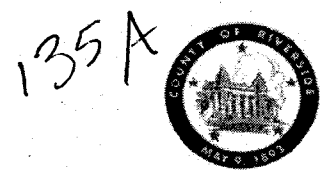


**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**FROM:** County Counsel

**SUBMITTAL DATE:**  
December 19, 2012

**SUBJECT:** Approval of the Conflict of Interest Code of the Valley Health System

**RECOMMENDED MOTION:** That the Board of Supervisors approves the Conflict of Interest Code submitted by Valley Health System.

**BACKGROUND:** Government Code section 87306.5 requires that all local agencies review their Conflict of Interest Code, and the listings of designated positions for employees who must disclose along with the types of disclosure required, and make appropriate amendments to each as required.

(Continued)

TAWNY M. LIEU, Deputy County Counsel  
for PAMELA J. WALLS, County Counsel

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE  
  
BY: Denise C. Harden

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Jeffries, Tavaglione, Stone, Benoit and Ashley  
**Nays:** None  
**Absent:** None  
**Date:** January 8, 2013  
**xc:** Co.Co., COB

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

**2-7**

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

Departmental Concurrence

- Consent
- Policy
- Consent
- Policy

Dept's Recomm.:

Per Exec. Ofc.:

Government Code Section 82011 identifies the code reviewing body as the Board of Supervisors for the County, within which a local government agency (as defined by Government Code Section 82041) is located. A local government agency, as defined by Government Code Section 82041, includes this type of entity.

The Valley Health System recently revised its Conflict of Interest Code and has submitted it for approval by the Board of Supervisors as the code reviewing body.

This office has reviewed the revised code and has found that it complies with statutory requirements. It is recommended that the Board of Supervisors approve Valley Health System's Conflict of Interest Code as revised and that the Clerk of the Board notify the Agency of the action taken.

**CONFLICT OF INTEREST CODE**  
**OF**  
**VALLEY HEALTH SYSTEM**

**Amended Effective November 1, 2012**

**A. PURPOSE.**

1. Statement of Purpose. It is the purpose of this Conflict of Interest Code (this "Code") to provide for the disclosure of designated employees' assets and income which may be materially affected by his or her official actions, and, in appropriate circumstances, to provide that designated employees should be disqualified from acting in order that conflicts of interest may be avoided. Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code Section 81000 et seq.) (the "Act").

**B. DEFINITION OF TERMS.**

1. Definitions. This Conflict of Interest Code contains a number of key terms, which are defined in the Political Reform Act of 1974 and the Regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. Sections 18100 et seq.) (the "Regulations"). The definitions in the Act and in the Regulations, and any amendments to the Act or the Regulations, are hereby incorporated by reference into this Conflict of Interest Code. Summaries of such definitions are contained in the attached Addendum, which is provided for convenience of reference only and is not a part of this Code. The definitions of key terms contained in the Act or the Regulations may be amended and changed from time to time, so that summaries of definitions contained in the Addendum will be updated accordingly on a periodic basis. [See Reg. 18730 §1]

**C. DISCLOSURE STATEMENTS.**

1. Definitions. The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regs. 18100, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Code.

2. Designated Employees. The persons holding positions listed in the left-hand column of the Appendix are "designated employees". It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests. [See Reg. 18730 §2]

3. Disclosure Categories. This Code does not establish any disclosure obligations for those designated employees who are also specified in Government Code Section 87200 if he or she is designated in this Code in that same capacity or if the geographical jurisdiction of Valley Health System, a California local health care district (the "District") is the same as or is wholly included within the jurisdiction in which those persons must report his or her financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 87200, et seq. [See Reg. 18730 §3]

FORM APPROVED COUNTY COUNSEL

BY: TAWNY V. LIEU 12-19-12 DATE

In addition, this Code does not establish any disclosure obligations for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(a) The geographical jurisdiction of the District is the same as or is wholly included within the jurisdiction of the other agency;

(b) The disclosure assigned in the Code of the other agency is the same as that required under Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 87200; and

(c) The filing officer is the same for both agencies.<sup>1</sup>

The foregoing are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office. [See Reg. 18730 §3]

4. Statements of Economic Interest: Time of Filing Statements; Contents Thereof.

(a) Initial Statements. All designated employees employed by the District on the effective date of this Code, as adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within 30 days after the effective date of the amendment. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code and income received during the 12 months prior to the effective date of the Code. [See Reg. 18730 §5A and §6A; See also Govt. Code Section 87302(b)]

(b) Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file statements within 30 days after assuming the designated positions, disclosing any reportable investments, interests in real property and business positions held on the date of assuming office, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively. [See Reg. 18730 §5B and §6B; See also Govt. Code Section 87302(b)]

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<sup>1</sup> Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under Article 2 of Chapter 7 of the Political Reform Act for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code 81004. [See Reg. 18730 §3 and note 1]

(i) A designated employee who transfers from one designated position to another designated position within the District is not deemed to have assumed or left office within the meaning of this Code. The next Statement of Economic Interests filed by such a designated employee shall disclose both:

(A) Interests made reportable by the employee's original disclosure category which were held or received at any time during the period from the opening date of the statement to the transfer date; and

(B) Interests made reportable by the employee's new disclosure category which were held or received at any time during the period from the date of the transfer through the closing date of the statement. [Reg. 18735]

(ii) In addition to the disclosure obligations described in paragraph (i) above, a designated employee who transfers to the position of board member, executive director or other chief executive officer shall, within ten (10) days following the transfer, amend his or her most recent Statement of Economic Interests to disclose any investments or interests in real property held on the date of transfer which are made reportable by the new disclosure category, but which were not previously reported. Such amended statement shall be filed with the Clerk of the Board of the District, who shall make and retain a copy and forward the original to the code reviewing body. If the employee has no new interests to report, he or she shall file a copy of his or her most recent statement within ten (10) days of transferring. In either case, either the statement or an accompanying letter should indicate the employee's new position and the date on which the transfer occurred. [Reg. 18735]

(iii) A designated employee who, at the expiration of his or her term, begins a term in the same position within the District within 30 days is not deemed to be a new employee within the meaning of Government Code Section 87302(b). Such person shall continue filing annual statements at the time specified in his or her agency's conflict of interest code. [Reg. 18735]

(iv) Filing Assuming Office Statements of Economic Interests; Alternates and Designees. For the purposes of Government Code Sections 87202 and 87302 and this Code, the date of assuming office is the date that a person either:

(A) Is authorized to serve in the position, as by being sworn in; or

(B) Except in the case of an elected official who is required to be sworn into office, begins to perform the duties of the position, as by making, participating in making, or attempting to use his or her official position to influence a governmental decision; whichever occurs earlier.

(c) Annual Statements. All designated employees shall file statements no later than April 1, disclosing any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office, whichever is later. [See Reg. 18730 §5C and §6C; See also Govt. Code Section 87302(b)]

(i) When a person assumes office or comes under the coverage of a newly effective Code between October 1 and December 31 and files an initial Statement of Economic Interests pursuant to this Code, that person need not file an annual Statement of Economic Interests until one year following the date specified in the Code if the filing deadline for the annual statement is April 1 or earlier. [Reg. 18732]

(ii) If a person leaves an office between January 1 and the filing deadline for his or her annual Statement of Economic Interests, the leaving office statement may serve as that person's annual statement, provided that prior to the deadline of the annual statement, the person notifies the filing officer in writing of his intention to follow this procedure. [Reg. 18732]

(iii) **Dates for Filing Annual Statements of Economic Interests.** [Reg. 18723] The filing deadline shall be April 1.

(A) If a person assumes an office specified in Government Code Section 87200 between October 1 and December 31 and files an assuming office Statement of Economic Interests pursuant to Government Code Section 87202, that person need not file an annual Statement of Economic Interests pursuant to Section 87203 until one year later than the date specified in subsection (ii).

(B) If a person leaves an office specified in Government Code Section 87200 between January 1 and the filing deadline for his or her annual Statement of Economic Interests, the leaving office Statement of Economic Interests filed pursuant to Government Code Section 87204 may serve as that person's annual Statement. Prior to the filing deadline for the annual Statement the person shall notify the filing officer in writing that he intends to follow this procedure.

(d) **Leaving Office Statements.** All persons who leave designated positions shall file statements within 30 days after leaving office, disclosing reportable investments, interests in real property, and income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office. [See Reg. 18730 §5D and §6D; See also Govt. Code Section 87302(b)]

(i) The date that a person permanently leaves office, for the purposes of Government Code Sections 87204 and 87302, is the date that the person is no longer authorized to perform the duties of the office, and stops performing those duties, including making, participating in making, or attempting to use his or her official position to influence any governmental decision. For purposes of this subdivision, a person shall not be deemed to have left office permanently because he or she is on a leave of absence or serves as an intermittent employee. However, a person shall be deemed to have left office permanently if the person merely receives compensation for accrued leave credits. [Reg. 18722(b)]

(e) **Statements for Persons Who Resign Prior to Assuming Office.** Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office provided he or she did not make or participate in the making of, or use his or her position to influence, any decision and did not receive or become entitled to

receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement. [See Reg. 18730 §5.5]

Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

- (i) File a written resignation with the appointing power; and
- (ii) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position. [See Reg. 18730 §5.5]

(f) Designated Employees and Consultants – Positions Pending Code Amendment.

