

Workshop w/ City Attorney

TYPES OF ACTION

A. LEGISLATIVE ACTION

EXAMPLES:

GENERAL PLANS
SPECIFIC PLANS
ZONING ORDINANCES

USUALLY NO "FINDINGS" REQUIRED

STANDARD OF REVIEW:

RATIONAL BASIS TEST
LEGITIMATE PURPOSE (statement of purpose often included in ordinance)

PRESUMPTION OF VALIDITY

BUT, WHERE CONSTITUTIONAL RIGHTS ARE BEING REGULATED,
MUST BE:

IMPORTANT GOVERNMENTAL INTEREST AND
MINIMUM DEGREE OF REGULATION

B. ADMINISTRATIVE ACTION (ADJUDICATORY)

EXAMPLES:

ZONING APPROVALS:

PLANNED DEVELOPMENT PERMITS
USE PERMITS
DESIGN PERMITS
VARIANCES
SIGN PROGRAMS
MODIFICATIONS TO PARKING REGULATIONS

SUBDIVISION APPROVALS:

TENTATIVE SUBDIVISION MAP APPROVAL
MODIFICATIONS OF SUBDIVISION STANDARDS

EXERCISE OF DISCRETION

MAY GRANT, DENY OR IMPOSE CONDITIONS OF APPROVAL

FINDINGS:

MUST ALWAYS SPECIFY FINDINGS TO GUIDE DISCRETION
DIFFERENT FINDINGS FOR DIFFERENT APPROVALS
FINDINGS MUST BE EXPRESSLY MADE IN GRANT OF APPROVAL

STANDARD OF REVIEW:

IS THE DECISION SUPPORTED BY FINDINGS?

ARE THE FINDINGS SUPPORTED BY SUBSTANTIAL EVIDENCE?

BUT, WHERE VESTED OR CONSTITUTIONAL RIGHTS ARE INVOLVED,
INDEPENDENT JUDGMENT TEST IS USED.

C. MINISTERIAL ACTIONS

NO DISCRETION INVOLVED – ONLY QUESTION IS WHETHER CERTAIN
STANDARDS OR REQUIREMENTS HAVE BEEN SATISFIED

NO AUTHORITY TO IMPOSE NEW CONDITIONS OR EXACTIONS (unless approval of
a modification to the original project is being requested, in which case the action would
no longer be ministerial).

EXAMPLES:

ISSUANCE OF BUILDING PERMITS – DO THE PLANS COMPLY WITH THE
APPLICABLE BUILDING CODES? (But building permits can, by ordinance, be
made discretionary acts if conditions imposed, based upon specified findings)

FINAL SUBDIVISION MAP APPROVAL – DOES THE FINAL MAP
SUBSTANTIALLY COMPLY WITH THE APPROVED TENTATIVE MAP? HAVE
THE CONDITIONS OF APPROVAL BEEN SATISFIED?

SECOND UNIT PERMITS – HAVE DEVELOPMENT STANDARDS BEEN
SATISFIED? (Previously were discretionary permits but most of discretion has
been eliminated by mandatory standards imposed by State law)

LOT LINE ADJUSTMENTS – CAN'T IMPOSE NEW CONDITIONS

ZONING ORDINANCE

A. AMENDMENT

PROPOSED AMENDMENTS MUST FIRST BE CONSIDERED BY PLANNING COMMISSION AFTER CONDUCT OF PUBLIC HEARING

COMMISSION MAKES RECOMMENDATION TO CITY COUNCIL – TO ADOPT, REJECT OR MODIFY

IF SUBSTANTIAL CHANGE BY CITY COUNCIL, MUST BE REFERRED BACK TO PLANNING COMMISSION FOR REVIEW AND COMMENT (within 45 days – no further public hearing is conducted by the Planning Commission)

FINAL ADOPTION OR REJECTION BY CITY COUNCIL

B. USES OF LAND AUTHORIZED BY ZONING ORDINANCE

UNLESS PROPOSED USE IS SPECIFIED IN THE ZONING ORDINANCE (or can be included as a matter of interpretation), IT IS PROHIBITED

