



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)<sup>1</sup> by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **January 17, 2019**, at Oakland City Hall, 1 Frank Ogawa Plaza, Hearing Room 1, Oakland, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **January 15, 2019**.

### BACKGROUND/OVERVIEW:

**Governing Statutes.** The Act's conflict of interest provisions ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. Section 87100 prohibits a public official from using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Under Section 87103(b), a public official has a financial interest in a decision within the meaning of Section 87100 if it is "reasonably foreseeable" that the decision will have a "material financial effect" on the certain enumerated interests including an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)

**Existing Regulation.** Regulation 18702.2 provides the materiality standards for interests in real property. Under Regulation 18701 and Regulation 18702.2(a)(1)-(6), an effect on an interest in real property is foreseeable and material whenever a decision explicitly involves the property. When property is not explicitly involved in the decision, the materiality standards are provided in Regulation 18702.2(a)(7)-(12), which provides that a foreseeable effect is material if the decision changes the property's development or income producing potential, changes the property's highest or best use, changes the property's character, affects real property located within 500 feet of the official's real property, or is of such a nature that the decision would influence the market value of the official's property.

Existing Regulation 18702.2(a)(11), the "500 foot rule," provides that a foreseeable effect is material if the governmental decision:

Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18702.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property....

Under this existing standard, determining materiality is straightforward where a property is within 500 feet of the property subject to the decision. However, determining materiality where a property is more than 500 feet from the property subject to the decision is more complicated and subjective, and requires a comprehensive review of all factors that potentially affect the value of the property.<sup>2</sup>

#### REGULATORY ACTION:

#### Amend 2 Cal. Code Regs. Section 18702.2 – Materiality Standard: Financial Interest in Real Property.

***Amendments to Regulation 18702.2.*** The Commission may consider amendments to all provisions of current Regulation 18702.2 including, but not limited to, the appropriate materiality standards for interests in real properties and further defining when interests in real properties are explicitly involved in governmental decisions. At a minimum, Commission staff anticipates proposing the following:

- Amending the materiality standard to establish a bright-line rule and allow an official to participate in a decision if the official's property interest is a sufficient distance from the property subject to the decision.
- Requiring that interests in business properties be evaluated under the materiality standards for real property.
- Clarifying that an official is disqualified from a decision affecting a leasehold interest in property if the decision will affect the rental value of the property.

SCOPE: The Commission may adopt the language noticed herein or it may choose new language to implement its decisions concerning the issues identified above or related issues.

#### FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

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<sup>2</sup> The existing Regulation 18702.2 eliminated a prior bright-line 500-foot rule.

AUTHORITY: Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

CONTACT: Any inquiries should be made to John M. Feser Jr., Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. The language of the proposed amendment of Regulation 18702.2 can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.