(i) **New Positions and Consultants – Interim Disclosure:** Consultants and newly created positions as set forth in Regulation 18219 that make or participate in the making of decisions that may foreseeably have a material effect on any financial interest shall file interim disclosure under this category.

(ii) **Disclosure Requirements:** Persons in positions specified in Section (C)(4)(f)(i) shall file under the broadest disclosure category in the agency's conflict-of-interest code until the agency amends its code to reflect the position. However, the agency may determine that the broadest disclosure is not necessary and set interim disclosure that is more tailored to positions with a limited range of duties. This determination shall include a description of the position's duties and, based upon that description, a statement of the extent of disclosure requirements.

(iii) **Public Records:** Records pertaining to positions that file under this category are public records and must be retained for the public's inspection in the same manner and location as the agency's conflict-of-interest code as set forth in Section 81008(a). This includes any written documents that support a limited disclosure category.

(iv) **Time of Filing:** Persons in positions specified in this regulation shall file an initial statement within 30 days of assuming office and shall continue to file annually in the same manner and location specified in the agency's conflict-of-interest code.

(v) **Annual Statement:** any statement filed under this provision is deemed to satisfy the requirement of Section 87302(b), which requires that an initial or annual statement be filed.

(vi) Nothing in this regulation shall be construed to exempt any agency from complying with provisions of Section 87306. [Reg. 18734]

(g) Privileged Information. An official or candidate need not disclose under Government Code Section 87207(b) the name of a person who paid fees or made payments to a business entity if disclosure of the person's name would violate a legally

recognized privilege under California law. Such a person's name may be withheld in accordance with the following procedure:

(i) An official who believes that a person's name is protected by a legally recognized privilege may decline to report the name, but shall file with his or her Statement of Economic Interests an explanation for such nondisclosure. The explanation shall separately state for each undisclosed person the legal basis for assertion of the privilege and, as specifically as possible without defeating the privilege, facts which demonstrate why the privilege is applicable.

(ii) With respect to each undisclosed person, the official shall state that to the best of his or her knowledge he or she has not and will not make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision when to do so constituted or would constitute a violation of Government Code Section 87100.

(iii) The Executive Director of the Fair Political Practices Commission may request further information from the official or candidate and, if no legal or factual justification sufficient to support assertion of the privilege is shown, may order that the disclosure required by the Act be made. The official or candidate shall, within 14 days after receipt of an order from the Executive Director of the Fair Political Practices Commission, either comply with the order or, if he or she wants to challenge the determination of the Executive Director of the Fair Political Practices Commission, appeal the determination, in writing, to the Fair Political Practices Commission.

(iv) If the Executive Director of the Fair Political Practices Commission determines that nondisclosure is justified because of the existence of a privilege, the matter shall be referred to the Fair Political Practices Commission.

(v) The Fair Political Practices Commission shall review an appeal filed under paragraph (iii) or a recommendation made by the Executive Director of the Fair Political Practices Commission under paragraph (iv) at a meeting held no less than 14 days after notice of the meeting is mailed to the official, the Attorney General and both the district attorney and the city attorney of the jurisdictions in which the official's residence and principal place of business are located. The Fair Political Practices Commission shall decide whether nondisclosure is warranted by issuing an opinion under Government Code Section 83114 and shall treat the explanation for nondisclosure accompanying the official's Statement of Economic Interests as an opinion request. The procedures set forth in 2 Cal. Code of Regs. Sections 18320-18324, however, shall not apply to opinions issued pursuant to this regulation.

(vi) If the Fair Political Practices Commission orders an official to disclose, the official must comply within 14 days. The Executive Director of the Fair Political Practices Commission may, for good cause, extend any of the time periods established in this regulation. [Reg. 18740]

Whenever a designated employee appeals a provision of this Conflict of Code pursuant to Section 87307, the code reviewing body may, in its discretion, suspend or modify the disclosure obligations of the appellant and persons similarly situated pending resolution of the appeal. [Reg. 18737]



5. Place of Filing Statements. All designated employees who are required to submit a statement of economic interests shall file the original with the Clerk of the Board of the District. The Clerk of the Board of the District shall make and retain a copy of all statements filed by designated employees and forward the original of each statement to the appropriate filing officer. [See Reg. 18730 §4, Govt. Code 81010, and Reg. 18115]

6. Forms for Statements. Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and shall be supplied by the District.

**D. MANNER OF REPORTING.**

1. Contents of Reports of Investments and Interests in Real Property. Investments and interests in real property which have a fair market value of less than Two Thousand Dollars (\$2,000) are not investments and interests in real property within the meaning of the Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children, as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater. [See Reg. 18730 §7A and note 4]

When an investment or interest in real property<sup>2</sup> is required to be reported under this Code, the statement shall contain the following:

- (a) A statement of the nature of the investment or interest;
- (b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
- (c) The address or other precise location of the real property;
- (d) A statement whether the fair market value of the investment or interest in real property equals or exceeds Two Thousand Dollars (\$2,000), exceeds Ten Thousand Dollars (\$10,000), exceeds One Hundred Thousand Dollars (\$100,000), or exceeds One Million Dollars (\$1,000,000).
- (e) In the event the statement is being filed as a supplemental annual statement or a statement of persons leaving office, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.
- (f) For purposes of disclosure under this section, "interest in real property" does not include the principal residence of the filer or any other property which the filer utilizes exclusively as the personal residence of the filer. [See Reg. 18730 §7A and Govt. Code 87206]

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<sup>2</sup> For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer. [See Reg. 18730 §7A note]

When an official is required to disclose a leasehold interest as defined in Government Code Section 82033, the official shall:

- (a) Identify the interest as a leasehold interest;
- (b) Disclose the number of years remaining on the lease;
- (c) Provide the address or other precise location of the leased property;
- (d) Provide the date upon which the lease became effective or terminated if either such date occurred during the period covered by the statement; and
- (e) Disclose the value of the leasehold interest.

The value of the leasehold interest is the amount of rent owed during a twelve (12) month period. For purposes of disclosure on a Statement of Economic Interests, the value of a leasehold interest is the amount of rent owed during a twelve (12) month period. The twelve (12) month period shall be computed as follows:

(a) In the case of an annual or leaving office statement, the first day of the twelve (12) month period is the first day of the reporting period or the first day of the lease, which occurs later.

(b) In the case of an assuming office or candidate's statement, the first day of the twelve (12) month period is the date the statement is due.

If the value of an official's leasehold interest is less than two thousand dollars (\$2,000) when the rent owed is computed as detailed above, but the official knows that the actual fair value of the leasehold during the twelve (12) month period exceeds two thousand dollars (\$2,000), the value of the leasehold is the actual fair market value, rather than the rent owed, during the twelve (12) month period. [See Reg. 18729]

2. Contents of Reports of Personal Income. A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, federal or local governmental agency. [See Reg. 18730 §7B and note 5]

When personal income is required to be reported under this Code, the statement shall contain, except as provided in paragraph 3 (business entity income) below:

(a) The name and address of each source of income aggregating Five Hundred Dollars (\$500) or more in value per year or more in value, or Fifty Dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(b) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was One Thousand Dollars (\$1,000) or less, greater than One Thousand Dollars (\$1,000), greater than Ten Thousand Dollars (\$10,000), or greater than One Hundred Thousand Dollars (\$100,000);

(c) A description of the consideration, if any, for which the income was received;

(d) In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

(e) In the case of a loan, the annual interest rate and the security, if any, given for the loan, and the term of the loan [See Reg. 18730 §7B and Govt. Code 87207(a)]

3. Contents of Reports of Business Entity Income. Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a ten percent (10%) or greater interest. The disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer. [See Reg. 18730 §7C and note 6]

When income of a business entity, including income of a sole proprietorship, is required to be reported under this Code, the statement shall contain:

(a) The name, address and a general description of the business activity of the business entity;

(b) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than Ten Thousand Dollars (\$10,000). [See Reg. 18730 §7C, note and Govt. Code 87207(b)]

4. Contents of Reports of Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity. [See Reg. 18730 §7D. See also Govt. Code 87209]

5. Acquisition or Disposal During Reporting Period. In the case of an annual statement or a leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal. [See Reg. 18730 §7E]

6. Prohibition on Receipt of Honoraria. No designated employee of the District shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not limit or prohibit payments, advances or reimbursements for travel and related lodging and subsistence authorized by Government Code Section 89506. [See Reg. 18730 §8A]

None of the following is an "honorarium", as defined by Government Code Section 89501(a), and none is subject to any prohibitions on honoraria.

(a) Information materials as defined by California Code of Regulations, Title 2, Section 18942.1

(b) A payment received from one's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not identified in this subdivision.

(c) A campaign contribution required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(d) A personalized plaque or trophy with an individual value of less than two hundred fifty dollars (\$250).

(e) Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity.

(f) Any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:

(i) Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering.

(ii) Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.

(iii) The foregoing items may be reportable as gifts and limited by Government Code Section 89503. Reference should be made to Government Code Section 82028 and to California Code of Regulations, Title 2, Sections 18940, *et seq.*, to determine whether or not these items are gifts that are reportable or otherwise limited.