PERMITTED USES – ALLOWED AS A MATTER OF RIGHT; NO SPECIAL ZONING PERMIT OR APPROVAL REQUIRED

CONDITIONAL USE – PERMIT REQUIRED, ISSUED BY PLANNING COMMISSION

USE PERMITS

FINDINGS: NOT DETRIMENTAL TO HEALTH, SAFETY, COMFORT OR GENERAL WELFARE OR OTHER PROPERITIES OR USES

AUTHORITY TO CONTROL OPERATIONS

CONTINUING JURISDICTION – POWER TO MODIFY CONDITIONS OR REVOKE PERMIT IF CONDITIONS VIOLATED

DECISION OF PLANNING COMMISSION IS FINAL UNLESS APPEALED TO CITY COUNCIL

PLANNED DEVELOPMENT (PD) PERMITS

RECOMMENDATION BY PLANNING COMMISSION – FINAL ACTION BY CITY COUNCIL

OTHER SPECIAL PURPOSE USE PERMITS:

HOME OCCUPATIONS (Issued by Planning Director)

INTERIM USES IN THE BAYLANDS (Until adoption of the Specific Plan)

TEMPORARY USES

CONDOMINIUM CONVERSIONS

C. VARIANCES VS. MODIFICATIONS OF STANDARDS

VARIANCES – SPECIFIC FINDINGS REQUIRED:

GRANTING WILL NOT BE CONTRARY TO PUBLIC SAFETY, HEALTH AND WELFARE

EXCEPTIONAL PHYSICAL CIRCUMSTANCES TO DISTINGUISH SITE FROM OTHER PROPERTIES IN THE SAME ZONING DISTRICT

NO GRANT OF SPECIAL PRIVILEGE

MODIFICATIONS OF STANDARDS – FINDINGS NOT AS STRINGENT AS VARIANCE

D. NONCONFORMING USES AND STRUCTURES

DISTINGUISH FROM ILLEGAL USES AND STRUCTURES – ORIGINALLY WERE LEGAL AND RENDERED ILLEGAL DUE TO CHANGE IN REGULATIONS

CAN BE LEGAL USE IN NONCONFORMING STRUCTURE (e.g. setback too small), or LEGAL STRUCTURE WITH NONCONFORMING USE (e.g. occupancy by business no longer allowed to be conducted in that district)

CONTINUATION OF NONCONFORMING USE OR STRUCTURE

GRANDFATHERED

AMORTIZATION PERIOD – TYPICALLY LONGER FOR STRUCTURES

LEGALIZE BY ISSUANCE OF USE PERMIT OR VARIANCE – NO LONGER WILL BE NONCONFORMING

CONDITIONS AND EXACTIONS

DEVELOPMENT IS A PRIVILEGE, NOT A RIGHT

A. SOURCES OF AUTHORITY TO IMPOSE CONDITIONS AND EXACTIONS

STATE PLANNING LAW AND SUBDIVISION MAP ACT

CEQA MITIGATION MEASURES

GENERAL PLAN AND SPECIFIC PLANS

GENERAL POLICE POWER OF CITY

B. WHEN DO WE GO TOO FAR?

MUST HAVE REASONABLE RELATIONSHIP TO IMPACTS OF PROJECT

"NEXUS" AND "PROPORTIONALITY"

DEVELOPER NOT RESPONSIBLE FOR CORRECTING CONDITIONS NOT
CREATED BY PROPOSED DEVELOPMENT

"TOO FAR" IS ABUSE OF DISCRETION AND REGULATORY TAKING
EXPOSURE TO DAMAGE CLAIM BY PROPERTY OWNER

C. TYPES OF EXACTIONS:

DEDICATION AND CONSTRUCTION OF PUBLIC FACILITIES

STREETS AND TRAFFIC CONTROL DEVICES

WATER AND SEWER UTILITY FACILITIES

LIGHTING AND LANDSCAPING

PARKS AND RECREATIONAL FACILITIES

DEVELOPMENT IMPACT FEES

PROPORTIONATE SHARE OF COST OF CAPITAL IMPROVEMENTS

SCHOOL IMPACT FEES – PAID TO SCHOOL DISTRICTS

CONNECTION FEES FOR WATER AND SEWER SERVICE

REIMBURSEMENT AGREEMENT – IF DEVELOPER INSTALLS GREATER CAPACITY
THAN NEEDED FOR PROJECT (e.g. street improvements or utility lines)

FEDERAL AND STATE PREEMPTION

A. FEDERAL AND STATE PREEMPTION:

FEDERAL PREEMPTION BASED UPON "SUPREMACY CLAUSE" OF U.S. CONSTITUTION. STATE OR LOCAL LAWS IN CONFLICT ARE PREEMPTED.

