

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

§ 18707. Disqualification Requirements.

(a) Public Officials under Section 87200. For recusal under Section 87105, all of the following apply when a public official who holds an office specified in Section 87200 has a financial interest in a decision within the meaning of Section 87100, and the governmental decision relates to an agenda item that is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.):

(1) Content and Timing of Identification. Following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, the public official must do all of the following:

(A) The public official must publicly identify each type of financial interest held by the official that is involved in the decision and gives rise to the disqualifying conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and the following details identifying each financial interest:

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

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

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

(iv) If income or gifts, the identification of the source; and

(v) If personal financial effect, the identification of the expense, liability, asset or income affected.

(B) Form of Identification. If the governmental decision will be made during an open session of a public meeting, the public identification must be made orally and be made part of the official public record.

(C) Recusal and Leaving the Room. The public official must recuse himself or herself and leave the room after the identification required by this regulation is made. He or she will not be counted toward achieving a quorum while the item is discussed.

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

(3) Exceptions:

(A) Uncontested Matters. The exception from leaving the room granted in Section 87105(a)(3) for a “matter [that] has been placed on the portion of the agenda reserved for uncontested matters” means agenda items on the consent calendar. If the public official has a financial interest in a matter that is on the consent calendar, the public official must comply with subdivisions (a)(1)(A) and (a)(1)(B) of this regulation, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.

(B) Absence. If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, there are no public identification duties on the public official for that item at that meeting.

(C) Speaking as a Member of the Public Regarding an Applicable Personal Interest. When a personal interest found in Regulation 18704(d)(2) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (a)(1)(A) and (a)(1)(B) of this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion and deliberations of the matter with the members of the public.

(b) For All Other Public Officials. For recusal from any decision other than a decision under subdivision (a), all of the following apply:

(1) If a public official determines not to act because of his or her financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.

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

(3) During a closed meeting of the agency, a disqualified official must not be present when the decision is considered or knowingly obtain or review a recording or any other nonpublic information regarding the governmental decision.

(4) An agency may adopt a local rule requiring a disqualified official to step down from the dais or leave the chambers.

(c) Confidential Information. Nothing in the provisions of this regulation is intended to cause an agency or public official to make any disclosure that would reveal the confidences of a closed session or any other privileged information as contemplated by law including but not limited to the recognized privileges found in Regulation 18740.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87101, 87105 and 87200, Government Code.

HISTORY

1. New section filed 6-22-2015; operative 7-22-2015. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 26). For prior history, see Register 2015, No. 21.