In the event it is the wish of the Planning Commission to adjourn its meeting to a certain hour on another day, a specific date, time and place must be set by the Commission prior to the regular motion to adjourn.

**D. Special Meetings**

Special meetings of the Planning Commission may be held at any time upon the call of the Chairman or by a majority of the voting members of the Commission or upon request of the City Council following at least 24 hours notice to each member of the Commission and to the press. The time and place of the special meeting shall be determined by the convening authority.

**E. Study Sessions/Workshops**

1. The Commission may be convened as a whole or as a committee of the whole in the same manner as prescribed for the calling of a regular or special meeting for the purpose of holding a study session.
2. Such meetings shall be open to the public, but unless the Commission invites evidence or comments to be given, participation by interested members of the public shall not take place at such study sessions, except as may be required by law.

**F. Agenda**

1. An agenda for each meeting of the Commission shall be prepared by the Community

Development Director.

2. The Commission cannot guarantee that applicants meeting filing deadlines will be placed on the agenda of the first meeting thereafter.
3. A copy of the agenda shall be posted in the City Hall.

**G. Order of Meetings**

**1. The Order of Business Shall be as follows:**

- a. The Chairperson shall take the chair precisely at the hour appointed for the meeting and shall immediately call the Commission to order.
- b. Commission members present and absent shall be recorded.
- c. The agenda shall be approved as submitted or revised.
- d. The minutes of any preceding meeting shall be submitted for approval.
- e. Under agenda item "Public Comments and Inquiries", any member of the audience may comment on any matter which is not listed on the agenda. However, the Commission will not act on a matter which is not on the agenda.
- f. The public shall be advised of the procedures to be followed in the meeting.
- g. The Commission shall then hear and act upon those proposals scheduled for consideration or public hearing, together with such other matters of business and report as the Commission or Community Development Director finds to require Commission consideration.
- h. Adjournment.

**2. Presentation or Hearing of Proposals**

The following shall be the order of procedure for public hearings concerning planning and zoning matters:

- a. The Chairperson shall announce the subject of the public hearings, as advertised.
- b. If a request is made for continuance, a motion may be made and voted upon to continue the public hearing to a definite time and date.
- c. The staff shall be asked to present the substance of the application, staff report and recommendation, and to answer technical questions of the Commission.
- d. The order of testimony shall be as follows:
  - (1) Applicant's statement
  - (2) Proponents' statements
  - (3) Opponents' statements
  - (4) If necessary, a rebuttal from the applicant
  - (5) Public hearing closed
  - (6) The Commission shall then deliberate and either determine the matter or continue the matter to another date and time certain.
- e. The rules of testimony shall be as follows:
  - (1) Person presenting testimony to the Commission are requested to give their name and address for the record.
  - (2) To avoid unnecessary cumulative evidence, the Chairperson may limit the number of witnesses or the time of testimony on a particular issue.
  - (3) Irrelevant and off-the-subject comments will be ruled out of order.
  - (4) The Chairperson will not permit any complaints regarding the staff or individual commissioners during a public hearing. Complaints should be submitted in writing or presented verbally as a separate item on the agenda.
  - (5) No person shall address the Commission without first securing the permission of the Chairperson to do so.
  - (6) All comments shall be addressed to the Commission. All questions shall be placed through the Chairperson.

**H. Motions**

1. A motion to adjourn shall always be in order except during roll calls.
2. The Chairperson of the Commission, or other presiding officer, may make and second motions and debate from the Chairperson subject only to such limitations of debate as are imposed on all members of the Commission.

I. **Voting**

1. **Voting Requirements**

- a. A quorum shall consist of four members.
- b. The affirmative vote of a majority of the Commission present is necessary for it to take action.
- c. Chairperson shall vote last.

2. **Recording of Votes**

The minutes of the Commission's proceeding shall show the vote of each member, including if they were absent or failed to vote on a matter considered.

3. **Disqualification from Voting**

A member shall disqualify from voting in accordance with the Conflict of Interest Rules of the City and State Law. When a member disqualifies, he/she shall state prior to the consideration of such matter by the Commission that he/she is disqualifying due to a possible conflict of interest and refrain from any part of the discussion.