(g) Any payment made for transportation, lodging and subsistence that is exempted from prohibitions on honoraria by Government Code Section 89506 or California Code of Regulations, Title 2, Sections 18950, *et seq.* [Reg. 18932.4]

7. Prohibition on Receipt of Gifts in Excess of \$440. No designated employee of the District shall accept gifts with a total value of more than Four Hundred Forty (\$440) in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. [Reg. 18730 §8.1]

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

8. Loans to Public Officials.

(a) No elected officer of the District shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the District. [See Reg. 18730 §8.2]

(b) No official of the District shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of District. This subdivision shall not apply to loans made to a District official whose duties are solely secretarial, clerical, or manual. [See Reg. 18730 §8.2]

(c) No elected officer of the District shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the District. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. [See Reg. 18730 §8.2]

(d) No official of the District shall, while he or she holds office, receive a personal loan from any person who has a contract with the District. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a District official whose duties are solely secretarial, clerical, or manual. [See Reg. 18730 §8.2]

(e) This section shall not apply to the following:

(i) Loans made to the campaign committee of an elected officer or candidate for elective office.

(ii) Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

(iii) Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

(iv) Loans made, or offered in writing, before January 1, 1998.  
[See Reg. 18730 §8.2]

9. Loan Terms.

(a) Except as set forth in subdivision (b), no elected officer of the District shall, from the date of his or her election to office through the date he or she vacates

office, receive a personal loan of five hundred dollars (\$ 500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan. [See Reg. 18730 §8.3]

(b) This section shall not apply to the following types of loans:

(i) Loans made to the campaign committee of the elected officer.

(ii) Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

(iii) Loans made, or offered in writing, before January 1, 1998.

(c) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code. [See Reg. 18730 §8.3]

#### 10. Personal Loans.

(a) Except as set forth in subdivision (b), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

(i) If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

(ii) If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

(A) The date the loan was made.

(B) The date the last payment of one hundred dollars (\$100) or more was made on the loan.

(C) The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months. [See Reg. 18730 §8.4]

(b) This section shall not apply to the following types of loans:

(i) A loan made to the campaign committee of an elected officer or a candidate for elective office.

(ii) A loan that would otherwise not be a gift as defined in this title.

(iii) A loan that would otherwise be a gift as set forth under subdivision (a), but on which the creditor has taken reasonable action to collect the balance due.

(iv) A loan that would otherwise be a gift as set forth under subdivision (a), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

(v) A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy. [See Reg. 18730 §8.4]

(c) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code. [See Reg. 18730 §8.4]

11. Commission Income. A public official required to disclose income pursuant to this title must disclose commission income, as defined in Reg. 18703.3(c)(1). A public official shall report commission income as follows: [Reg. 18728.5 (a) and (b)]

(a) The total amount of commission income received during the period covered by the statement, shall be reported if it equals five hundred dollars (\$500) or more.

(i) The source of the income shall be listed as the official if he or she is self-employed or is reporting as a business entity. For purposes of this subdivision, a public official who receives commission income on a regular basis is a business entity.

(ii) If the official conducts business through a firm or other business entity, the source of income shall be listed as the firm or other business entity.

(b) If the official reports commission income as a business, in addition to the information reported pursuant to subdivision (b)(1) of this regulation, the name of each source of gross commission income shall be reported if the source provided commission income of ten thousand dollars (\$10,000) or more during the period covered by the statement. [Reg. 18728.5 (b)(2)]

(c) The full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction. [Reg. 18728.5 (b)(3)]

12. Incentive Compensation. A public official required to disclose income pursuant to this title must disclose incentive compensation, as defined in Reg. 18703.3(d), as described by this regulation.

(a) In addition to salary, reimbursement of expenses, and other income received from his or her employer, a public official shall separately report the name of each person who purchased products or services sold, marketed or represented by the public official if the official received incentive compensation of five hundred dollars (\$500) or more attributable to the purchaser during the period covered by the statement.

(b) If an official's incentive compensation is paid by his or her employer in a lump sum, without allocation of amounts to specific customers, the official shall determine the amount of the incentive compensation attributable to each of the official's customers. This may be based on the volume of sales to or purchases made by those customers and the amount of incentive compensation attributable to each customer according to the formula utilized by the official's employer. [Reg. 18728.5(c)]

13. Travel Advance or Reimbursement. When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to the Code, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income. [Govt. Code 87207(c)]

(a) Travel costs and reimbursements therefor paid by a "committee" as defined in the Appendix, including a "controlled committee," shall be valued as follows:

(i) A reimbursement, advance, or other payment for actual travel expenses (including meals and lodging) or for other actual and legitimate campaign expenses made by such a committee or controlled committee is neither income nor a gift to an official and need not be disclosed on the official's or candidate's Statement of Economic Interests if the expenditures are reported by the committee in accordance with the provisions of Government Code Sections 84100 et seq.

(ii) A reimbursement, advance, or other payment for personal travel expenses not covered by subsection (1) shall be reported by the recipient pursuant to Government Code Sections 87207 and 87302.

(b) Any other payment not covered by subsection (a), including a payment for personal services, such as salary, consulting fees, etc., from a committee is income or a gift (except as provided in Section 18950.3) and reported by the recipient pursuant to Government Code Section 87207 or 87302. [Reg. 18727.5]

14. Incorporation of Information by Reference. Except in statements required by Govt. Code Section 87203, investments and interests in real property which have been disclosed on a statement of economic interests filed in the same jurisdiction within the previous sixty (60) days may be incorporated by reference. [Govt. Code 87208]

15. Reporting Expenditures Charged to a Credit, Debit or Charge Card by a Candidate or Committee. A candidate or committee shall disclose the information, as pertinent, required by paragraphs (1) through (5) of subdivision (k) of Section 84211 for expenditures paid by the candidate or committee to a credit, debit or charge card company if the expenditures reach the \$100 aggregate threshold for that subdivision. A candidate or committee shall also disclose the information, as pertinent, required by paragraphs (1) through (5) of subdivision (k) of Section 84211 for each specific expenditure of \$100 or more charged on the candidate's or committee's credit, debit or charge card. [Reg. 18421.9]

16. Reporting of Expenditures by an Agent or Independent Contractor.



(a) The following expenditures, and all similar expenditures, when made by an agent or independent contractor, including any vendor or subvendor, on behalf of or for the benefit of a candidate or committee, must be reported under Section 84303. Expenditures not of the types included below do not have to be reported. Expenditures that must be reported include all of the following:

(i) Expenditures to any person, other than an employee of the agent or independent contractor, for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with any of the following:

- (1) Development of campaign strategy.
- (2) Campaign management.
- (3) Design or management of campaign literature or advertising.
- (4) Campaign fund raising.

(ii) Expenditures to any person, other than an employee of the agent or independent contractor, who furnishes the candidate or committee with products or services that show how the campaign is conducted, including but not limited to expenditures for any of the following:

- (1) Printed campaign literature.
- (2) Advertising time or space.
- (3) Campaign buttons and other campaign paraphernalia.
- (4) Surveys, polls, signature gathering and door-to-door solicitation of voters.
- (5) Facilities, invitations, or entertainment for fundraising events.
- (6) Postage for campaign mailings.

(iii) Any of the following types of expenditures:

- (1) To the candidate.
- (2) To any person for the personal use of the candidate, or his or her family.
- (3) That are gifts to any person.

(4) To or on behalf of any other candidate or committee.

(5) To printers of mass mailings.

(6) To any person who transfers funds to any other person for expenditures reportable under this regulation.

(7) For any commission, finder's fee or rebate provided to any person in connection with any expenditure reportable under this regulation if the commission, finder's fee or rebate is inconsistent, in either manner or amount, with customary industry practice.

(b) Expenditures made directly from a candidate's or committee's account, charged to the candidate's or committee's credit card, debit card or charge card, are not considered expenditures by an agent or independent contractor reportable under Section 84303. These expenditures shall be reported under Section 84211, and candidate or committee payments to a credit card, debit card or charge card company shall be reported and itemized as specified in Regulation 18421.9.

(c) An expenditure required to be reported by Section 84303 must be reported by the candidate or committee at the same time and in the same manner and detail as required under Section 84211 for the candidate's or committee's direct expenditure. [Reg. 18431]

#### 17. Payments in Connection with Speeches.

(a) "Speech" means making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event.

(b) Lodging, food or beverages are "necessary" only when provided on the day immediately preceding, the day(s) of, and the day immediately following the speech, panel, seminar, or similar service.

(c) A payment made for admission to an event at which an official makes a speech, transportation, and necessary lodging, food, or beverages, and nominal non-cash benefits provided to the official in connection with making the speech is not a "payment" as defined in Section 82044 and is not reportable if all of the following apply:

(i) The speech is for official agency business and the official is representing his or her government agency in the course and scope of his or her official duties.

(ii) The payment is a lawful expenditure made only by a federal, state, or local government agency for purposes related to conducting that agency's official business. For purposes of this subdivision, a payment made to the agency by a nongovernmental source that is earmarked for use by or reimbursement of an official specified by the source is not a "payment by a federal, state, or local government agency."

(iii) The official making the speech is not a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200. [Reg. 18950.3]

18. Travel.

(a) Travel In Connection With Speeches, Panels, and Seminars.

(i) Only a reportable payment is subject to the limitations on gifts specified in Gov't Code Section 89503. See Section 18950.3, to determine whether a payment in connection with a speech, panel, or seminar is reportable.

(ii) A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Gov't Code Sections 89501, 89502, or 89503 if:

(A) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and

(B) The travel, including actual transportation and related lodging and subsistence, is in connection with a speech given by the official or candidate; the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech; and the travel is within the United States.

