



# Officers and Section 84308

October 2023

## CONTENTS

<b>Introduction .....</b>	<b>3</b>
<b>A. Am I an “Officer”? .....</b>	<b>4</b>
1. Qualifications .....	4
2. Exceptions .....	4
<b>B. What Are My Responsibilities and Limitations? .....</b>	<b>5</b>
1. Prohibition: Accepting, Soliciting, or Directing Contributions Exceeding \$250 During 12-Month Period While the Proceeding is Pending and 12 Months After.....	5
2. Prohibition: Taking Part in Entitlement for Use Proceeding.....	6
3. Disclosure Requirements: Contributions Received in Prior 12 months .....	6
<b>C. Am I Taking Part in a “Pending License, Permit, or Other Entitlement for Use” Proceeding? .....</b>	<b>7</b>
1. License, Permit, or Other Entitlements for Use Proceedings .....	7
2. When is the Proceeding “Pending”? .....	8
<b>D. For the Proceeding, Who Are the “Parties, Participants, or Their Agents”?.....</b>	<b>9</b>
1. Parties.....	9
2. Participants .....	9
3. Agents.....	10
<b>E. Do I “Know or Have Reason to Know” a Participant Has a “Financial Interest in the Proceeding”? .....</b>	<b>12</b>
1. What is a Financial Interest in a Proceeding? .....	12
2. When Do I Know About it? .....	12
3. Standards and Facts Relevant to Particular Types of Participant’s Financial Interests.....	13
a. Explicitly Involved Interest in the Proceeding .....	13
b. Business Entity Interest in the Proceeding. ....	14
c. Real Property Interests in the Proceeding. ....	15
d. Source of Income Interests.....	16
e. Source of Gift Interests.....	17
f. Personal Finances.....	17
<b>F. Have I “Willfully or Knowingly” Received a \$250 or Greater Contribution From a Party, Participant, or Agent Within the Past 12 Months? .....</b>	<b>18</b>
1. Knowledge of a Contribution .....	18

2. How is the \$250 Calculated? ..... 19

**G. Can I Return a Contribution?..... 22**

**H. Frequently Asked Questions ..... 23**

# INTRODUCTION

Section 84308 is a California law aimed at preventing “pay-to-play” practices, in part, by prohibiting parties, participants, and their respective agents in a proceeding involving a license, permit, or other entitlement for use (collectively referenced as an “entitlement for use proceeding” or “proceeding”) from contributing more than \$250 to an officer of the agency the proceeding is before during a 12-month period. An officer is similarly prohibited from accepting, soliciting or directing such a contribution. The prohibition on contributions applies to any 12-month period while the proceeding is pending and for 12 months following the date a final decision is rendered in the proceeding.

Under Section 84308, the officer of an agency is required to disclose any contribution exceeding an aggregate \$250 that a party or any participant has made to them within the 12 months preceding the proceeding. Further, the officer of an agency may not make, participate in making, or in any way attempt to use their official position to influence the decision in the proceeding pending before the agency if the officer has received a contribution of more than \$250 within the preceding 12 months from a party, or a party’s agent. An officer of an agency is similarly prohibited from taking part in a proceeding if the officer received a contribution of more than \$250 within the preceding 12 months from a participant, or participant’s agency, if the officer knows or has reason to know that the participant has a financial interest in the decision.

When it was first enacted in 1982, Section 84308 applied to appointed members of boards and commissions who were running for elective office. (Stats. 1982, ch. 1049 § 1 (“Levine Act”).) However, effective January 1, 2023, the Legislature expanded the scope of its prohibitions to apply to agencies whose members are directly elected by voters and extend the prohibitions from 3 months to 12 months after the final decision in a proceeding. (Stats. 2022, ch. 848 § 1 (“SB 1439”) .)

The following is a step-by-step guide to help you determine:

- Whether you are an “officer” subject to Section 84308’s prohibitions;
- What your responsibilities are;
- What type of proceedings are covered;
- Who meets the definition of a party, participant or their agent;
- When there is a financial interest involved; and
- What to do in the event you have accepted a contribution subject to the prohibitions in Section 84308.

Frequently Asked Questions are also addressed.

## A. AM I AN “OFFICER”?

### 1. Qualifications

Section 84308 defines “officer” as “any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elected office in an agency.”

To determine whether you qualify as an “officer” for purposes of Section 84308, and an “officer of the agency” subject to the restrictions of Section 84308, ask yourself:

(1) Do I have the ability to:

- a. “Make, participate in making, or in any way attempt to use my official position to influence” a decision (defined further below) in the relevant entitlement for use proceeding; or
- b. Exercise authority or budgetary control over the agency of officers who may do so?

(2) Do I serve in any of the following capacities:

- a. In an elected position;
- b. As a member of a board or commission;
- c. As the chief executive of a state agency or county, city or district of any kind; or
- d. In a position with decision-making authority with respect to the proceeding and I am also a candidate for elected office or I was a candidate for elected office in the 12 months prior to the proceeding?

If your answer to both of the above questions is “yes,” then you qualify as an “officer” for purposes of Section 84308 and you are an “officer of the agency” subject to the applicable restrictions.

