

FPPC Revises the “Public Generally” Exception for Public Officials with Conflicts of Interest

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Public officials now have greater clarity about when a governmental decision will have an indistinguishable effect on the public generally, thereby allowing them to participate in the decision despite a potential conflict of interest.

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 financial interest. A public official generally has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect on the official, the official's immediate family, or on certain financial interests. However, under the “public generally” exception, an official with a financial interest may still participate in a governmental decision if the financial effect on the official's interest is *indistinguishable* from the decision's effect on the public generally. The Fair Political Practices Commission (FPPC) recently amended Regulation 18703, which sets forth the rules for applying the “public generally” exception.

Revised Regulation 18703 amends both the general rule for the “public generally” exception and the specific rules for special circumstances. The general rule for the “public generally” exception requires the official to demonstrate that: (1) the governmental decision affects a *“significant segment”* of the public in the official's jurisdiction; and (2) the governmental decision's effect on the official's financial interest is not unique compared to the effect on the significant segment. The FPPC recently revised the general rule to create a lower “significant segment” threshold of **15 percent** - instead of 25 percent - for residential real property within the official's jurisdiction if the only interest impacted is the official's *primary residence*. All other aspects of the general rule remain the same.

Revised Regulation 18703 also amends requirements for the application of the “public generally” exception in some special circumstances, as follows:

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- ▶ **Public Services and Utilities:** A public official may *no longer* participate in a decision to *impose* an assessment, tax, fee, or utility rate, or *determine the boundaries* of a property or groups of persons subject to an assessment, tax, fee, or utility rate if it is reasonably foreseeable that the decision would have a material impact on the official's financial interests. However, revised Regulation 18703 clarifies that an official may participate in *setting* or *adjusting* the *amount* of the assessment, tax, fee, or utility rate, so long as such charges are applied equally, proportionally, or by the same percentage to the official's interest and all others subject to the charges.
- ▶ **Limited Neighborhood Effects:** Under this exception, a public official may participate in decisions on specific types of ordinances if the decision affects residential properties in a specific location. The revised Regulation clarifies that in order to fall into this exception, the decision must affect *over 50 parcels or five percent* of the residential real properties in the official's jurisdiction.
- ▶ **Rental Properties:** Finally, revised Regulation 18703 clarifies that the exception for interests in rental properties applies (in certain circumstances) for public officials who are tenants *and landlords*. Officials now may participate in broad rent control decisions and tenant protection measures if: (1) the decision applies to all residential rentals within the official's jurisdiction except those exempted by the Costa-Hawkins Rental Housing Act; (2) the official owns three or fewer residential rental units; and (3) the only interests affected by the decision are the official's interests in the residential property as a landlord or the official's interests in a primary residence (as either a lessee or as the owner of the property).

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** or **Chelsea Straus**.