Except as otherwise provided by Section 18950.3, any payment made for travel specified in this subdivision (a)(ii), shall be reported in accordance with Gov't Code Section 87207(c).

(b) Travel Provided by Governmental Entity or Charity. A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Gov't Code Sections 89501, 89502, or 89503 if:

(i) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and

(ii) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Section 203 of the Revenue and Taxation Code, or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Except as provided by Section 18950.3, any payment, made for transportation, lodging, and subsistence, specified by subdivision (b), shall be reported in accordance with Gov't Code Section 87207(c).

(c) Travel Paid From Campaign Funds. A payment made for transportation and necessary lodging and subsistence, which payment is made from campaign funds as permitted by Gov't Code Section 89513, or which is a contribution, is not an honorarium or a gift.

(d) **Travel Provided By Official's Agency.** A payment made for transportation and necessary lodging and subsistence, which payment is made by the agency of an official, is not an honorarium or a gift.

(e) **Travel In Connection With Bona Fide Business.** A payment made for transportation, lodging, and subsistence, which payment is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code, is not an honorarium or gift unless the sole or predominant activity of the business, trade or profession is making speeches. [Reg. 18950.1]

## **E. DISQUALIFICATION.**

### **1. Basic Disqualification Requirements.**

(a) No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his or her economic interests, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official's participation is legally required. [See Reg. 18700 and Govt. Code 87100]

(b) To determine whether a given individual has a disqualifying conflict of interest under the Act, proceed with the following analysis:

(i) Determine whether the individual is a public official, within the meaning of the Act. (See Government Code §82048; Regulation 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Act.

(ii) Determine whether the public official is making, participating in making, or using or attempting to use his or her official position to influence a government decision. (See Regulation 18702.) If the public official is not making, participating in making, or using or attempting to use his or her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Act.

(iii) Notwithstanding (ii) above, determine whether the public official who holds an office specified in Government Code §87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Brown Act (Government Code §54950 et seq.).(See section 6&7 of the Addendum). [Reg. 18702].

(iv) Identify the public official's economic interests. (See Regulation 18703.)

(v) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his or her official position to influence. (See Regulation 18704.)

(vi) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to Regulation 18704. (See Regulation 18705.)

(vii) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in Regulation 18705) on each economic interest identified pursuant to Regulation 18703. (See Regulation 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Act. If it is reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, and the official does not participate in the decision, determine whether the official may segment the decision into separate decisions to allow his or her participation in subsequent decisions. (See Regulation 18709.)

(viii) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the reasonably foreseeable material financial effect on the public official's economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Act. (See Regulation 18707.)

(ix) Determine if the public official's participation is legally required despite the conflict of interest. If the official can establish that his or her participation is legally required, he or she may participate in the governmental decision despite the conflict of interest. (See Regulation 18708.) [See Reg. 18700 and Govt. Code 87100]

2. Mandatory Disqualification Requirements. No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect upon the public generally, on the official or a member of his or her immediate family or on: [See Reg. 18730 §9]

(a) Any business entity in which the designated employee has a direct or indirect investment worth Two Thousand Dollars (\$2,000) or more;

(b) Any real property in which the designated employee has a direct or indirect interest worth Two Thousand Dollars (\$2,000) or more;

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating Five Hundred Dollars (\$500) or more in value provided to, received by or promised to the designated employee within twelve (12) months prior to the time when the decision is made;

(d) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating Four Hundred Twenty Dollars (\$420) or more provided to, received by, or promised to the designated employee within twelve (12) months prior to the time when the decision is made. [See Reg. 18730 §9]

3. Disclosure of Disqualifying Interest. When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act must be accompanied by disclosure of the disqualifying interest. [See Reg. 18730 §10]

(a) Board Member: Notice of disqualification shall be given at the meeting during which consideration of the decision takes place and shall be made part of the official record of the board.

(b) Chief Executive Officer: Within a reasonable time, he or she must report, in writing, the nature of the matter and the existence of the conflict to his or her appointing authority (i.e. the Board of Directors).

(c) Designated employee who is a Consultant: Within a reasonable time, he or she must, in writing, report the nature of the matter and the existence of the conflict to the Chief Executive Officer.

(d) Other designated employee: Within a reasonable time, he or she must, in writing, report the nature of the matter and the existence of the conflict to his or her supervisor. [See Reg. 18730 §10]

4. Rights as Citizen; Public Generally. Nothing contained herein shall abridge the right of any citizen, whether or not a designated employee, to submit information or express views on the same basis as any other citizen, provided such is done in public and provided that the person clearly indicates he or she is acting in a private capacity.

5. Rule of Necessity; Legally Required Participation. This Code does not prevent a designated employee from making or participating in the making of any decision to the extent that his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for the purposes of this section. The attorney for the District shall advise any designated employee on a case-by-case basis whether or not the "Rule of Necessity" is applicable. [See Reg. 18730 §9.3 and Gov. Code 87101]

#### **F. ASSISTANCE OF THE COMMISSION AND COUNSEL.**

1. Assistance of the Commission and Counsel. Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code Section 83114 and Regs. sections 18329 and 18329.5 or from the attorney for the District, provided that nothing in this section requires the attorney for the District to issue any formal or informal opinion. [See Reg. 18730 §11]

2. Evidence of Good Faith. Whether or not a violation is inadvertent, negligent or deliberate, the presence or absence of good faith shall be considered in applying the remedies and sanctions under the Code. [Gov. Code 91001(c)]

**G. LEGISLATIVE OR JUDICIAL AMENDMENTS.**

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1. Automatic Amendments of Code. All amendments or changes to the provisions of the Act, occurring as the result of legislative amendment or judicial decision only, shall automatically and immediately be incorporated into this Code and this Code shall, without further action, thereupon be deemed amended and changed to reflect such legislative or judicial amendment or decision.

**H. FORCE AND EFFECT OF CODE.**

1. Violations. This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided by in the Political Reform Act, Government Code Sections 81000 - 91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code Section 91003. [Reg. 18730 §12]

**APPENDIX**  
**VALLEY HEALTH SYSTEM**  
**CONFLICT OF INTEREST CODE**

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<b><u>Designated Employees'</u></b> <b><u>Title of Function</u></b>	<b><u>Disclosure Categories Assigned</u></b>
Members of the Board of Directors	1, 2, 3, 4, 5, 6, 7
Candidates for Board of Directors	1, 2, 3, 4, 5, 6, 7
Chief Executive Officer	1, 2, 3, 4, 5, 6, 7
Chief Financial Officer	1, 2, 3, 4, 5, 6, 7
General Counsel	1, 2, 3, 4, 5, 6, 7
Special Counsel	1, 2, 3, 4, 5, 6, 7
Clerk of the Board of Directors	1, 5, 6, 7
Consultants **	1, 2, 3, 4, 5, 6, 7

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\*\* Consultants shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations: the Chairman of the Board may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Conflict of Interest Code. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chairman of the Board's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

[See Govt. Code 87302]



## Disclosure Categories

The disclosure categories listed below identify the types of investments, business entities, sources of income, or real property which the designated employee must disclose for each disclosure category to which he or she is assigned.

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Category 1: All investments and management positions in, and sources of income from, all business entities that (i) do business or own real property within the boundaries of the District, (ii) plan to do business or own real property within the boundaries of the District within the next year, or (iii) have done business or owned real property in the District within the past two (2) years.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of the District.

Category 3: All investments and management positions in, and sources of income from, business entities (i) subject to the regulatory, permit or licensing authority of the designated employee's department or (ii) have been subject to such authority during the past two (2) years, or (iii) will be subject to such authority in the next two (2) years.

Category 4: All investments in, and sources of income from, business entities that (i) are engaged in land development, construction or the acquisition or sale of real property within the boundaries of the District, (ii) have engaged in such activities within the boundaries of the District in the past two (2) years, or (iii) plan to engage in such activities within the boundaries of the District during the next (2) two years.

Category 5: All investments and management positions in, and sources of income from, business entities that are banking, savings and loan or other financial institutions.

Category 6: All investments and management positions in, and sources of income from, business entities that provide services, supplies, materials, machinery or equipment of a type purchased or leased by the District.

Category 7: All investments and management positions in, and sources of income from, business entities that provide services, supplies, materials, machinery or equipment of a type used or administered by the designated employee's department.

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**ADDENDUM**

**REFERENCE DEFINITIONS**

**FOR**

**CONFLICT OF INTEREST CODE**

**OF**

**VALLEY HEALTH SYSTEM**

**Amended Effective November 1, 2012**

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## DEFINITIONS

### 1. "PUBLIC OFFICIAL" or "OFFICIAL":

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"Public Official" or "Official" shall mean every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government. It also does not include members of the Board of Governors and designated employees of the State Bar of California, members of the Judicial Council, members of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article and federal officers or employees serving in an official federal capacity on a state or local government agency [See Govt. Code §82048 and Reg. 18701(a)].

For purposes of Government Code Section 82048 which defines "Public Official" and Government Code Section 82019 which defines "Designated Employee", the following definitions shall apply:

(a) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decision-making authority.

(i) A committee, board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision; or

(B) It may compel a governmental decision or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency. [See Reg. 18701(a)(1)]

(ii) A committee, board, or commission does not possess decision-making authority under subsection (a)(i)(A) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decision-making authority.