III. **REVIEW AND AMENDMENTS PROCEDURE:**

- A. These Rules of Procedure shall be reviewed as and when needed.
- B. These Rules and Procedure may be amended at any meeting of the Planning Commission by a majority of the members present provided that notice of the proposed amendment is shown as an action item on the posted agenda for the said meeting.

## SELECTION AND RESPONSIBILITIES OF CHAIRPERSON AND VICE-CHAIRPERSON

Being Chairperson is a rewarding experience but involves a number of responsibilities in addition to running the Commission meetings. Normally, a lot of extra time is spent on both preparing for such meetings and working with the Community Development Director and others on various matters such as those noted below.

Those Planning Commissioners who have not served as Chairperson might discuss the responsibilities with the present or former chairperson to get a better idea of what is involved.

It has been the Commission's practice for Commission members to take turns being the chairperson and vice-chairperson. Sometimes members serve one term and sometimes two consecutive terms. Seniority is often a consideration but does not have to be a deciding factor. Also, consideration should be given to a member's ability and effectiveness as chair in making the selection. Of course, sometimes individual Commission members prefer not to be the vice-chairperson and/or the chairperson and that should be respected.

The following is a list of many of the Planning Commission Chairperson's responsibilities. A number of these can fall on the vice-chairperson in the chairperson's absence.

1. Preside at all meetings of the Commission.
2. Call special meetings of the Commission in accordance with legal requirements and the Rules of Procedure.
3. Sign documents of the Commission.
4. See that all actions of the Commission are proper.
5. Assist staff in determining agenda items.
6. Appoint committees as necessary.
7. Assist staff in determining whether certain matters can be handled administratively or should come to the Planning Commission.
8. Assist staff in certain zoning enforcement matters.
9. Attend certain City Council, County Planning Commission and other meetings as the Planning Commission's representative.
10. Communicate informally as necessary with the Mayor, City Council members and City Manager on certain Planning Commission matters.
11. Assist in the orientation and education of new Planning Commission members.
12. Write and approve letters on behalf of the Planning Commission.

## PROCEDURES FOR CHAIRING MEETINGS

The following steps are normally appropriate for regular Planning Commission meetings:

1. **Call the meeting to order** promptly at the appointed hour (if a quorum exists).
2. **Roll Call.** Ask the staff to call **the roll**.
3. **Update Agenda.** Ask whether staff or commissioners have **proposed changes** to the agenda and indicate when and how those new items will be considered.
4. **Minutes.** Note the **minutes** on the agenda and, unless changes are necessary, ask for a motion to approve them. Voice vote is sufficient.
5. **Communications.** Announce that this is the time on the agenda that any member of the audience may comment on any matter which is not listed on the **agenda**.
6. Announce to the audience certain Planning Commission procedures:  
The Planning Commission normally ends its meetings at **11:00 p.m.** even if it necessitates carrying items over to another meeting. The Planning Commission will not consider a new item on the agenda after 11:00 p.m., except under unusual circumstances.

In order to assist in completing the agenda items, **please be brief** and to the point -- preferably 2 to 5 minutes. The maximum time limit is 15 minutes unless prior arrangements have been made. Please use the **microphone** and write your name and address on the **sign-in sheet** provided for the record.