**Note:** A candidate for elective office who does not meet any of the above criteria is not an “officer of the agency” and the Section 84308 restrictions applicable to an “officer of the agency” will not apply until such time as the candidate serves in one of the positions noted above. (See, e.g., Butler Advice Letter, No. A-23-103.)

### 2. Exceptions

The term “officer” does not apply to any person acting in any of the following positions:

- Member of the courts or any agency in the judicial branch;
- Member of the Legislature;
- Member of the Board of Equalization; or

- A Constitutional officer (i.e., the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, State Treasurer, and Superintendent of Public Instruction).

## B. WHAT ARE MY RESPONSIBILITIES AND LIMITATIONS?

If you meet the definition of an “officer” under Section 84308 and are an “officer of the agency,” or become an “officer of the agency” following your candidacy, you are subject to the following prohibitions related to entitlement for use proceedings:

### 1. Prohibition: Accepting, Soliciting, or Directing Contributions Exceeding \$250 During 12-Month Period While the Proceeding is Pending and 12 Months After

For any entitlement for use proceeding, you are prohibited from accepting, soliciting, or directing a contribution of more than two hundred fifty dollars (\$250) from any party or a party’s agent, or from any participant or a participant’s agent if you know or have reason to know that the participant has a financial interest in the proceeding.

**This applies during any 12-month period while the proceeding is pending and for 12 months following the date of the final decision.**

#### 12-Month Period Example 1

A party files an application with your office on January 1, 2023. The same day, the party contributes \$250 to your campaign committee. Your agency’s consideration of the application extends beyond one year and, on January 1, 2024, the party contributes another \$250 to your campaign committee. The party does not violate Section 84308 by making the second contribution while the proceeding is pending and you do not violate Section 84308 by accepting the second contribution because you have not received more than \$250 during any 12-month period.

## 12-Month Period Example 2

A party files an application with your office on January 1, 2023. The same day, the party contributes \$150 to your campaign committee. On July 1, 2023, the party contributes another \$100. The matter is pending before you the proceeding extends beyond one year. On January 1, 2024, the party contributes another \$250.

The party violates Section 84308 and you will violate Section 84308 by accepting the \$250 contribution because you received more than \$250 during a 12-month period. You received \$100 from the party on July 1, 2023, and \$250 on January 1, 2024, for a total of \$350 during a 12-month period.

## 2. Prohibition: Taking Part in Entitlement for Use Proceeding

You are prohibited from making, participating in making, or in any way attempting to use your official position to influence the decision in an entitlement for use proceeding pending before the agency if you have willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if you know or have reason to know that the participant has a financial interest in the decision.

- **Making a Governmental Decision:** You “make” a governmental decision if you authorize or direct any action, vote, appoint a person, obligate or commit your agency to any course of action, or enter into any contractual agreement on behalf of your agency.
- **Participating in a Governmental Decision:** You “participate in making a governmental decision” if you provide information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- **Attempting to Use Official Position to Influence a Governmental Decision:** You “attempt to use your official position to influence a governmental decision” if you: (1) contact or appear before any official in your agency or in an agency subject to the authority or budgetary control of your agency for the purpose of affecting a decision; or (2) contact or appear before any official in any other government agency for the purpose of affecting a decision, and you act or purport to act within your authority or on behalf of your agency in making the contact.

## 3. Disclosure Requirements: Contributions Received in Prior 12 months

If you have received a contribution exceeding \$250 from a party, participant, or agent thereof *within the preceding 12 months*, you are required to disclose (or have another agency officer or employee disclose on your behalf) the contribution as follows:

- **Form:** Disclosure may be made orally or in writing when made in a meeting. Disclosure must be made in writing if no meeting is held.
- **Timing:** If a public meeting is held, disclosure must be made at the beginning of the meeting. If you learn of the party’s contribution or the participant’s contribution and financial interest during the meeting, disclosure must be made before you continue to take part in the proceeding. If no public meeting is held, written disclosure must be entered into the agency’s public record.
- **Contents:** The disclosure must include:
  - The fact that you have received contributions from a party, participant, or agent thereof, greater than \$250 within the preceding 12 months; and
  - The name(s) of the contributor(s).
- **Legally Required Participation:** If you are taking part in a governmental decision on the basis that your participation is legally required, the disclosure must also include:
  - A summary description of the circumstances under which you believe the conflict may arise; and
  - The legal basis for concluding there is no alternative source of decision.

## C. AM I TAKING PART IN A “PENDING LICENSE, PERMIT, OR OTHER ENTITLEMENT FOR USE” PROCEEDING?

### 1. License, Permit, or Other Entitlements for Use Proceedings

Section 84308 defines the term “license, permit, or other entitlement for use” to mean “all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (*other than competitively bid, labor, or personal employment contracts*), and all franchises.”

The term “entitlement for use” is not defined by Section 84308. The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered by Section 84308 are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants. The California courts have examined the term “entitlement for use” in other contexts. These decisions provide useful guidance; however, interpretation of the Act is not necessarily limited by interpretation of other laws. Below is a list of proceedings the FPPC has previously advised on as entitlement for use proceedings. (See, e.g., *Velasquez* Advice Letter, No. I-23-065; *Quadri* Advice Letter, No. A-02-096; *Washington* Advice Letter, No. I-91-521.)