(b) "Consultant" means an individual who, pursuant to a contract with the District:

(i) Makes a governmental decision whether to:

(A) Approve a rate, rule or regulation;

(B) Adopt or enforce a law;

(C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

(D) Authorize the District to enter into, modify, or renew a contract provided it is the type of contract which requires District approval;

(E) Grant District approval to a contract which requires agency approval and in which the District is a party or to the specifications for such a contract;

(F) Grant District approval to a plan, design, report, study or similar item;

(G) Adopt, or grant District approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(ii) Serves in a staff capacity with the District and in that capacity participates in making a governmental decision as defined in Reg. 18702.2 or performs the same or substantially all the same duties for the District that would otherwise be performed by an individual holding a position specified in the District's Conflict of Interest Code. [Reg. 18701 (a)(2)]

For purposes of Government Code Section 87200, the following definitions apply:

(a) "Other Public Officials Who Manage Public Investments" means:

(i) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(ii) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(iii) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in paragraph (a)(ii) above. [Reg. 18701(b)]

(b) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(c) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred

compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(d) "Management of public investments" means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions. [Reg. 18701(b)]

## 2. "DESIGNATED EMPLOYEE":

"Designated Employee" means any officer, employee, member, or consultant of the District whose position with the District:

(a) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

(b) Is elective, other than an elective state office.

(c) Is designated in the Appendix of the District's Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

(d) Is involved as a District employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

"Designated employee" does not include an elected District officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California. [See Govt. Code §82019]

However, for purposes of Section 82019, the term "designated employee" includes a consultant as defined under Regulation 18701(a)(2) and an employee in a newly created position that makes or participates in the making of decisions and whose specific position is not yet listed in an agency's conflict-of-interest code. [Reg. 18219] Please see section (C)(4)(f) for interim disclosures related to consultants and employees in newly created positions.

## 3. "MAKING GOVERNMENTAL DECISIONS":

(a) A public official "makes governmental decisions," except as provided in Definition 4(b)(1) herein, when he or she, acting within the authority of his or her office or position:

(i) Votes on a matter;

(ii) Appoints a person;

(iii) Obligates or commits the District to any course of action;

(iv) Enters into any contractual agreement on behalf of the District;

(v) Determines not to act, within the meaning of subparagraphs (a)(i), (a)(ii), (a)(iii), or (a)(iv) above, unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest. [Reg. 18702.1(a)]

(b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the District Board and the official remains on the dais or his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum. [Reg. 18702.1 (b)]

(c) During a closed meeting of the District Board, a disqualified official shall not be present when the decision is considered or knowingly obtain or review a recording or any other non-public information regarding the governmental decision. [Reg. 18702.1 (c)]

(d) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Brown Act (Government Code section 54950 *et seq.*) and Regulation sections 18702.1(a)(1)-(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

Nothing in this definition authorizes or prohibits the District, by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers.

**4. "PARTICIPATING IN THE MAKING OF GOVERNMENTAL DECISIONS":**

(a) A public official "participates in the making of a governmental decision", except as provided in subsection (b) of this definition, when he or she, acting within the authority of his or her position, the official:

(i) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision referenced in Definition 1(b)(i) above; or

(ii) Advises or makes recommendations to the decisionmaker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment by the official and the purpose of which is to influence the decision referenced in Definition 1(b)(i) above; or



(B) Preparing or presenting any report, analysis, or opinion orally or in writing which requires the exercise of judgment by the official and the purpose of which is to influence the decision referenced in Definition 1(b)(i) above. [Reg 18702.2]

(b) Making or participating in the making of a governmental decision shall not include:

(i) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(ii) Appearances by a public official as a member of the general public before the District in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests as defined in 2 Cal. Code of Regs. Section 18702.4(b)(1); or

(iii) Actions by public officials relating to his or her compensation or the terms or conditions of his or her employment or contract. In the case of public officials who are "consultants" as defined above, this includes actions by consultants relating to the terms or conditions of the contract pursuant to which he or she provides services to the District, so long as he or she is acting in his or her private capacity. [Reg. 18702.4(a)]

**5. "USING OR ATTEMPTING TO USE OFFICIAL POSITION TO INFLUENCE GOVERNMENTAL DECISIONS":**

(a) With regard to a governmental decision which is within or before the District or a committee appointed by or subject to the budgetary control of the District Board, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the District. Attempts to influence include, but are not limited to, appearances or contracts by the official on behalf of a business entity, client, or customer. [Reg. 18702.3(a)]

(b) With regard to a governmental decision which is within or before the District Board not covered by subsection (a) above, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, the District to any member, officer, employee or consultant of the District. Such actions include, but are not limited to, the use of official stationery. [Reg. 18702.3(b)]

(c) Notwithstanding subsections (a) above, an official is not attempting to use his or her official position to influence a governmental decision of the District covered by that subsection if the official:

(i) Appears in the same manner as any other member of the general public before the District in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

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(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

(ii) Communicates with the general public or the press.

(iii) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.

(iv) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before the District. However, this provision applies only if the official has no other direct oral or written contact with the District with regard to the client's proceeding before the District except for necessary contact with the District's staff concerning the processing or evaluation of the drawings or submissions prepared by the official.

(v) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

(A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;

(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner. [Reg. 18702.4(b)]

(d) Influencing Prospective Employment. [Reg. 18747]

(i) No public official shall "make," "participate in making," or "use his or her official position to influence" any governmental decision, as defined in 2 Cal. Code Regs., sections 18702.1, 18702.2, 18702.3, 18702.4, if the decision directly relates to a prospective employer.

(ii) A governmental decision "directly relates" to a prospective employer if the public official knows or has reason to know:

(A) The prospective employer is "directly involved" in the decision, as defined in 2 Cal. Code Regs. section 18704.1(a); or

(B) It is reasonably foreseeable that the financial effect of a decision on a prospective employer is material as follows:

(1) For a business entity, the same as set forth in 2 Cal. Code Regs. section 18705.1(c);

(2) For a nonprofit entity, the same as set forth in 2 Cal. Code Regs. section 18705.3(b)(2); or

(3) For an individual, the same as set forth in 2 Cal. Code Regs. section 18705.3(b)(3).

(iii) A person is a "prospective employer" of a public official if the official, either personally or through an agent, is "negotiating" or has an "arrangement" concerning prospective employment with that person.

(A) A public official is "negotiating" employment when he or she interviews or discusses an offer of employment with an employer or his or her agent.

(B) A public official has an "arrangement" concerning prospective employment when he or she accepts an employer's offer of employment.

(C) A public official is not "negotiating" or does not have an "arrangement" concerning prospective employment if he or she rejects or is rejected for employment.

(iv) Notwithstanding subdivision (a), the prohibitions of Government Code section 87407 do not apply if:

(A) The governmental decision will affect the prospective employer in substantially the same manner as it will affect a "significant segment," as set forth in 2 Cal. Code Regs. section 18707.1(b)(1), of the public generally;

(B) The public official is legally required to make or participate in the making of the governmental decision within the meaning of Government Code section 87101 and 2 Cal. Code Regs. section 18708; or

(C) The prospective employer is a state, local, or federal governmental agency.

**6. "GOVERNMENT CODE §87200 FILERS":**

(a) The following are §87200 filers: Elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and

members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election. [Gov. Code 87200]

**7. "USING OR ATTEMPTING TO USE HIS OR HER OFFICIAL POSITION TO INFLUENCE A GOVERNMENTAL DECISION RELATING TO AN AGENDA ITEM WHICH IS NOTICED FOR A MEETING SUBJECT TO THE PROVISIONS OF THE BAGLEY-KEENE ACT OR THE BROWN ACT"**

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(a) Government Code section 87105 and this regulation apply when a public official who holds an office specified in Government Code section 87200 has a financial interest in a decision within the meaning of Government Code section 87100, and the governmental decision relates to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 *et seq.*) or the Brown Act (Government Code section 54950 *et seq.*).

(b) **Content & Timing of Identification:** The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:

(i) The public official shall publicly identify:

(A) Each type of economic interest held by the public official which is involved in the decision and gives rise to the conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and

(B) The following details identifying the economic interest(s):

(1) if an investment, the name of the business entity in which each investment is held;

(2) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;

(3) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;

(4) if income or gifts, then identification of the source;  
and

(5) if personal financial effect, then identification of the expense, liability, asset or income affected.

(ii) **Form of Identification:** If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.

(iii) **Recusal/Leaving the Room:** The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and (b)(2) of this regulation is made. He or she shall not be counted toward achieving a quorum while the item is discussed.

(c) **Special Rules for Closed Session:** If the governmental decision is made during a closed session of a public meeting, the public identification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his or her recusal is because of a conflict of interest under Government Code section 87100. The declaration shall be made part of the official public record. The public official shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(d) **Exceptions:**

(i) **Uncontested Matters:** The exception from leaving the room granted in Government Code section 87105(a)(3) for a "matter [that] has been placed on the portion of the agenda reserved for uncontested matters" shall mean agenda items on the consent calendar. When the matter in which the public official has a financial interest is on the consent calendar, the public official must comply with subdivisions (b)(1) and (b)(2) of this regulation, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.

(ii) **Absence:** If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, then Government Code section 87105 and this regulation impose no public identification duties on the public official for that item at that meeting.

