

FPPC Revises Public Disclosure and Abstention Requirements for Public Officials with Conflicts of Interest

07.01.2020

ATTORNEYS

Diana H. Varat

Public officials may not rely on “absence” to avoid publicly disclosing a disqualifying financial interest. Instead, officials specified in Government Code Section 87200, which includes city councilmembers, planning commissioners, city attorneys, city managers, and others, still must disclose a disqualifying interest even if they are absent for the decision, according to the detailed requirements in revised Regulation 18707.

Under the Political Reform Act, public officials may not make, participate in making, or attempt to use their official positions to influence a governmental decision in which they know or have reason to know that they have a disqualifying interest. A public official has a disqualifying interest if the governmental decision at issue will have a reasonably foreseeable, material effect on the official’s financial interests. The prior version of Regulation 18707 set requirements for both the timing and contents of the disclosure.

The FPPC has now amended the regulation regarding abstention and recusal to ensure that disqualified public officials publicly identify any disqualifying financial interests even if they are not present for the decision. While the FPPC acknowledged that this practice has not been widespread, some officials apparently have sought to avoid disclosing their conflicts of interest by simply being “absent” from a portion of a meeting. Under revised Regulation 18707, mere absence during the relevant item clearly does not suffice for the purpose of complying with the FPPC’s recusal requirements.

If a public official identified in Section 87200 has a disqualifying financial interest, the official must comply with the explicit disclosure requirements of revised Regulation 18707. The official must identify the financial interest giving rise to the conflict, making sure to provide the details about the financial interest that are required by the regulation. Generally, this disclosure must be made orally, ***immediately prior to the consideration of the agenda item***. Unless the item is on the consent calendar or the official falls within an exception, the

official must leave the room after the public disclosure and prior to consideration of the item. Importantly, if the official leaves the meeting before the relevant agenda item, the official must publicly identify the agenda item and the financial interest prior to leaving the meeting. If the official first joins the meeting after the consideration of the relevant agenda item, the official must publicly identify the agenda item and the financial interest immediately upon joining the meeting. Regulation 18707 does not identify recusal requirements where the official with the conflict of interest is absent from the entire meeting.

The Revised FPPC Regulation can be viewed [here](#).

If you have any questions about conflicts of interest under California law, or how these amendments may impact your jurisdiction, please contact **Diana Varat**.