STATE LAWS MAY PREEMPT LOCAL ORDINANCES

BRISBANE IS A GENERAL LAW CITY.

LOCAL LAWS MAY NOT CONFLICT WITH "GENERAL" OR STATE LAWS – WHEN SUCH GENERAL LAWS ARE ADOPTED, STATE LAW HAS PREEMPTED POWER OF CITY TO ADOPT A LOCAL LAW

B. PREEMPTION ANALYSIS:

NEED TO DETERMINE IN EACH CASE WHETHER THERE IS A CONFLICT AND WHETHER THERE IS "ROOM TO REGULATE" AT THE LOCAL LEVEL.

PREEMPTION AT FEDERAL LEVEL:

Scheme of federal regulation so dominant that it precludes enforcement of state laws on the same subject. Goals and purpose of federal law show intent to preclude local authority

Conflict exists when state law makes it impossible to comply with federal law or creates an obstacle to the goal of the federal law. City cannot impose conditions on a subject matter within its authority if the conditions interfere with the federal regulatory scheme (e.g. local regulation of telecommunication antennas or interference with interstate commerce,).

STATE PREEMPTION OF LOCAL LAWS

Local law may conflict with state law if it: (1) duplicates, (2) contradicts, or (3) enters a field which has been "fully occupied" by state law.

Need to determine legislative intent in each case.

No conflict if local law deals with a different "field" of regulation or if the field of regulation has not been fully and completely covered (i.e. occupied) by state law.

Does the local law have a separate and independent purpose to distinguish it from state law? Is there a long tradition of local regulation?

LOCAL REGULATION MUST COMPLY WITH FEDERAL AND STATE CONSTITUTIONAL RIGHTS SUCH AS FREE SPEECH, DUE PROCESS AND EQUAL PROTECTION

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A. LEVELS OF REVIEW:

STATUTORILY OR CATEGORICALLY EXEMPT- TYPES OF PROJECTS DETERMINED UNDER STATE LAW NOT TO HAVE POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS. NO CEQA INITIAL STUDY REQUIRED.

NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION- DETERMINED THAT THE PROJECT IMPACTS ARE EITHER LESS THAN SIGNIFICANT OR CAN BE MITIGATED TO A LEVEL OF INSIGNIFICANCE, BASED UPON INITIAL STUDY.

ENVIRONMENTAL IMPACT REPORT- DETERMINED THAT THE PROJECT IMPACTS ARE POTENTIALLY SIGNIFICANT

B. DETERMINATION OF SIGNIFICANCE:

A SIGNIFICANT EFFECT IS GENERALLY DEFINED AS A SUBSTANTIAL ADVERSE CHANGE IN THE **PHYSICAL** ENVIRONMENT. SOCIAL AND/OR ECONOMIC EFFECTS ARE NOT CONSIDERED SIGNIFICANT FOR PURPOSES OF CEQA.

A DETERMINATION OF SIGNIFICANCE SHOULD BE BASED UPON SUBSTANTIAL EVIDENCE. SUBSTANTIAL EVIDENCE CONSISTS OF FACTS, REASONABLE ASSUMPTIONS BASED ON FACTS, AND EXPERT OPINION BASED ON FACTS. SPECULATION, ARGUMENT, UNSUPPORTED OPINION AND ERRONEOUS FACTS ARE NOT CONSIDERED SUBSTANTIAL EVIDENCE FOR CEQA PURPOSES.

C. MITIGATION MEASURES: MUST CLEARLY REDUCE THE IMPACT IN QUESTION TO A LESS THAN SIGNIFICANT LEVEL. MITIGATION MEASURES MUST BE ENFORCEABLE AND MEASURABLE TO ALLOW FOR VERIFICATION THAT THEY ARE BEING IMPLEMENTED.

