

1 Proposed: Amend 2 Cal. Code Regs., Section 18702.2 to read:

2 **§ 18702.2. Materiality Standard: Financial Interest in Real Property.**

3 (a) ~~Except as provided in subdivision (c) below, †~~ The reasonably foreseeable financial
4 effect of a governmental decision ~~(listed below in (a)(1) through (a)(12))~~ on a parcel of real
5 property in which an official has a financial interest, other than a leasehold interest, is material
6 whenever the governmental decision:

7 (1) Involves the adoption of or amendment to a general (except as provided below) or
8 specific plan, and the parcel is located within the proposed boundaries of the plan;

9 (2) Determines the parcel's zoning or rezoning (other than a zoning decision applicable to
10 all properties designated in that category), annexation or de-annexation, or inclusion in or
11 exclusion from any city, county, district, or other local government subdivision, or other
12 boundaries, other than elective district boundaries as determined by the California Citizen's
13 Redistricting Commission or any other agency where the governmental decision is to determine
14 boundaries for elective purposes;

15 (3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the
16 parcel;

17 (4) Authorizes the sale, purchase, or lease of the parcel;

18 (5) Involves the issuance, denial or revocation of a license, permit or other land use
19 entitlement authorizing a specific use of or improvement to the parcel or any variance that
20 changes the permitted use of, or restrictions placed on, that real property. ~~For purposes of this~~
21 ~~paragraph, any financial effect resulting from a governmental decision regarding permits or~~
22 ~~licenses issued to the official's business entity when operating on the official's real property shall~~
23 ~~be conclusively analyzed under Regulation 18702.1, rather than this paragraph, without any~~

1 ~~separate consideration for any material financial effects on the official's real property as a result~~
2 ~~of the decision;~~

3 (6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or
4 similar facilities, and the parcel in which the official has an interest will receive new or improved
5 services that are distinguishable from improvements and services that are provided to or received
6 by other similarly situated properties in the official's jurisdiction or where the official will
7 otherwise receive a disproportionate benefit or detriment by the decision;

8 (7) Involves real property located within 500 feet of the property line of the parcel of real
9 property. But the Commission may provide written advice allowing an official to participate
10 under these circumstances if the Commission determines there are sufficient facts to indicate
11 there will be no reasonably foreseeable measurable impact on the official's property.

12 (8) Involves real property located between 500 feet and 1,000 feet of the property line of
13 the official's real property, and the decision:

14 ~~(7)~~ (A) Would change the development potential of the parcel of real property;

15 ~~(8)~~ (B) Would change the income producing potential of the parcel of real property.

16 ~~However, if the real property contains a business entity, including rental property, and the nature~~
17 ~~of the business entity remains unchanged, the materiality standards under Regulation 18702.1~~
18 ~~applicable to business entities would apply instead;~~

19 ~~(9)~~ (C) Would change the highest and best use of the parcel of real property in which the
20 official has a financial interest;

21 ~~(10)~~ (D) Would change the character of the parcel of real property by substantially
22 altering traffic levels or intensity of use, including parking, of property surrounding the official's
23 real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other

1 factors that would affect the market value of the real property parcel in which the official has a
2 financial interest;

3 ~~(11) Would consider any decision affecting real property value located within 500 feet of~~
4 ~~the property line of the official's real property, other than commercial property containing a~~
5 ~~business entity where the materiality standards are analyzed under Regulation 18702.1.~~
6 ~~Notwithstanding this prohibition, the Commission may provide written advice allowing an~~
7 ~~official to participate under these circumstances if the Commission determines that there are~~
8 ~~sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the~~
9 ~~official's property; or~~

10 ~~(12) (E)~~ Would cause a reasonably prudent person, using due care and consideration
11 under the circumstances, to believe that the governmental decision was of such a nature that its
12 reasonably foreseeable effect would influence the market value of the official's property.

13 (b) The financial effect of a governmental decision on a parcel of real property in which
14 an official has a financial interest involving property more than 1,000 feet from the property line
15 of the official's real property, other than a decision identified in subdivision (a)(1) through (6), is
16 presumed not to be material. This presumption may be rebutted with evidence the governmental
17 decision would have an obvious and substantial effect on the official's parcel of real property.

18 ~~(b) (c)~~ Leasehold Interests. ~~Except as provided in subdivision (c) below, t~~ The reasonably
19 foreseeable financial effects of a governmental decision on any real property in which a
20 governmental official has a leasehold interest as the lessee of the property is material only if the
21 ~~whenever~~ governmental decision will:

22 (1) Change the termination date of the lease;

23 (2) Increase or decrease the potential rental value of the property;

1 ~~(3) Increase or decrease the rental value of the property, and the official has a right to~~
2 ~~sublease the property;~~

3 ~~(4)~~ (3) Change the official's actual or legally allowable use of the real property; or

4 ~~(5)~~ (4) Impact the official's use and enjoyment of the real property.

5 ~~(e)~~ (d) Exceptions. The financial effect of a governmental decision on a parcel of real
6 property in which an official has a financial interest is not material if: Exceptions:

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

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

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

15 (B) The decision requires a further decision or decisions by the public official's agency
16 before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or
17 the approval of or change to a zoning variance, land use ordinance, or specific plan or its
18 equivalent.

19 (C) The decision does not concern an identifiable parcel or parcels or development
20 project. A decision does not “concern an identifiable parcel or parcels” solely because, in the
21 proceeding before the agency in which the decision is made, the parcel or parcels are merely
22 included in an area depicted on a map or diagram offered in connection with the decision,

1 provided that the map or diagram depicts all parcels located within the agency's jurisdiction and
2 economic interests of the official are not singled out.

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

6 ~~(d)~~ (e) Definitions. The definitions below apply to this regulation:

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

12 (2) “General plan” means “general plan” as used in Sections 65300, et seq.

13 (3) “Specific plan” or its equivalent means a plan adopted by the jurisdiction to meet the
14 purposes described in Sections 65450, et seq.

15 (4) Real property in which an official has a financial interest does not include any
16 common area as part of the official's ownership interest in a common interest development as
17 defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000
18 et seq.)

19 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,
20 87102.6, 87102.8 and 87103, Government Code.

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