**Note: Section 84308 does not cover proceedings in which general policy decisions or rules are made or where the interests affected are many and diverse.**

## Examples of Entitlement for Use Proceedings

- Building and development permits
- Charter school petitions
- Conditional use permits
- Contracts generally, including small purchase order agreements, unless an exception applies
- Public street abandonments
- Private development plans
- Professional license revocations
- Rezoning of specific real estate parcels
- Event permits
- Rulemaking procedures affecting a particular industry where only a small number of businesses are affected
- Special district formation proceedings involving the creation of a special use or benefit to the persons in the district
- Tentative subdivision and parcel maps
- Zoning variances

## 2. When is the Proceeding “Pending”?

For an officer, an entitlement for use proceeding has commenced and is considered “pending” only when:

- The decision is before you for your consideration. If you are a member of a governing body, this includes any item placed on the agenda for discussion or decision at a public meeting of the body; **or**
- You know or have reason to know the proceeding is *before the jurisdiction of your agency* for its decision or other action, *and* it is reasonably foreseeable *the decision will come before you in your decision-making capacity*.
- **Note:** A different definition of “pending” applies to parties, participants, and their agents. For these persons, it is “pending” when it is before the agency’s jurisdiction for action.

### Pending Proceeding Example 1

A non-profit organization submits a permit application to the City Parks Department to host a large event at a City park. You are a member of the City Council. Absent any outside knowledge, at this point, you do not “know or have reason to know” about the proceeding and, therefore, it is not “pending” for you. Therefore, you would not violate Section 84308 by accepting, soliciting, or directing a contribution of more than \$250 from the non-profit *at this point in the process*.



## Pending Proceeding Example 2

Continuing the above example, the event permit application is rejected by the Parks Department and the non-profit appeals the decision to the City Council. The non-profit's permit item appears on the agenda for an upcoming City Council meeting. At this point, the proceeding is "pending" for you and you are now prohibited from accepting, soliciting, or directing a contribution of more than \$250 from the non-profit.

## Pending Proceeding Example 3

Alternatively, suppose that prior to the permit decision appearing on a City Council meeting agenda, a City staff member told you that the project was pending before the Parks Department and would likely come before the City Council at some point if the Parks Department rejects the application. Because you have this information, the proceeding would be "pending" for you, even though the item had not yet been included on a City Council meeting agenda.

## D. FOR THE PROCEEDING, WHO ARE THE "PARTIES, PARTICIPANTS, OR THEIR AGENTS"?

### 1. Parties

Section 84308 defines "party" as "any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use."

### 2. Participants

Section 84308 defines "participant" as any person who is not a party but who **actively supports or opposes a particular decision** in an entitlement for use proceeding and who has a **financial interest** in the decision.

In general, a person will qualify as a participant if the person has a financial interest in the proceeding and communicates with you or agency staff for the purpose of influencing a decision in the proceeding. This includes when the person:

- Lobbies in person;
- Testifies in person; or
- Otherwise acts to influence a proceeding by communicating with an officer or employee of the agency for the purpose of influencing a decision in the proceeding.

*Note: This does not include communications made to the public outside of the proceeding.*

### Participant Example 1

One person sends a letter to the City Council regarding an entitlement for use proceeding. Another person makes a public comment regarding the entitlement for use proceeding during a public meeting. If either person has a financial interest in the proceeding, that person qualifies as a **participant**.

### Participant Example 3

One person writes an op-ed article, published in the local paper, in support of the City Council approving an application in an entitlement for use proceeding. Another person protests outside of City Hall before the entitlement for use proceeding is held, yelling and chanting that the City Council should vote no on the underlying project. Even if one of these persons has a financial interest in the proceeding, as long as the person does not communicate directly with the officer or agency regarding the proceeding, the person is **not a participant**.

### Financial Interests

In general, a person is considered to have a “financial interest” for purposes of Section 84308 if it is **reasonably foreseeable the proceeding, or a governmental decision within the proceeding**, would have a **material financial effect on one or more** of the person’s **economic interests**. Relevant economic interests include the person’s interests in business entities, real property, sources of income, sources of gifts, and personal finances.

Determining whether a person has a **financial interest** in a proceeding or particular governmental decision can be a complex matter. For this reason, if you have knowledge or reason to know that a person who may qualify as a participant in a proceeding has a potential financial interest, you should contact the FPPC for assistance to understand whether the duties and prohibitions of Section 84308 will apply. More information on financial interests, when a financial interest is “material” and when you would have “reason to know” is detailed further below.

### 3. Agents

A person is the “agent” of a party or participant in a pending entitlement for use proceeding if the person:

- Represents that party or participant for compensation; and
- Appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding.

**Note: An individual will qualify as an agent only if the individual's communication with an agency is *for the purpose of influencing the pending proceeding*.** An individual whose communications with an agency are *not* made for the purpose of influencing the proceeding is not considered an agent for purposes of Section 84308, even if the individual receives compensation from a party or participant.

#### Agent Example 1

Ainsley Atkinson, an attorney, is paid to represent a client real estate developer, Rio Estates, in obtaining a real estate development agreement and drafts a letter in support of the project on behalf of Rio Estates. Atkinson sends the letter to the County Planning Commission ahead of the Commission's consideration on whether to approve a building permit. Because Atkinson is paid to represent Rio Estates and has communicated with the agency for the purpose of influencing the proceeding, Atkinson **is an agent** for Rio Estates.