PERMIT STREAMLINING ACT

APPLIES ONLY TO ADJUDICATORY ACTS (e.g. applications for land use permits)

DOES NOT APPLY TO LEGISLATIVE ACTIONS (e.g. applications for General Plan or Zoning Ordinance amendment)

MUST PROVIDE LIST OF APPLICATION REQUIREMENTS

30 DAYS TO REVIEW APPLICATION

EITHER DETERMINE IS COMPLETE OR ADVISE AS TO WHAT IS NEEDED

APPLY ORDINANCES AND RULES IN FORCE AS OF TIME APPLICATION DEEMED COMPLETE

TIME LIMIT FOR ACTION BY PLANNING COMMISSION ON APPLICATION FROM DATE APPLICATION IS DEEMED COMPLETE (subject to extensions):

IF NEGATIVE DECLARATION – 6 MONTHS

IF EIR – 1 YEAR

IF NO ACTION TAKEN, APPLICATION *COULD* BE DEEMED APPROVED AFTER CERTAIN NOTICES GIVEN (but this result is unlikely due to certain procedural requirements and need to comply with CEQA, which may require more time).

CONFLICTS OF INTEREST

PUBLIC OFFICIALS ARE PROHIBITED FROM MAKING, OR IN ANY WAY ATTEMPTING TO USE THEIR OFFICIAL POSITION TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH THEY KNOW, OR HAVE REASON TO KNOW, THEY HAVE A FINANCIAL INTEREST.

AN OFFICIAL HAS A FINANCIAL INTEREST IF IT IS REASONABLY FORESEEABLE THAT THE DECISION WILL HAVE A MATERIAL FINANCIAL EFFECT, DISTINGUISHABLE FROM ITS EFFECT ON THE PUBLIC GENERALLY, ON THE OFFICIAL OR A MEMBER OF HIS OR HER IMMEDIATE FAMILY, OR ON THE OFFICIAL'S PROPERTY, BUSINESS, INVESTMENTS OR SOURCES OF INCOME.

The Conflict of Interest regulations published by the California Fair Political Practices Commission are complex and cannot easily be summarized here. For a general overview of the Conflicts Laws see the attached FPPC booklet entitled "Can I Vote?".

Can I Vote? Overview of the Conflicts Laws

"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

- You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, and
- a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most, if not all, mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**

- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

Here are the eight steps:

- **Step One:** Are you a "public official" within the meaning of the rules?
- **Step Two:** Are you making, participating in making, or influencing a governmental decision?
- **Step Three:** What are your economic interests? That is, what are the possible sources of a financial conflict of interest?
- **Step Four:** Are your economic interests directly or indirectly involved in the governmental decision?
- **Step Five:** What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?
- **Step Six:** The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?
- **Step Seven:** If you have a conflict of interest, does the "public generally" exception apply?
- **Step Eight:** Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One : Are you a "public official," within the meaning of the rules?

B-10

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality - you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

Governmental Decision

Step Two : Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion or judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict - Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Regulations section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must publicly identify in detail the economic interest that creates the conflict, step down from the dais and **must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

- The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.
- Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she may not sit in the public area and listen to the discussion.
- Supervisor Robertson rents a home to a county employee. The county employee is the subject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he

must recuse himself from participating in the closed session but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him. He may not attend the closed session or obtain any non-public information from the closed session.

Economic Interests

Step Three : What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.
- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income, a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has given you gifts which total \$420 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

Directly or Indirectly Involved?

Step Four : Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in " and therefore directly affected by " a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations if you have questions as each case arises. Note also that the next step in the analysis " applying the right standard to determine whether an impact is material " depends in part on whether the interest is directly or indirectly involved. The regulations , Sections 18704 through 18704.5 , and other helpful information can be found on the FPPC's web site, <http://www.fppc.ca.gov>.

Materiality (Importance)

Step Five : What kinds of financial impacts on your economic interests are considered

important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six : Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"Public Generally" Exception

Step Seven : If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific segments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.10.