7. **Consent Items:** All matters under consent items on the agenda are considered routine and will be acted upon (roll call vote) without discussion by the Planning Commission unless any Commission member or member of the audience has a question or wishes to make a statement or discuss the item. In that event, the chairperson will remove that item from the regular consent items and place it for separate consideration. Be sure to ask if anyone wishes an item removed from the regular consent items. Take up such items next, as first regular agenda items.
8. Regular Agenda Items:
  - a. **Announce** the item.
  - b. Ask the staff to present the staff report.
  - c. Ask the Planning Commission if they have any questions for the staff.
  - d. **Open** the public hearing; if it is necessary to continue the public hearing, make sure that the hearing is opened (and not closed) and continued to a specific time and date. (See below: "9. Public Hearings")
  - e. Invite the **applicant** to speak.
  - f. Invite **others in favor** of the application to speak.
  - g. Invite those **in opposition** to speak.
  - h. Ask the staff if any **written communications** have been received and, if so, have them either read into the record or summarized as appropriate.
  - i. Allow, if necessary, the applicant to make a **rebuttal** statement. This must be brief and limited to a rebuttal of comments made by those in opposition.
  - j. **Close** the public hearing.
  - k. Ask the Planning Commission if they have **any questions** for the staff or public hearing speakers.
  - l. Turn the item over to the Planning Commission for **discussion**. It may be appropriate to focus or structure the discussion regarding certain issues or questions. If the Commissioners do not volunteer comments, it may be necessary to ask individual Commissioners what they think about specific points. Normally, the Commission should first discuss land use and zoning issues, and then deliberate on specific conditions and details rather than mixing the two or beginning with details.
  - m. After a motion and second are made, **restate the motion** or at least get confirmation from the Planning Commission that everyone is clear on the motion prior to voting.
  - n. Call for **the question** (vote). Roll call vote is needed for all applications.
  - o. Following the voting, **announce** the Planning Commission's **action to the audience**. Indicate whether the action is final or whether it is a recommendation to the City Council. Indicate, **if there are any questions** regarding this action, possible appeal procedures, etc., that the Community Development Department should be contacted for assistance.
9. **Public Hearings:** Ask those who are for and against a proposal to speak at the public hearing in the following sequence:
  - a. **Staff report** of background and recommendation.
  - b. **Applicant's** statement.
  - c. **Proponents** of the proposal statements.
  - d. **Opponents** of the proposal statements.
  - e. If necessary, a **rebuttal** from the applicant.
  - f. Instructions to audience: If you decide to speak, please start by giving your name and address and completing the sign-up sheet at the podium. Then tell the Commission your concerns. We want your views; don't worry about how to say them. If several people have spoken, try not to be repetitious. If there are several with the same concerns, please try to appoint a spokesperson. The Commission is particularly interested in the specific reasons you are for or against a proposal because the Commission's decision needs to be based on specific reasons.
10. **Adjournment:** Prior to adjourning the meeting, ask staff whether the meeting needs to be adjourned to a specific time and date.

# Public Service Values for Commissioners

## Fairness

- I review applications and make other decisions based on the merits of the issues.
- I honor the law's and the public's expectation that the general plan and other planning policies will govern development decisions in our jurisdiction.
- I support the public's right to know and promote meaningful public involvement.
- I am impartial and do not favor developers or others who are in a position to help me.
- I promote equality and treat all people, projects, and perspectives equitably.

## Compassion

- I recognize government's responsibilities to society's less fortunate.
- I consider exceptions to planning policies when there are unintended consequences or undue burdens.
- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to and care about the needs of the public, officials, and staff.

## Respect for Others

- I treat fellow officials, staff, and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personalities, character, or motivations.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I am engaged and responsive.
- I involve staff in all meetings that affect agency business.

## Responsibility

- I come to meetings prepared.
- I do not disclose confidential information without proper legal authorization.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I refrain from any action that might appear to compromise my independent judgment.
- I take responsibility for my own actions, even when it is uncomfortable to do so.
- I do not use information that I acquire in my public capacity for personal advantage.
- I do not represent third parties' interests before my agency or neighboring agencies.

## Integrity

- I am truthful with my fellow commissioners, the public, and others.
- I do not promise that which I have reason to believe is unrealistic.
- I am prepared to make unpopular decisions to further the public's interest.
- I credit others' contributions in moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I disclose suspected instances of corruption to the appropriate authorities.

## Public Trust

- I remember that my obligation as a public official is to serve the whole community.
- I make sound planning decisions that implement the policies expressed in the general plan.
- I consider the interests of the entire community in reaching my decisions.
- I give full considerations to all aspects of a project, including protection of the environment and the need for affordable housing.
- I promote the efficient use of the agency's resources.
- I balance the fiscal impacts of a project with the agency's social and planning goals.

## Vision

- I work to assure that the vision expressed in the general plan is one that works to improve the quality of life in my community.
- I am proactive and innovative when setting goals and considering proposals.
- I maintain consistent standards but am sensitive to the need for compromise, thinking outside the box, and improving existing paradigms.
- I promote intelligent innovation to forward the agency's policies and services.
- I consider the broader regional and statewide implications of the agency's decisions and issues.