#### Agent Example 2

Suppose Atkinson's letter in support of the project is sent to the County Planning Commission by Atkinson's assistant, rather than Atkinson herself. Although the letter is intended to influence the proceeding, the assistant's purpose in sending the letter is not; rather, the assistant's purpose in sending the letter is administrative/secretarial. Likewise, the assistant is not paid to represent Rio Estates; the assistant is paid to assist Atkinson. For these reasons, the assistant **is not an agent** Rio Estates.

#### Agent Example 3

Continuing the above examples, the Planning Commission considers the project application. The project architect, Priyanka Archer, hired by the client, attends the meeting and provides purely technical data and analysis in response to Planning Commission questions. As long as Archer does not otherwise engage in direct communications for the purpose of influencing the proceeding, Archer **is not an agent** for Rio Estates.

## E. Do I “KNOW OR HAVE REASON TO KNOW” A PARTICIPANT HAS A “FINANCIAL INTEREST IN THE PROCEEDING”?

### 1. What is a Financial Interest in a Proceeding?

Under the Political Reform Act, a person has a “financial interest” in a governmental decision when it is reasonably foreseeable that the governmental decision at issue would have a **material financial effect** (of a positive or negative nature) on a person’s interest in:

- A **business entity** as an employee, director, officer partner, trustee, manager or an investment interest of \$2,000 or more.
- **Real property** with a value of \$2,000 or more including a leasehold interest but not a month-to month tenancy.
- **Source of income** totaling \$500 or more in the 12 months prior to the proceeding.
- **Source of gift** totaling \$590 or more in the 12 months prior to the proceeding.
- The participant’s **personal finances** or the participant’s immediate family member.

**Note:** For a party in an entitlement for use proceeding, Section 84308’s requirements and prohibitions automatically apply. The relevance of a “financial interest” in an entitlement for use proceeding is only relevant to determining whether an individual qualifies as a participant for purposes of Section 84308.

### 2. When Do I Know About it?

As an officer, you are considered to “know or have reason to know” that a participant has a financial interest in a decision only if you have actual knowledge of the financial interest, or the participant reveals facts in written or oral statements during the proceeding before you that make the participant’s financial interest apparent.

Under Section 84308, you are required to consider all relevant facts known to you in determining whether a participant has made a financial interest apparent. This includes:

- The specificity with which the participant has described their economic interests;
- The potential for a material financial effect on those interests as a result of the decision; and
- The realistic possibility of the financial effect.

Note: If a participant describes or mentions the financial impact a proceeding, or a governmental decision within the proceeding, would or could have on the participant's financial interest you must consider the information provided and the impact the decision may have on the interest.

In addition to the general rule stated above, you will by default be deemed to have "reason to know" that a participant has a financial interest in the proceeding if you have facts indicating the participant has any of the following:

- A **business entity interest** that may see a significant increase or decrease in customers as a result of the proceeding;
- A **real property interest** located within 500 feet of the real property at issue in the proceeding. (Note: An officer does not have "reason to know" if the facts are solely that the participant has an economic interest located in the general vicinity of a business entity or real property at issue in the proceeding.)
- A **business relationship** with the applicant and the decision may result in additional services provided to the applicant.

**Note:** if the officer knows there is clear and convincing evidence establishing it is not reasonably foreseeable the decision will have material financial effect on the participant's interests, the participant does not have a financial interest in the proceeding.

### 3. Standards and Facts Relevant to Particular Types of Participant's Financial Interests

To determine whether you "know or have reason to know" that the participant has a financial interest in the decision for purposes of Section 84308, ask yourself if you have any of the information discussed below:

#### *a. Explicitly Involved Interest in the Proceeding*

If an individual has an economic interest such as a business entity, real property, or source of income explicitly involved in the proceeding, the individual will have a financial interest in the proceeding and therefore qualify as a participant. For example, if the individual's employer is the applicant in the proceeding and the individual provides public comment—even in their capacity as a private citizen rather than as an agent advocating in their paid capacity as an employee—the individual will qualify as a participant.

However, in circumstances where it is not apparent that the individual's economic interest is explicitly involved in the proceeding, consider the following:

*b. Business Entity Interest in the Proceeding.*

Generally, a participant's financial interest in a business entity not explicitly involved in a governmental decision will only become apparent if they reveal facts indicating any of the following:

- **Change in Revenue:** The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.
- **Change in Expenses:** The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.
- **Impact on Real Property:** The entity has an interest in real property and: (A) the property is a named party in, or the subject of, the decision; or (B) there is clear and convincing evidence the decision would have a substantial effect on the property.

#### Business Entity Example 1

A person provides public comment at a City Council meeting, speaking in support of a developer's permit application. The person specifies, "I work for the developer, but I'm not being paid to be here. I'm just here in my personal capacity because I think the project would benefit the community." Here, the participant has a business entity interest in the applicant as their employer, and you know the proceeding would have a reasonably foreseeable, material financial effect on that business entity interest given the fact that the employer is the applicant in the proceeding.