Are you required to participate?

Step Eight : Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much, if not more, on the facts of your particular situation as it does on the law.
- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.
- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

An important note'

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code ??81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line " 1-866-ASK-FPPC " as far in advance as possible.

How to Contact Us:

- **Mail:**
Fair Political Practices Commission

428 J Street, Suite 620
Sacramento, CA 95814

- **Website:**

www.fppc.ca.gov

- **Telephone:**

Toll-free advice line: 1-866-ASK-FPPC(1-866-275-3772)

Regular line: 1-916-322-5660

Enforcement hot-line: 1-800-561-1861

(revised 7-27-05)

GLOSSARY OF PLANNING TERMS

Abutting. Having property or zone district boundaries in common; e.g., two lots are abutting if they have property lines in common.

Access. A way of approaching or entering a property. In zoning and subdivision regulations, lots of record usually are required to have direct access to a public street or to a private street meeting public standards. This is done not only to permit entry of residents and other uses but to permit emergency vehicles to reach buildings. In the context of land-use controls, access includes ingress, the right to enter, and egress, the right to leave.

Capital improvement program. A portion of the governmental budget pertaining to the construction of permanent infrastructure improvements, such as streets, landscape medians, parks and public buildings. The Planning Commission is given the opportunity to review the capital improvement program, thereby linking planning to the annual budgeting process. Capital improvement programs are usually projected two or three years in advance and should be updated annually.

Compatibility. The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. The designation of permitted and conditionally permitted uses in a zoning district are intended to achieve compatibility within the district. Some elements affecting compatibility include: intensity of occupancy as measured by dwelling units per acre; pedestrian or vehicular traffic generated; aesthetic and visual impacts; and such environmental effects as noise, vibration, glare, and air pollution.

Conditional use. A use that may locate in certain zoning districts upon the granting of a use permit by the Planning Commission, based upon a finding that the use will not be detrimental to the public health, safety, and welfare and will not impair the integrity and character of the zoning district. The Planning Commission either approves subject to conditions or denies such uses. Each application is considered on its individual merits.

Covenants, Conditions and restrictions (CC&R's). The requirements and limitations placed on each lot of a subdivision project. They are intended to protect the individual lot owners as well as the general public regarding placement, construction, and maintenance of buildings and common areas.

Condominium. The legal arrangement in which a dwelling unit in an apartment building or residential development is individually owned but in which the common areas are owned, controlled and maintained through an organization consisting of all the individual owners.

Dedication. A turning over of private land for a public use by a property owner, and its acceptance for such use by the governmental agency in charge of the public function for which it will be used. Dedications for streets, parks, utilities, or other public uses are often made conditions for the approval of a development by the planning commission.

Dedication, payment in lieu of. Cash payments required as a substitute for a dedication of land by an owner, usually at so many dollars per lot or per square foot. This overcomes the two principal problems of land-dedication requirements by applying the exactions on development more equitably and by allowing purchase of sites at the best locations rather than merely in places where the development is large enough to be required to dedicate a school or park.

Density. The average number of families, persons, or housing units per unit of land; usually density is expressed "per acre." Thus, the density of a development of 300 units occupying 40 acres is 7.5 units per acre. The control of density (see density, control of) is one of the basic purposes of the general plan and the zoning regulations. Gross density includes the area necessary for streets, schools and parks. Net density does not include land area for public facilities.

Density, control of. A limitation on the occupancy of land. Density can be controlled through zoning by one or a combination of the following methods: use restrictions, e.g., single or multiple family dwellings; minimum lot size requirements; floor area ratios; land use intensity zoning; setback and yard requirements; establishing ratios between the number and types of housing units and land area; direct limitations on units per acre; requirements for lot area per dwelling unit; and other means.

Development impact fees. This is a fee or charge imposed on developers to pay for the costs to the community of providing services to a new development. It is a means of providing a fund for financing new public improvements without resorting to deficit financing.

Easement. A right given by the owner of land to another party for specific limited use of that land. For example, a property owner may give or sell an easement on his property to allow utility facilities like power lines or pipelines, or to allow access by occupants of abutting property. An easement may be acquired by government through dedication by the property owner or by purchase.