# FAIR POLITICAL PRACTICES COMMISSION

## FPPC Regulations

### TITLE 2, DIVISION 6, CALIFORNIA CODE OF REGULATIONS

- ▶ FPPC Home Page
- ▶ Commission
- ▶ Agendas
- ▶ FPPC Regulations
  - ▶ Newly Adopted or Amended Regulations / Proposed Regulations
- ▶ The Political Reform Act
- ▶ Candidates and Committees
- ▶ Interested Persons' Meetings
- ▶ Lobbyists
- ▶ Restrictions on Government Officials and Employees
- ▶ Ethics Orientation for State Officials
- ▶ AB 1234 Ethics Training for Local Officials
- ▶ Conflicts of Interest / Form 700 / COI Codes
- ▶ Enforcement
- ▶ Audit Program
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- ▶ Legislation
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(Back to FPPC Regulations)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

#### § 18704.2. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.

(a) Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply:

- (1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (a)(5), real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.
- (2) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.
- (3) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official has an interest.
- (4) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.
- (5) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.
- (6) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or improved services.

(b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:

(1) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under 2 Cal. Code Regs. section 18705.2(b).

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

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

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

(B) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

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

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

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

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

(2) "General plan" means "general plan" as used in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 5, sections 65300, et seq.

(3) "Specific plan or its equivalent" means a "specific plan" or any equivalent plan adopted by the jurisdiction to meet the purposes described in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 8, sections 65450, et seq.

(d) Determining the applicable materiality standard.

(1) If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(a).

(2) If a real property interest is not directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(b).

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

#### History

- (1) New section filed 11-23-98; effective upon filing.
- (2) Amendment filed 3-26-99; effective upon filing.
- (3) Amendment filed 1-16-2001; effective 2-1-2001.
- (4) Amendment filed and effective 2-18-03.
- (5) Amendment of subsections (b) and (b)(1), new subsections (b)(3)-(c)(3), subsection relettering and amendment of newly designated subsections (d)(1)-(2) filed 9-9-04; operative 9-9-04.



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## Can I Vote? Overview of the Conflicts Laws

*"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"*

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

- You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, and
- a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most, if not all, mistakes. These steps are spelled out and explained in general terms in this booklet.

**If you learn nothing else from this booklet, remember these things:**

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

Here are the eight steps:

- **Step One:** Are you a "public official" within the meaning of the rules?
- **Step Two:** Are you making, participating in making, or influencing a governmental decision?
- **Step Three:** What are your economic interests? That is, what are the possible sources of a financial conflict of interest?
- **Step Four:** Are your economic interests directly or indirectly involved in the governmental decision?
- **Step Five:** What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?
- **Step Six:** The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?
- **Step Seven:** If you have a conflict of interest, does the "public generally" exception apply?
- **Step Eight:** Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

## Public Official

### Step One : Are you a "public official," within the meaning of the rules?

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality - you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

## Governmental Decision

### Step Two : Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making

recommendations to the decision-maker).

- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion or judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

#### When you have a conflict - Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Regulations section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must publicly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

#### Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

#### Examples:

- The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave

the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.

- Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she **may not** sit in the public area and listen to the discussion.
- Supervisor Robertson rents a home to a county employee. The county employee is the subject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session **but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.** He may not attend the closed session or obtain any non-public information from the closed session.

## Economic Interests

### Step Three : What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.
- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income, a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who

has given you gifts which total \$420 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

## Directly or Indirectly Involved?

### Step Four : Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in " and therefore directly affected by " a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations if you have questions as each case arises. Note also that the next step in the analysis " applying the right standard to determine whether an impact is material " depends in part on whether the interest is directly or indirectly involved. The regulations , Sections 18704 through 18704.5 , and other helpful information can be found on the FPPC's web site, <http://www.fppc.ca.gov>.

## Materiality (Importance)

### Step Five : What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is

reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

## Does a Conflict of Interest Result?

**Step Six : Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?**

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

## "Public Generally" Exception

### Step Seven : If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific segments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.10.

### Are you required to participate?

#### Step Eight : Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

## Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much , if not more , on the facts of your particular situation as it does on the law.

- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.
- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

### **An important note'**

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code ??81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line " 1-866-ASK-FPPC " as far in advance as possible.

### **How to Contact Us:**

- **Mail:**  
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428 J Street, Suite 620  
Sacramento, CA 95814
- **Website:**  
[www.fppc.ca.gov](http://www.fppc.ca.gov)
- **Telephone:**  
  
Toll-free advice line: 1-866-ASK-FPPC(1-866-275-3772)  
  
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Enforcement hot-line: 1-800-561-1861

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