#### Business Entity Example 2

Continuing the above example, another person stands up at the City Council meeting and provides public comment, stating, "I'm a licensed electrician and I think a development project of this size would bring a lot of valuable jobs to local tradespeople like me." The person has indicated they have a business entity interest in their business as an electrician and has also indicated the project would potentially benefit their business, but has not provided any facts indicating their business could benefit, for example, by \$1,000,000 or result in an increase of five percent of annual gross revenue and at least \$10,000. Because of the general facts provided, you would not have reason to know that the individual has a financial interest in the proceeding.

*c. Real Property Interests in the Proceeding.*

When considering the materiality of a financial effect on real property not explicitly involved in a governmental decision, the proximity of the participant's real property to the real property at issue in the decision is of particular importance. Are you aware of any of the following concerning the participant's real property - is it:

- **Within 500 Feet:** from the subject property of a governmental decision and there is no "clear and convincing evidence" the decision will have no measurable impact on the participant's property.
- **Between 500 and 1,000 Feet:** from the subject property of a governmental decision and the decision would change the parcel's:
  - Development potential;
  - Income producing potential;
  - Highest and best use;
  - Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
  - Market value.

However, if you are aware that the participant's real property is:

- **Over 1,000 Feet:** from the subject property of a governmental decision the decision is presumed to not have a reasonably foreseeable, material financial effect on the individual's real property absent "clear and convincing evidence" of a substantial effect on the participant's property.

**Note: You are not considered to "know" or "have reason to know" of a participant's financial interest in a decision solely as a result of the participant identifying an economic interest located in the general vicinity of a business entity or real property at issue in the proceeding.**

### Real Property Example 1

An individual provides public comment at a City Council meeting opposing a development project because of the effect they believe the project will have on nearby residences and notes, "I live near this project." Based solely on these comments, you would not know or have reason to know whether the individual has a real property interest within 500 or 1,000 feet or further away from the project.

## Real Property Example 2

If, however, the individual said, “I live within 100 yards,” or “I live directly across the street” from the project, you would be aware that the individual lives within 500 feet of subject property and unless there are clear facts that the decision would have no measurable impact on her property, the Section 84308 requirements and prohibitions will apply to this person as a participant.

If you are aware or the individual mentions they have a **leasehold interest** in real property, they will have a financial interest if the decision would: (1) Change the termination date of the lease; (2) Increase or decrease the potential rental value of the property; (3) Change the person’s use of the property; or (4) Impact the use and enjoyment of the property. A month-to-month tenancy is *not* a “real property interest” under the Act.

Note: There are certain exceptions applicable to determining a material interest in real property, such as when the proceeding includes a decision that solely concerns repairs/maintenance or replacement of existing streets, water, sewer, storm drainage or similar facilities. (For decisions relating the adoption or amendment of a General Plan, please consult Regulation 18702.2(d)(2) or seek further advice.)

### d. Source of Income Interests

Generally, a participant’s financial interest in a source of income not explicitly involved in the decision, will only become apparent if they reveal facts indicating any of the following and the source is a:

- **Business Entity:** Apply the standards discussed above for determining a material financial effect on business entity interests.
- **Nonprofit Organization:** Apply the same standards discussed above use for determining a material financial effect on a business entity.
- **Individual:**
  - Personal Finances: The decision may affect the individual’s income, investments, assets, or liabilities by \$1,000 or more;
  - Impact on Business: The participant knows or has reason to know the individual has an interest in a business entity that will be materially financially affected under the standards pertaining to business entity interests, described above;
  - Impact on Real Property: The participant knows or has reason to know the individual has an interest in real property and the property is a named party in, or the subject of the decision, or there is clear and convincing evidence the decision would have a substantial effect on the property.



**“Nexus” Test:** The governmental decision is also considered to have a reasonably foreseeable, material financial effect if it would achieve, defeat, aid, or hinder a purpose or goal of the source of income and the participant or their spouse receives or is promised the income for achieving the purpose or goal.

#### Source of Income Example

At a City Council meeting, a member of the public provides comment and states, “I work for the Downtown Business Chamber of Commerce and my job is to bring business to Downtown and help revitalize the Downtown area economy. Approval of this project would do just that.” Based on the person’s comments, you know it is reasonably foreseeable the proceeding would have material financial effect on the person’s source of income—the Downtown Business Chamber of Commerce—based on the nexus between the governmental decisions at issue and the Chamber of Commerce’s goals that the speaker is paid to achieve. The Section 84308 requirements and prohibitions would apply to this participant.

#### e. Source of Gift Interests

Generally, a participant’s financial interest in an individual as a source of gift not explicitly involved in a governmental decision will only become apparent if they reveal facts indicating any of the following:

- **Business Entity:** Apply the standards discussed above for determining a material financial effect on business entity interests.
- **Nonprofit Organization:** Apply the same standards discussed above for determining a material financial effect on a business entity.
- **Individuals:**
  - The individual’s personal finances will be materially impacted, as described in the “Personal Finances” section below;
  - The participant knows or has reason to know the individual has an interest in a business entity or real property that will be materially financially affected under the standards pertaining to business entity or real property interests, described above;
  - The participant knows or has reason to know the individual has an interest in real property and the property is a named party in, or the subject of the decision, or there is clear and convincing evidence the decision would have a substantial effect on the property.

