

1 Amend 2 Cal. Code Regs., Section 18705 to read:

2 **§ 18705. Legally Required Participation.**

3 (a) A public official who has a financial interest in a decision may establish that ~~he or she~~
4 is the official is legally required to make or to participate in the making of a governmental
5 decision within the meaning of Section 87101 only if there exists no alternative source of
6 decision consistent with the purposes and terms of the statute authorizing the decision.

7 (b) Whenever a public official who has a financial interest in a decision is legally
8 required to make or to participate in making such a decision, ~~he or she~~ the official shall state the
9 existence of the potential conflict as follows:

10 (1) The public official shall disclose the existence of the conflict and describe with
11 particularity the nature of the economic interest. "Particularity" as used in this regulation shall be
12 satisfied if the official discloses:

13 (A) whether the conflict involves an investment, business position, interest in real
14 property, or the receipt of income, loans, or gifts;

15 (B) if the interest is an investment, the name of the business entity in which each
16 investment is held; if the interest is a business position, a general description of the business
17 activity in which the business entity is engaged; if the interest is real property, the address or
18 another indication of the location of the property, unless the property is the official's principal or
19 personal residence, in which case the official shall disclose this fact. For income, loans or gifts,
20 the official shall disclose the person or entity that is the source.

21 (2) The public official or another officer or employee of the agency shall give a summary
22 description of the circumstances under which ~~he or she~~ the official believes the conflict may
23 arise.

1 (3) Either the public official or another officer or employee of the agency shall disclose
2 the legal basis for concluding that there is no alternative source of decision.

3 (4) The disclosures required by this regulation shall be made in the following manner:

4 (A) If the governmental decision is made during an open session of a public meeting, the
5 disclosures shall be made orally before the decision is made, by either the public official or by
6 another officer or employee of the agency. The information contained in the disclosures shall be
7 made part of the official public record either as a part of the minutes of the meeting or as a
8 writing filed with the agency. The writing shall be prepared by the public official and/or any
9 officer or employee and shall be placed in a public file of the agency within 30 days after the
10 meeting; or

11 (B) If the governmental decision is made during a closed session of a public meeting, the
12 disclosures shall be made orally during the open session either before the body goes into closed
13 session or immediately after the closed session. The information contained in the disclosures
14 shall be made part of the official public record either as a part of the minutes of the meeting or as
15 a writing filed with the agency. The writing shall be prepared by the public official and/or any
16 officer or employee and shall be placed in a public file of the agency within 30 days after the
17 meeting; or

18 (C) If the government decision is made or participated in other than during the open or
19 closed session of a public meeting, the disclosures shall be made in writing and made part of the
20 official public record, either by the public official and/or by another officer or employee of the
21 agency. The writing shall be filed with the public official's appointing authority or supervisor and
22 shall be placed in a public file within 30 days after the public official makes or participates in the
23 decision. Where the public official has no appointing authority or supervisor, the disclosure(s)

1 shall be made in writing and filed with the agency official who maintains the records of the
2 agency's statements of economic interests, or other designated office for the maintenance of such
3 disclosures, within 30 days of the making of or participating in the decision.

4 (c) This regulation shall be construed narrowly, and shall:

5 (1) Not be construed to permit an official, who is otherwise disqualified under Section
6 87100, to vote to break a tie.

7 (2) Not be construed to allow a member of any public agency, who is otherwise
8 disqualified under Section 87100, to vote if a quorum can be convened of other members of the
9 agency who are not disqualified under Section 87100, whether or not such other members are
10 actually present at the time of the disqualification.

11 (3) Require participation by the smallest number of officials with a conflict that are
12 “legally required” in order for the decision to be made. A random means of selection may be
13 used to select only the number of officials needed. When an official is selected, ~~he or she~~ the
14 official is selected for the duration of the proceedings in all related matters until ~~his or her~~ the
15 official’s participation is no longer legally required, or the need for invoking the exception no
16 longer exists.

17 (d) For purposes of this section, a “quorum” shall constitute the minimum number of
18 members required to conduct business and when the vote of a supermajority is required to adopt
19 an item, the “quorum” shall be that minimum number of members needed for that adoption.

20 COMMENT: Nothing in the provisions of subsection (b)(4)(B) is intended to cause an agency or
21 public official to reveal the confidences of a closed session contemplated by law. For example,
22 under the Brown Act (Sections 54950 et seq.) a city council may enter a closed session to discuss

1 personnel matters and need not publicly disclose the name of the employee who is the subject of
2 the meeting. (Section 54957.) This regulation does not require a city council person who is
3 legally required to participate in that closed session to disclose that employee's name when the
4 council member makes the record required by this regulation.

5 Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003 and
6 87101, Government Code.