(iii) **Speaking as a Member of the Public Regarding an Applicable Personal Interest:** When a personal interest found in 2 Cal. Code Regs. section 18702.4(b) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion of the matter with the members of the public. [Reg. 18702.5]

(e) Nothing in the provisions of this regulation is intended to cause an agency or public official to make any disclosure that would reveal the confidences of a closed session or any other privileged information as contemplated by law including but not limited to the recognized privileges found in 2 Cal. Code Regs. section 18740.

## **8. "FINANCIAL INTEREST":**

(a) **Public Official.**

(i) A public official has a financial interest in a decision 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, a member of his or her immediate family, or on any of the following:

(A) Any business entity in which the public official has a direct or indirect investment worth Two Thousand Dollars (\$2,000) or more;

(B) Any real property in which the public official has a direct or indirect interest worth Two Thousand Dollars (\$2,000) or more;

(C) Any source of income other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating Five Hundred Dollars (\$500.00) or more in value provided to, received by or promised to the public official within twelve (12) months prior to the time when the decision is made;

(1) Notwithstanding subparagraph (a)(i)(C) of this Definition, a retail customer of a business entity engaged in retail sales of good or services to the public generally is not a source of income to an official who owns a ten percent (10%) or greater interest in the entity if the retail customers of the business entity constitute a significant segment of the public generally, and the amount of income received by the business entity from the customer is not distinguishable from the amount of income received from its other retail customers. [Govt. Code 87103.5]

(2) Notwithstanding subparagraph (a)(i)(C) of this Definition, any person who makes a payment to a state agency or local government agency to defray the estimated reasonable costs to process any application, approval or any other action, including but not limited to, holding public hearings and evaluating or preparing any report or document, shall not by reason of the payments be a source of income to a person who is retained or employed by the agency. [Govt. Code 87103.6]

(D) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management;

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating Two Hundred Fifty Dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve (12) months prior to the time when the decision is made. The amount of the value of gifts specified by this Definition shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

(ii) For purposes of this Definition, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of the public official, or by a business entity or trust in which the official, the official's agent, spouse and/or dependent children own directly, indirectly or beneficially a 10% interest or greater. [Govt. Code §87103].

(b) Engineers and Land Surveyors (Consultants)

(i) A registered professional engineer or licensed land surveyor who renders professional services as a consultant to a state or local government, either directly or through a firm in which he or she is employed or is a principal, does not have a financial interest in a governmental decision pursuant to Section 87100 where the consultant renders professional engineering or land surveying services independently of the control and direction of the public agency and does not exercise public agency decisionmaking authority as a contract city or county engineer or surveyor.

(ii) For purposes of this subparagraph (b), the consultant renders professional engineering or land surveying services independently of the control and direction of the public agency when the consultant is in responsible charge of the work pursuant to Section 6703 or 8703 of the Business and Professions Code.

(iii) Subparagraph (b)(i) above does not apply to that portion of the work that constitutes the recommendation of the actual formula to spread the costs of an assessment district's improvements if both of the following apply:

(A) The engineer has received income of two hundred fifty dollars (\$ 250) or more for professional services in connection with any parcel included in the benefit assessment district within 12 months prior to the creation of the district.

(B) The district includes other parcels in addition to those parcels for which the engineer received the income.

(iv) The recommendation of the actual formula does not include preliminary site studies, preliminary engineering, plans, specifications, estimates, compliance with environmental laws and regulations, or the collection of data and information, utilized in applying the formula. [Govt. Code 87100.1]

## 9. "INVESTMENT":

Any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business within the jurisdiction, or has done business within the jurisdiction at any time during the (2) two years prior to the time any statement or other action is required under the District's Conflict of Interest Code. No asset shall be deemed an investment unless its fair market value equals or exceeds Two Thousand Dollars (\$2,000).

"Investment" does not include a time or a demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, or any bond or other debt instrument issued by any government or government agency.

Investments of an individual include a pro rata share of investments of any business entity, mutual fund or trust in which the individual or immediate family owns, directly,

indirectly or beneficially, a 10% interest or greater. The term "parent, subsidiary or otherwise related business entity" shall be specifically defined by regulations of the Commission. [Govt. Code §82034].

**10. "INTEREST IN REAL PROPERTY":**

Includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the fair market value of the interest is Two Thousand Dollars (\$2,000) or more. Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10% interest or greater. [Govt. Code §82033].

**11. "REAL PROPERTY WITHIN THE JURISDICTION":**

Real property or any part of a parcel of real property located within or not more than two (2) miles outside the boundaries of the District or within two (2) miles of any land owned or used by the District. [Govt. Code. §82035].

**12. "INCOME":**

(a) "Income" means, except as provided in subsection (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10% interest or greater.

(b) "Income" does not include:

(i) Income, other than a gift, received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two (2) years prior to the time any statement or other action is required;

(ii) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100);

(iii) Salary and reimbursement for expenses or per diem received from a state, local or federal government agency and reimbursement for travel expenses and per diem received from a bona fide non-profit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(iv) Any devise or inheritance;



(v) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;

(vi) Dividends, interest or any other return on a security which is registered with the Securities & Exchange commission of the United States Government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures;

(vii) Redemption of a mutual fund;

(viii) Alimony or child support payments;

(ix) Any loan or loans from a commercial lending institution which are made in the lenders regular course of business on terms available to members of the public without regard to official status;

(x) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph;

(xi) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status;

(xii) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a)(FN2).

(xiii) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser. [Govt. Code §82030].

### **13. "BUSINESS ENTITY":**

Any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. [Govt. Code §82005]

### **14. "PARENT, SUBSIDIARY, OTHERWISE RELATED BUSINESS ENTITY":**

(a) "Parent-subsidary." A parent-subsidary relationship exists when one corporation directly or indirectly owns shares possessing more than fifty percent (50%) of the voting power of another corporation. [Reg. 18703.1(d)]

(b) "Otherwise related business entity." Business entities, including corporations, partnerships, joint ventures and any other organizations and enterprises operated for profit, which do not have a parent-subsidiary relationship are otherwise related if any one of the following three tests is met:

(i) One business entity has a controlling ownership interest in the other business entity.

(ii) There is shared management and control between the entities. In determining whether there is shared management and control, consideration should be given to the following factors:

(A) The same person or substantially the same person owns and manages the two entities;

(B) There are common or commingled funds or assets;

(C) The business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis;

(D) There is otherwise a regular and close working relationship between the entities;

(iii) A controlling owner (fifty percent (50%) or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity. [Reg. 18703.1(d)]

#### 15. "ECONOMIC INTEREST":

(a) "Business Entities": A public official has an economic interest in a business entity if any of the following are true:

(i) The public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more in the business entity.

(ii) The public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.

(iii) "Parent, Subsidiary, Otherwise Related Business Entity": An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Definition 8 (a)(i)(A) or (a)(i)(D).

(iv) Although a public official may not have an economic interest in a given business entity pursuant subsections (i)-(iii) above, the public official may nonetheless have an economic interest in the business entity if it is a source of income to him or her. (See Reg. 18703.3). [Reg. 18703.1]

(b) "Real Property": A public official has an economic interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more in fair market value. [Reg. 18703.2]

(c) "Source of Income":

(i) (A) For purposes of disqualification under Sections 87100 and 87103, a public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars (\$500) or more within twelve (12) months prior to the time when the relevant governmental decision is made. For purposes of the Act, a public official's income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income. [Reg. 18703.3(a)(1)]

(B) An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has an interest as defined in Definition 8(a)(i)(C). "Parents, subsidiaries, and otherwise related business entities" are defined in Definition 14. [Reg. 18703.3(a)(2)]

(C) In addition to having an economic interest in any business entity from which the official has received income of five hundred (\$500) or more within 12 months prior to the time when the relevant governmental decision is made, the official has a source-of-income economic interest in all of the following:

(1) Any individual owning a 50 percent or greater interest in that business entity.

(2) Any individual, regardless of the extent of the individual's ownership interest in that entity, who has the power to direct or cause the direction of the management and policies of the business entity. [Reg. 19703.3(a)(3)]

(ii) "Former employers." Source of income, as defined in Definition 8(a)(i)(C) and this section, shall not include a former employer if:

(A) All income from the employer was received by or accrued to the public official prior to the time he or she became a public official;

(B) the income was received in the normal course of the previous employment; and

(C) there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer. [Reg. 18703.3(b)]

(iii) "Commission income" means gross payments received by a public official as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited. The sources of commission income in a specific sale or similar transaction include for each of the following:

(A) An insurance broker or agent:

(1) The insurance company providing the policy;

(2) The person purchasing the policy; and

(3) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.

(B) A real estate broker:

(1) The person the broker represents in the transaction;

(2) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;

(3) Any brokerage business entity through which the broker conducts business; and

(4) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(C) A real estate agent:

(1) The broker and brokerage business entity under whose auspices the agent works;

(2) The person the agent represents in the transaction; and

(3) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(D) A travel agent or salesperson:

(1) The airline, hotel, tour operator or other person who provided travel services or accommodations in the transaction;

(2) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and

(3) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.

(E) A stockbroker:

(1) The brokerage business entity through which the broker conducts business; and

(2) The person who trades the stocks, bonds, securities or other investments through the stockbroker.

(F) A retail or wholesale salesperson:

(1) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and

(2) The person who purchases the product or service.