#### f. Personal Finances

In general, a governmental decision’s reasonably foreseeable financial effect on a participant’s personal finances or the finances of the participant’s immediate family is material if the decision may result in the participant or participant’s immediate family member receiving a financial benefit or loss—other than a financial impact on a

business entity or real property interest—of \$500 or more in any 12-month period due to the decision. This does not apply if the decision’s financial impact would affect the participant’s economic interest in a business entity or real property, as such financial effects are considered separately under the standards discussed above.

## F. HAVE I “WILLFULLY OR KNOWINGLY” RECEIVED A \$250 OR GREATER CONTRIBUTION FROM A PARTY, PARTICIPANT, OR AGENT WITHIN THE PAST 12 MONTHS?

### 1. Knowledge of a Contribution

As an officer, you are considered to have “willfully or knowingly” received a contribution under any of the following circumstances:

- **Actual knowledge:** You have actual knowledge of the contribution;
- **Disclosure by the Party:** The contribution has been disclosed by the party pursuant to Section 84308(e) and Regulation 18438.8; or
- **Other Reasons to Know:** You are aware of facts including, but not limited to:
  - The party, participant, or another person has otherwise informed you that a contribution or contributions have been made to you;
  - The party or participant has previously made two or more contributions of more than \$250 to you;
  - You personally solicited the party or participant for a contribution; or
  - You personally accepted a contribution from the party or participant.
- **Relevance of Prior Campaign Reporting:** Note that the fact that a contribution was previously included in a campaign report filed by your campaign committee does not constitute “reason to know” of a party’s or participant’s contribution except in the following circumstances:
  - The party’s proceeding has also been noticed on an agenda for a public meeting before the body or board of which you are a member *or*,
  - For officers not on a body or board, the proceeding is before you in your decision-making capacity.

## Campaign Reporting Example

You are a City Councilmember. A development project application is included on the agenda for the next City Council meeting. The applicant has failed to disclose the \$300 contribution he made to your campaign committee eight months ago, in violation of Section 84308. (Where the contribution is made prior to the proceeding, the party must disclose the contribution at the time of filing the application.) The project application was included on the City Council meeting agenda. The \$300 contribution was included in a campaign report filed by your campaign committee. Accordingly, at the point the project application appears on the City Council meeting agenda, you have reason to know about the developer's \$300 contribution—even though the applicant did not disclose it in their initial application—and you must either recuse yourself from the proceeding or return the amount exceeding the \$250 contribution limit.

## 2. How is the \$250 Calculated?

In determining whether you have received a contribution of more than \$250 from a party, participant, or agent, consider the following:

- **Aggregation:** To determine whether you have received a contribution of more than \$250 from a party or participant or their respective agent during a 12-month period, you must aggregate all of the following:
  - All contributions made by the party or by the participant; with
  - All contributions made by the party's agent or the participant's agent during the shorter of: (A) The previous 12-month period; or (B) The period beginning on the date the party or participant first hired the agent as either a paid employee, contractor, or consultant; and
  - All contributions made by an individual, other than an uncompensated officer of a nonprofit organization, or entity required to be aggregated with the party or participant and any agent of the party or participant under Section 82015.5 (see discussion below) of the Political Reform Act.

**Exception:** Although the above contributions generally must be aggregated for purposes of determining whether you have received a contribution exceeding \$250, you do not have reason to know about a contribution from an individual or entity required to be aggregated with contributions by a party, participant, or agent—and you do not violate Section 84308 as a result of the contribution—if, at the time of the potential violation, both the following criteria are met:

- (1) The party, participant, or agent has not disclosed the contribution on the record of the proceeding; and
- (2) You do not otherwise know facts establishing that the contribution must be aggregated pursuant to Section 82015.5 and Regulation 18438.5.

## Section 82015.5

Section 82015.5 provides:

- If an individual directs or controls an entity's contributions, the entity's contributions shall be aggregated with contributions made by both of the following:
  - That individual.
  - Any other entity whose contributions that individual directs or controls.
- If two or more entities make contributions that are directed or controlled by a majority of the same persons, the contributions of those entities shall be aggregated.
- Contributions made by entities that are majority owned by a person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their contribution-making decisions.

In practice, Section 82015.5's aggregation rules will most frequently come into play when you have received a contribution from a party or participant, as well as a contribution from a business owned by the party or participant or from a parent/subsidiary/sister corporation of the party or participant.

**Note:** In general, a spouse of a party or participant is not also considered a party or participant and, therefore, contributions by a spouse are not aggregated with contributions by the party or participant. The two scenarios in which contributions by a spouse are aggregated with contributions by the party or participant are where:

- (1) The proceeding involves real property or a business interest that is owned jointly by the spouses; or
- (2) The spouse is acting as the agent of their party or participant spouse.

### Aggregation Example 1

A proceeding is on the agenda for the next public meeting of the governmental board you are a member of. You check whether the party involved has contributed to any of your controlled committees within the past 12 months and see that the party contributed \$200 six months ago. No other contributions have been disclosed by the party or the party's agent. Accordingly, you take part in the proceeding at the public meeting.

After the meeting, you learn that the party owns a company that also contributed \$200 to your committee six months ago, for an aggregate total contribution of \$400 within the past six months. Because the party and the party's agent did not disclose the contribution by the party's company and you did not know facts establishing that the contribution by the party's company needed to be aggregated with the party's contribution—i.e., you did not know of the connection between the party and the company—your participation in the proceeding **was not a violation** of Section 84308.

