

1 Amend 2 Cal. Code Regs. Section 18705 as follows:

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

3 (a) A public official who has a financial interest in a decision or has received a  
4 disqualifying contribution under Section 84308 may establish that the official is legally required  
5 to make or to participate in the making of a governmental decision within the meaning of Section  
6 87101 only if there exists no alternative source of decision consistent with the purposes and  
7 terms of the statute authorizing the decision.

8 (b) Whenever a public official who has a financial interest in a decision or has received a  
9 disqualifying contribution under Section 84308 is legally required to make or to participate in  
10 making such a decision, the official, or an employee of the agency on behalf of the official, shall  
11 state the existence of the potential conflict as follows:

12 (1) The ~~public~~ official or employee shall disclose the existence of the conflict and  
13 describe with particularity the nature of the economic interest. “Particularity” as used in this  
14 regulation shall be satisfied if the official or employee discloses:

15 (A) whether the conflict involves an investment, business position, interest in real  
16 property, or the receipt of income, ~~loans, or gifts~~ loan, gift, or contribution;

17 (B) if the interest is an investment, the name of the business entity in which each  
18 investment is held; if the interest is a business position, a general description of the business  
19 activity in which the business entity is engaged; if the interest is real property, the address or  
20 another indication of the location of the property, unless the property is the official’s principal or  
21 personal residence, in which case the official or employee shall disclose this fact. For income,  
22 loans or gifts, the official or employee shall disclose the person or entity that is the source. For  
23 contributions, the official or employee shall disclose that the official has received contributions  
24 from a party or participant greater than \$250 within the preceding 12 months and the name of the

1 party or participant who made the contributions.

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

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

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

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

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

21 (C) If the government decision is made or participated in other than during the open or  
22 closed session of a public meeting, the disclosures shall be made in writing and made part of the  
23 official public record, either by the ~~public official and/or by another officer~~ or employee of the  
24 ~~agency~~. The writing shall be filed with the ~~public~~ official's appointing authority or supervisor and

1 shall be placed in a public file within 30 days after the ~~public~~ official makes or participates in the  
2 decision. Where the ~~public~~ official has no appointing authority or supervisor, the disclosure(s)  
3 shall be made in writing and filed with the agency official who maintains the records of the  
4 agency's statements of economic interests, or other designated office for the maintenance of such  
5 disclosures, within 30 days of the making of or participating in the decision.

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

7 (1) Not be construed to permit an official, who is otherwise disqualified under Section  
8 87100 or Section 84308, to vote to break a tie.

9 (2) Not be construed to allow a member of any public agency, who is otherwise  
10 disqualified under Section 87100 or Section 84308, to vote if a quorum can be convened of other  
11 members of the agency who are not disqualified under Section 87100 or Section 84308, whether  
12 or not such other members are actually present at the time of the disqualification.

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

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

21 COMMENT: Nothing in the provisions of subsection (b)(4)(B) is intended to cause an  
22 agency or ~~public~~ official to reveal the confidences of a closed session contemplated by law. For  
23 example, under the Brown Act (Sections 54950 et seq.) a city council may enter a closed session  
24 to discuss personnel matters and need not publicly disclose the name of the employee who is the

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

4 Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002,  
5 81003, 84308, and 87101, Government Code.