Environmental assessment. An assessment of a proposed project or activity to determine whether it will have significant effects on the natural and man-made environments. When no significant environmental impact will result, a "negative declaration" is issued instead of the Environmental Impact Report (EIR), which is the detailed report on how the project will affect the environment.

Final subdivision map. A map of an approved subdivision filed in the county recorder's office. It usually shows surveyed lot lines, street right-of-ways, easements, monuments, and distances, angles, and bearings, pertaining to the exact dimensions of all parcels, streets, common area open space, and other design features of the subdivision. (See also tentative subdivision map).

Finding. A determination or conclusion based on the evidence presented to the Planning Commission in support of its decision. Different types of approvals (such as use permits, variances and tentative maps) will each have a separate set of findings to be made for granting the approval, as set forth in the zoning or subdivision ordinance.

Frontage. The frontage, or front, of a lot is usually defined as the side nearest the street.

General plan. A legal document in the form of a map and accompanying text which serves as a comprehensive long-term plan for the physical development of the City. The Plan shall consist of development policies and shall include objectives, standards and programs, as incorporated into 7 mandatory elements (land use, circulation, housing, conservation, open space, noise and safety).

Homeowners association. A non-profit organization, usually established by the CC & R's. Generally, each lot owner in a subdivision, condominium or similar planned development becomes a member upon purchase and each lot is subject to a charge for a proportionate share of the expenses for the organization's activities such as maintaining common area landscaping, recreation facilities and parking areas.

Lot. The basic development unit - an area with fixed boundaries, used or intended to be used by one building and its accessory structures. Characteristics of lots for zoning purposes include: buildable area, lot coverage, lot depth and lot width. A lot must meet the requirements of the zoning district in which it is located and must front on a public street or an approved private street.

Nonconforming uses or structures. Lots, structures, uses of land and structures, and characteristics of uses, which are prohibited under the terms of the current zoning ordinance but were lawful at the time they were first established. While ordinances may permit legal nonconforming uses or structures to continue, they prohibit the substitution of a new or different nonconformity and do not permit the enlargement of a nonconforming condition or re-establishment if the use or structure is abandoned or terminated.

Off-site improvements. Installation of streets, curbs, gutters, sidewalks, street trees, etc., that are located adjacent to the project on city-owned property. These improvements are typically required as a condition of project approval.

Permitted use. A use by right which is specifically authorized in a particular zoning district. It is contrasted with conditional uses which are authorized only if certain requirements are met and a use permit is granted by the Planning Commission.

Planned development (P-D). A self-contained development, often with a mixture of land uses and densities, in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. Commercial and even industrial uses may be combined with different types of residential uses. A special PD permit is required and the Planning Commission typically is given authority to modify development standards in connection with the granting of such permit.

Principal use. The main use of land or structures as distinguished from a secondary or accessory use. A house is a principal use in a residential area; a garage or pool is an accessory use.

Setback regulations. The requirements that a building be set back a certain distance from the street or lot line.

Specific plan. A plan adopted by a city to implement the general plan for a designated area. It contains the locations and standards for land use densities, streets and other public facilities in greater detail than the general plan map and text.

Subdivision. The division of land into two or more lots. The subdivision process may include the establishment of streets, utility easements and other design features.

Tentative subdivision map. A map showing the design of a proposed subdivision of lots. It includes all of the conditions of approval and exactions that are imposed by the City and other governmental agencies that review the proposed map. The term "tentative" is somewhat misleading because additional conditions or substantive design changes cannot be required after the tentative subdivision map approval has been granted, unless the subdivider thereafter applies for approval of a modification to the original tentative map.

Variance. The granting of relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. A variance may be granted, for example, to reduce yard or setback requirements, or the number of parking spaces. A variance cannot be granted for a use which is not allowed in the zoning district as either a permitted or conditional use.

Zero lot line. A development in which a building is sited on one or more lot lines with no setback. Conceivably, three or four sides of the building could be on the lot lines. The intent is to allow more flexibility in site design and to increase the amount of usable open space on the lot or within the entire subdivision.

Zoning districts. Geographical areas of a city or county zoned with uniform regulations and requirements.