### Aggregation Example 2

Using the above example, suppose that during the course of the meeting—after you have already begun participating—the party discloses that their company contributed \$200 to your committee six months ago. At that point, you would know facts establishing that the contributions need to be aggregated and would amount to more than \$250 within the past 12 months. Your continued participation in the proceeding would be **a violation** of Section 84308, unless you disclosed on the record of the proceeding the fact that the contributions were disqualifying and confirmed you would return the disqualifying portion of the contribution within 30 days and subsequently did, in fact, return the disqualifying portion of the contribution.

## G. CAN I RETURN A CONTRIBUTION?

Under Section 84308, you are permitted to return a contribution that would otherwise disqualify you from an entitlement for use proceeding if you **return the contribution within 30 days** from the time you know, or should have known, about the contribution and the proceeding. You are permitted to make such a return if:

- (1) The contribution was received from a **party** prior to you knowing or having reason to know that a proceeding involving the party had commenced. For purposes of this provision, if you serve on a governing body or board, you are considered to know or have reason to know a proceeding involving the party has commenced if the proceeding has been noticed on the agenda for a public meeting of the board; or
- (2) The contribution was received from a **participant** prior to you knowing or having reason to know that the participant had a financial interest in the proceeding.

If you are serving on a governing body or board and would otherwise be disqualified under Section 84308 from taking part in a proceeding, you may take part in the proceeding prior to returning the contribution if all the following criteria are met:

- (1) The decision is made at a public meeting of the governing body or board;
- (2) You have known or should have known about the contribution and proceeding for fewer than 30 days;
- (3) After learning of the contribution or proceeding and prior to taking part in any further discussion or decision, you disclose the fact of the disqualifying contribution on the record of the proceeding, as required by Section 84308(c), and confirm that the return will occur within 30 days from the time you knew, or should have known, about the contribution and proceeding; and
- (4) The contribution is returned within that timeframe.

### Return of Contribution Example

You are a member of the City Council. At a public meeting held on March 11, the City Council will consider a proposed development agreement. The developer donated \$300 to your campaign committee six months ago. You learned about the proceeding when the meeting agenda was published 10 days ago, on March 1. At the beginning of the meeting, you disclose the contribution over \$250 from the developer within the preceding 12 months, but state that you will return the disqualifying portion by March 31—30 days after you first knew, or should have known, about the contribution and proceeding. You may then take part in the proceeding without violating Section 84308 as long as the disqualifying portion is, in fact, returned by March 31.

## H. FREQUENTLY ASKED QUESTIONS

### 1. Is my local government position covered under Section 84308?

Under Section 84308, “officer” means “any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.” This includes local government positions. The only officials Section 84308’s requirements do not apply to are officials in the judicial branch, the Legislature, Board of Equalization, and constitutional officers.

### 2. What if I am an officer in the midst of a proceeding and the individual testifying in support of a project discloses they made a \$300 contribution to my campaign and states they live “in the neighborhood near the project site.” Do I have “reason to know” that the individual has a financial interest in a proceeding so that they qualify as a “participant” for disclosure and recusal purposes?

You must consider your knowledge and the specific facts provided. An officer does not know of a participant’s financial interest in a decision solely as a result of the participant identifying an economic interest located in the general vicinity of a business entity or real property at issue in the proceeding.

If, after considering the specificity of the facts provided, you are not certain, you should either:

(A) In an abundance of caution, recuse yourself from the proceeding until you can determine with certainty that the individual does *not* constitute a participant in the proceeding; or

(B) Not recuse, but follow the steps in the meeting for returning the disqualifying portion of the contribution received from the individual, including disclosing the contribution, pledging to return the disqualifying amount within the relevant timeframe, and then doing so. If the appropriate steps for the return of a contribution are completed, your continued participation in the proceeding does not constitute a violation of Section 84308.

As an officer, you are required to consider all relevant facts known by you at the time of the decision in determining whether the facts revealed by a person have made a financial interest apparent. You should familiarize yourself with the relevant “reasonable foreseeability” and “material financial effect” standards discussed in this document, as well as available on the FPPC website at <https://fppc.ca.gov/learn/conflicts-of-interest-rules.html> and <https://fppc.ca.gov/the-law/fppc-regulations/regulations-index.html> (Regulations 18701 and 18702.1-18702.5). If you are uncertain whether the facts known by you make a person’s financial interest apparent, you may wish to seek advice from agency counsel or the FPPC.

**3. Other than being made “orally,” “in writing,” or “on the record,” what form must disclosure take?**

Neither Section 84308 nor its related regulations specify the exact form disclosure must take beyond the requirements discussed in the “Disclosure” section above. Given the wide variety of agencies and jurisdictions Section 84308 applies to, disclosure may take different forms. For example, one agency may decide to include all relevant disclosures in writing as part of the meeting agenda, while another agency may choose to have agency counsel make a disclosure on an officer’s behalf and have the disclosure included in the meeting minutes. As long as a record of the disclosure is maintained by the agency and may be accessed by the public, the agency may decide on its preferred process for disclosure.