[Reg 18703.3]

(iii) For purposes of determining whether disqualification is required under the provisions of Sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

(iv) "Incentive Compensation" means income received by an official who is an employee, over and above salary, which is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive compensation does not include: salary; commission income; bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum; and such executive incentive plans as may be based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company. Incentive compensation also does not include payments for personal services which are not marketing or sales. The purchaser is a source of income to the official if all three of the following apply:

(1) The official's employment responsibilities include directing sales or marketing activity toward the purchaser; and

(2) There is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and

(3) There is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.  
[Reg. 18703.3(d)]

(d) "Source of Gifts": A public official has an economic interest in any donor of, or any intermediary or agent for a donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating four hundred twenty dollars (\$420) or more in value provided to, received by, or promised to the public official within twelve (12) months prior to the time when the decision is made. [Reg. 18703.4]

(e) "Personal Finances": A public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will

have an effect on this economic interest if the decision will result in the personal expenses, income, assets or liabilities of the official or his or her immediate family increasing or decreasing. [Reg. 18703.5]

(f) "Immediate Family" means the spouse and dependent children. [Gov. Code 82029]

**16. "DIRECTLY OR INDIRECTLY INVOLVED IN A GOVERNMENT DECISION."**

(a) "Business Entities, Sources of Income, Sources of Gifts"

(i) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

(A) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal or similar request; or

(B) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

(ii) If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in Definition 17 below. (See Regs. 18705.1(b), 18705.3(a) and 18705.4(a), respectively). If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in Definition 17 below. (See Regs. 18705.1(c), 18705.3(b), or 18705.4(b), respectively). [Reg. 18704.1]

(b) "Interest in Real Property":

(i) Real property in which a public official has an economic interest, is directly involved in a governmental decision if any of the following apply::

(A) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (E) below, real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

(B) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting such real property. For purposes of this

subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.

(C) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official has an interest.

(D) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.

(E) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(F) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property will receive new or improved services.[Reg. 18704.2]

(ii) Notwithstanding subdivision (i) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is indirectly involved if:

(A) The decision solely concerns the amendment of the existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under Reg. 18705.2(b).

(B) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(C) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

(1) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official or by a person representing either the public official or an economic interest of the public official.

(2) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or a specific plan or its equivalent.

(3) The decision does not concern an identifiable parcel or parcels or development project. A decision does not “concern an identifiable parcel or parcels” solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency’s jurisdiction and economic interests of the official are not singled out.

(4) The decision does not concern the agency’s prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

(iii) Definitions – General Plans. The definitions below apply to this regulation:

(A) A decision “solely concerns the adoption or amendment of a general plan” when the decision, in the manner described in Government Code sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement of development policies, maps, diagrams, and texts, or any other component setting forth objectives, principles, standards, and plan proposals as described in Government Code sections 65302 and 65303.

(B) “General plan” means “general plan” as used in Government Code sections 65300, et. seq.

(C) “Specific plan or its equivalent” means a specific plan or any equivalent plan adopted by the jurisdiction to meet the purposes described in Government Code sections 65450, et. seq.

(iv) Determining the applicable materiality standard

(A) If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in Definition 17 below (See Reg. 18705.2(a)).

(B) If a real property interest is not directly involved in a governmental decision, apply the materiality standards in Definition 17 below (See Reg. 18705.2(b)). [Reg. 18704.2]

(c) “Economic Interest in Personal Finances”: A public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family. [Reg. 18704.5]

## 17. “MATERIAL FINANCIAL EFFECT”:

(a) General Rule. In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official’s economic interest is directly involved and whether the effect of the decision is material under subparagraph (b)(i) of this Definition (below). If the official’s



economic interest is not directly involved in the decision, or the effect of the decision is not material under subparagraph (b)(i) of this Definition (below), then it must be determined if the effect is material under the appropriate regulation of subparagraphs (b)(ii) of this Definition (below).

Whenever the specific provisions of subparagraph (b) of this Definition (below) cannot be applied, the following general rule shall apply: The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official. [Reg. 18705(b) and 18704(a)]

Notwithstanding any determination that the reasonable foreseeable effect of a decision is material under this regulation or under subparagraph (b) of this Definition (below), an official does not have to disqualify himself or herself from a governmental decision if, although a conflict of interest would otherwise exist, the decision will have no financial effect on the person or business entity who appears before the official, or on the real property in which the official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family. [Reg. 18705(c)].

(b) Official's Economic Interest is Directly or Indirectly Involved in the Decision.

(i) Directly Involved: If the public official's economic interest is directly involved in a governmental decision, the effect of the decision is material if any of the following applies

(A) Economic Interests in Business Entities: [Reg. 18705.1(b)]

(1) General Rule: Unless the exception in subsection (b)(i)(A)(2) below of this subsection applies, the financial effects of a governmental decision on a business entity which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.

(2) Exception: If the public official's only economic interest in the business entity is an investment interest (See Govt. Code Section 87103(a)), and the public official's investment in the business entity is worth twenty five thousand dollars (\$25,000) or less, then apply the materiality standards in subsection (ii)(A)(2) below if the business entity is listed on the Fortune 500, or the materiality standards in subsection (ii)(A)(3) below if the business entity is listed, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than:

(a) \$2.5 million, or

(b) such other amount described at Rule 102.01C of the New York Stock Exchange's Listed Company manual (or any superseding rule of the New York Stock Exchange describing its financial standards for initial listing).[Reg. 18705.1(b)]

(B) Economic Interests in Real Property: [Reg. 18705.2(a)]

(1) Real Property, other than leaseholds: The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

(2) Real Property, leaseholds: The financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following:

- (a) The termination date of the lease;
- (b) The amount of rent paid by the lessee for the leased real property, either positively or negatively;
- (c) The value of the lessee's right to sublease the real property, either positively or negatively;
- (d) The legally allowable use or the current use of the real property by the lessee; or
- (e) The use or enjoyment of the leased property by the lessee.

(C) Economic Interests in Persons Who Are Sources of Income: [Reg. 18705.3]

(1) Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the District, is deemed material. [Reg. 18705.3(a)]

(2) Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision. [Reg. 18705.3(c)]

(D) Economic Interests in Persons Who Are Sources of Gifts.  
[Reg. 18705.4(a)]

(1) Any reasonably foreseeable financial effect on a person who is a source of a gift to a public official, and which person is directly involved in a decision before the District, is deemed material.

(E) Personal Financial Effect: [Reg. 18705.5]

(1) A reasonably foreseeable financial effect on a public official's or his or her immediate family's finances is material if it is at least two hundred fifty dollars (\$250) in any twelve (12) month period. When determining whether a governmental

decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered. [Reg. 18705.5(a)]

(2) The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position. [Reg. 18705.5(b)]

(ii) Indirectly Involved: If the public official's economic interest is indirectly involved in a governmental decision, the effect of the decision is material if any of the following applies:

(A) Economic Interest in Business Entities: [Reg. 18705.1(c)]

(1) The following materiality standards apply when a business entity in which a public official has an economic interest is indirectly involved in a governmental decision. If more than one of the following subsections is applicable to the business entity in question, apply the subdivision with the highest dollar thresholds.

(2) If the business entity is listed in the Fortune 500, the financial effect of a governmental on the business entity is material if it is reasonably foreseeable that:

(a) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year of \$10,000,000 or more; or

(b) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or

(c) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$10,000,000 or more.

(3) If the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than \$2.5 million, or such other amount described at Rule 102.01C of the new York Stock Exchange's Listed Company Manual (or any superseding rule of the New York Stock Exchange describing its financial standards for initial listing), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(a) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$500,000 or more; or

(b) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$200,000 or more; or

(c) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$500,000 or more.

(4) If the business entity is listed, on the NASDAQ/American Stock Exchange, or if not so listed, for its most recent fiscal year had: net income of no less than \$500,000 (or such other amount described in the minimum financial requirements for continued listing on the NASDAQ SmallCap market), or earnings before taxes of no less than \$750,000 (or such other amount of earnings before taxes described under initial listing standard 1 of Section 101(a) of the Rules of the American Stock Exchange, or any superseding Section of the Rules of that Exchange), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(a) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$300,000 or more; or

(b) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more; or

(c) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$300,000 or more.

(5) If the business entity is not covered by subsections (ii)(A)(2)-(ii)(A)(4), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(a) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or

(b) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing business expenses for a fiscal year in the amount of \$5,000 or more; or

(c) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.

(6) Terminology. The accounting terms described below are the same as, or not inconsistent with, terms used in Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. Nothing in this subsection (ii)(A) should

be construed to incorporate new items not contemplated under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, nor to exclude any items that might be included in the definitions of these terms under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards.

(a) Assets. As used in this subsection, "assets" means all property, real and personal, tangible and intangible, which belongs to any business entity. This includes, but is not limited to, cash, securities, merchandise, raw materials, finished goods, operating supplies, and ordinary maintenance material and parts, accounts receivable and notes and loans receivable, and prepaid expenses (such as prepaid insurance, interests, rents, taxes, advertising, and operating supplies).

(1) When a business entity holds a claim over collateral (including real property) as security for a loan made by the business entity, such a claim does not make the collateral (including real property) an "asset" of the business entity, unless the business entity has initiated proceedings to foreclose upon, or acquire the asset based on the debtor's failure to repay the loan. The loan or note secured by the collateral is an asset.