**4. I am a candidate for office but I am not currently an officer of an agency. Am I prohibited from accepting, soliciting, or directing a contribution from a party or participant involved in a proceeding before the agency the candidate is campaigning for office in?**

No. A candidate for office who does not hold any other governmental position does not meet the definition of “officer of an agency” and therefore is not prohibited from accepting, soliciting, or directing such contributions from a party, participant, or agent, **but may be prohibited** from taking part in a proceeding involving the party, participant, or agent *once elected* if they have received a contribution of more than \$250 within the preceding 12 months.

**5. I am a candidate for a school board position and I am an employee of the County Planning permit department. Am I subject to Section 84308 due to my employment given that a building application does not in any way relate to a school board position?**

**Yes. You are subject to Section 84308.** The office a candidate is running for does not need to relate to the entitlement for use proceeding in order for Section 84308 to apply.

**6. Is a “strong mayor” with veto power over city council decisions permitted to exercise that veto power—even when the mayor has received ordinarily disqualifying contributions of more than \$250 from a party, participant, or agent thereof—on the basis of “legally required participation”?**

**Yes.** Because a “strong mayor” is legally required to exercise the powers and fulfill the duties authorized by a city charter and, to the extent the city charter authorizes a mayor to take part in an entitlement for use proceeding, conduct that would ordinarily disqualify a mayor under Section 84308 does not prohibit the mayor from participating. (*Granda* Advice Letter, No. I-23-102.)

However, the legally required participation exception does not excuse other violations of Section 84308 and a **strong mayor** taking part in an entitlement



proceeding pursuant to the exception is still required to refrain from soliciting, directing, or receiving contributions from parties/participants while the proceeding is pending and for 12 months thereafter, and must also make all necessary disclosures.

**7. Are personal contributions from members of a governmental board in their individual capacity considered contributions “from the governmental board”? Do the contributions need to be aggregated?**

**No.** Contributions made in the member’s personal capacity, are not considered contributions from the governmental board and are not aggregated with contributions made by other members of the body or board made in their personal capacities.

**8. May I accept, solicit, or direct contributions exceeding \$250 from an unpaid, volunteer officer of a non-profit organization, if the organization is a party, participant, or agent in the proceeding?**

Yes. Contributions from an uncompensated officer of a non-profit organization are not aggregated with contributions by the non-profit organization, given that the uncompensated officer does not have a financial interest in the proceeding. The non-profit organization is not a “business entity” and it is not a “source of income “ to the volunteer officer.

**9. I am an elected local officer. Can I be disqualified from taking part in an entitlement for use proceeding based on contributions the officer received in 2022, within 12 months of the proceeding?**

**No.** Under Regulation 18438, Section 84308’s provisions, as amended by SB 1439 and effective as of January 1, 2023, do not apply to contributions received prior to that date. If Section 84308 did not apply to you before January 1, 2023, contributions you received and proceedings you participated in prior to that date do not implicate Section 84308.

**10. Does the \$250 limit apply to each candidate or each committee? For example, can a party donate \$250 to two committees controlled by the same officer?**

The \$250 limit applies to **each candidate, not each committee**, such that a party, participant, or agent may not donate more than \$250 across all of an officer’s controlled committees.

**11. A business contributed more than \$250 to my campaign a few months ago. Now an employee of the business is coming before my agency in their personal capacity, applying for a building permit to remodel their home. Am I disqualified from the proceeding based on the business’s \$250+ contribution?**

**Generally, no.** In the described circumstances, the employee would be the party in the proceeding, while the business would not be a party or agent of the employee-party. Assuming the business is not structured in such a way that the “employee” is, in

fact, the majority owner of the company or directs or controls the company's contributions, the contributions made by the company would not be aggregated with contributions made by the employee. Therefore, the officer who received a \$250+ contribution from the company would not be disqualified from the proceeding.

**12. Are project labor agreements establishing the terms and conditions of employment for workers on certain projects considered exempt “labor contracts” under Section 84308?**

**Yes.** A “labor contract” is defined as “a contract or agreement reached through collective bargaining or with a representative group regarding the salary, benefits, or terms and conditions under an employment or retirement policy for employees or retirees, including a project labor agreement entered into under Public Contract Code Section 2500.”

**13. If a union representative provides public comment in support or in opposition of a governmental decision and indicates the decision will have a financial impact on its members, is the union considered a “participant”?**

Only if the union organization itself has a financial interest under the standards applicable to a nonprofit organization. To be a “participant,” a person (including a nonprofit organization) must have a financial interest in the proceeding. A nonprofit organization such as a union does not necessarily have a financial interest in a proceeding solely because it would be beneficial to the organization's members.

The relevant standards for determining a reasonably foreseeable, material financial effect on a nonprofit organization, such as a union, are:

- **Change in Receipts:** The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than: \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000.
- **Change in Expenses:** The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500.
- **Impact on Real Property:** The official knows or has reason to know that the organization has an interest in real property and: the property is a named party in, or the subject of, the decision; or there is clear and convincing evidence the decision would have a substantial effect on the property.

Accordingly, unless it is reasonably foreseeable that a nonprofit organization would experience any of the above financial effects (e.g., the union's receipt of union dues increases by \$1,000,000 as a result of the increased union wages caused by a government contract), the nonprofit organization will not qualify as a “participant” and an

officer is not prohibited from receiving more than \$250 from the organization advocating for or against a particular decision in an entitlement proceeding.