(2) The definition of "assets" also includes intangible assets. Intangible assets, include, but are not limited to, long-lived legal rights and competitive advantages developed or acquired by a business enterprise, patents, copyrights, franchises, trademarks, organizational costs, goodwill, and secret processes.

(b) Earnings Before Taxes. Revenue, less the cost of goods sold and selling, general, and administrative expenses (but not excluding depreciation and amortization expenses); otherwise defined as operating and non-operating profit before the deduction of income taxes. Described variously as EBT, Income Before Income Taxes, or Income Before Provision for Income Taxes.

(c) Expenses. In general, the term refers to the current costs of carrying on an activity.

(d) Gross Revenue. Actual or expected inflows of cash or other assets. "Gross Revenue" is the revenue of a business entity before adjustments or deductions are made for returns and allowances and the costs of goods sold, and prior to any deduction for these and any other expenses.

(e) Liabilities. Obligations of the business entity, liquidation of which is reasonably expected to require the transfer of assets or the creation of other new liabilities. Any financial obligation or cash expenditures that must be made by the business entity at a specific time to satisfy the contractual terms of such an obligation.

(f) Net Income. A business entity's total earnings; otherwise defined as revenues adjusted for the costs of doing business, depreciation, interest, taxes, and other expenses. This amount is usually found at the bottom of a business entity's Profit and Loss statement. Also described as Net Profit.

(7) Financial statements. In complying with this regulation, public officials may rely on the most recent independently audited financial

statements of the business entity so long as those statements are reflective of the current condition of the business entity. Financial statements are not considered "reflective of the current condition of the business entity" where:

(a) The most recent independently audited financial statements of the business entity are for a fiscal year ending more than twenty-four months prior to the date of the governmental decision.

(b) The most recent audit of the financial statements resulted in an adverse opinion, was issued with a disclaimer, or was otherwise qualified in such a manner that the statement of assets, liabilities, expenses, or gross revenues is questioned in the audit report, or

(c) There has been a subsequent event, intervening between the date that the financial statement was created and the date of the decision of the public official, that makes the statement no longer representative, including, but not limited to, business reorganizations.

(C) Economic Interest in Real Property: [Reg. 18705.2(b)]

(1) Real Property, other than leaseholds: The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

(a) The development potential or income producing potential of the real property in which the official has an economic interest;

(b) The use of the real property in which the official has an economic interest;

(c) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

(2) Real property, leaseholds. The financial effect of a governmental decision on real property in which a public official has a leasehold interest and which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the governmental decision will:

(a) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property;

(b) Change the lessee's actual use of the real property;

(c) Substantially enhance or significantly decrease the lessee's use or enjoyment of the leased real property;

(d) Increase or decrease the amount of rent for the leased real property by 5+ percent during any 12-month period following the decision; or

(e) Result in a change in the termination date of the lease.

(D) Economic Interests in Persons Who Are Sources of Income: [Reg. 18705.3(b)]

(1) Sources of income which are business entities. If the source of income is a business entity, apply the materiality standards stated in subsection (ii)(A) above.

(2) Sources of income which are non-profit entities, including governmental entities. The effect of a decision is material as to a nonprofit entity which is a source of income to the official if any of the following applies:

(a) For an entity whose gross annual receipts are \$ 400,000,000 or more, the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$1,000,000 or more; or

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$1,000,000 or more.

(b) For an entity whose gross annual receipts are more than \$ 100,000,000 but less than \$ 400,000,000, the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$400,000 or more; or

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$100,000 or more; or

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$400,000 or more.

(c) For an entity whose gross annual receipts are more than \$ 10,000,000, but less than or equal to \$100,000,000 the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$200,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$50,000 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$200,000 or more.

(d) For an entity whose gross annual receipts are more than \$1,000,000, but less than or equal to \$10,000,000 the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$100,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$25,000 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$100,000 or more.

(e) For an entity whose gross annual receipts are more than \$100,000 but less than or equal to \$1,000,000 the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$50,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.



(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$50,000 or more.

(f) For an entity whose gross annual receipts are \$100,000 or less, the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$10,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$2,500 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$10,000 or more.

(3) Sources of income who are individuals. The effect of a decision is material as to an individual who is a source of income to an official if any of the following applies:

(a) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

(b) The decision will affect the individual's real property interest in a manner that is considered material under subsection (ii)(B) above.

(E) Economic Interests in Persons Who Are Sources of Gifts.  
[Reg. 18705.4(b)]

(1) Sources of gifts which are indirectly involved business entities. If the source of a gift is a business entity, apply the materiality standards stated in subsection (ii)(A) above.

(2) Sources of gifts which are indirectly involved nonprofit entities or government agencies. If the source of a gift is a nonprofit entity or a government agency, apply the materiality standards stated in subsection (ii)(C)(2).

(3) Sources of gifts who are indirectly involved individuals. If the source of a gift is an individual, apply the materiality standards stated in subsection (ii)(C)(3).

(c) Determining Whether a Material Financial Effect Is Reasonably Foreseeable: [Reg. 18706]

(i) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely

that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision.

(ii) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subsection (i) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:

(A) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;

(B) The market share held by the official or the official's source of income in the jurisdiction;

(C) The extent to which the official or the official's source of income has competition for business in the jurisdiction;

(D) The scope of the governmental decision in question; and

(E) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

(iii) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable.

(d) Effect on the Public Generally. [Reg. 18707]

(i) Introduction. Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the governmental decision if the public official can establish that the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally as set forth in subparagraphs (d)(iv) through (d)(xi) of this Definition (below) (i.e. See Title 2, California Code of Regulations, sections 18707.1-18707.9).

(ii) Steps to Determine Application of Public Generally. To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subparagraph (d)(i) of this Definition above, apply Steps One through Four:

(A) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.

(B) Step Two: For each person or real property identified in Step One, determine the applicable "significant segment" rule according to the provisions of

subparagraph (d)(iv)(B) of this Definition (below) (i.e. See Title 2, California Code of Regulations, section 18707.1(b)).

(C) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two-part test set forth in subparagraph (d)(iv)(B) of this Definition (below) (i.e. See Title 2, California Code of Regulations, section 18707.1(b)) is not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.

(D) Step Four: Following the provisions of subparagraph (d)(iv)(C) of this Definition (below) (i.e. See Title 2, California Code of Regulations, section 18707.1(b)(2)), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in subparagraphs (d)(v) through (d)(xi) of this Definition (below) (i.e. See Title 2, California Code of Regulations, sections 18707.2 through 18707.9) applies to each person or real property triggering the conflict of interest.

(iii) For purposes of Government Code section 87102.5 (Members of the Legislature) and Government Code section 87102.8 (elected state officers), Government Code section 87102.6(b)(2) applies.

(iv) General Rule. [Reg. 18707.1]

(A) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subsections (iv)(B) and (iv)(C) below apply.

(B) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a "significant segment" of the public generally if any of the following are affected as set forth below:

(a) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:

(1) Ten percent (10%) or more of the population in the jurisdiction of the official's agency or the district the official represents; or

of the jurisdiction. (2) 5,000 individuals who are residents

(b) Real Property. For decisions that affect a public official's real property interest, the decision also affects:

(1) Ten percent (10%) or more of all property owners or all residential property owners in the jurisdiction of the official's agency or the district the official represents; or

(2) 5,000 property owners or residential property owners in the jurisdiction of the official's agency.

(3) While the public official must identify ten percent or more of residential property owners or 5,000 residential property owners as provided above, and not residential properties, for purposes of subdivision (b)(1)(B) the official may choose to count each residential property affected as being owned by one property owner if, and only if, the official counts himself or herself as the sole owner of the public official's residential property regardless of his or her actual ownership interest.

(4) For purposes of this subdivision, residential property means any real property that contains a single family home, or a multi-family structure of four units or fewer, on a single lot, or a condominium unit.

c) Business Entities. For decisions that affect a business entity in which a public official has an economic interest the decision also affects either 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

d) Governmental Entities. For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity.

e) Exceptional Circumstances. The decision will affect a segment of the population which does not meet any of the standards in subsections (B)(1)a) through (B)d) above, however, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally.

(C) Substantially the Same Manner: The governmental decision will financially affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (B)(1) above. The financial effect need not be identical for the official's economic interest to be considered "financially affected" in "substantially the same manner."

(2) Comparing Financial Effects on Real Property: For a decision that affects a public official's economic interest in his or her real property, financial

effects are measured in terms of the overall dollar amount of the increase or decrease in the value of the property and not by a percentage increase or decrease affecting property values as a whole. Factors to be considered in determining the financial effect on the official's property in comparison with the financial effect on the public generally include, but are not limited to, the following:

(a) The magnitude of the financial effect of the governmental decision on the official's property as compared with other properties contained within the significant segment;

(b) The lot size of the official's property compared with other properties contained within the significant segment (e.g., one acre versus 10 acres);

(c) The square footage of the building space of the property compared with the square footage of the building space of other properties contained within the significant segment;

(d) The proximity of the official's property to the property that is the subject of the governmental decision compared with the proximity of other properties contained within the significant segment;

(e) The number of units/parcels owned by the official compared to others in the significant segment;

(f) The physical characteristics or permitted use of the property (i.e., historical, commercial, residential) as compared to other properties in the significant segment;

(g) The location of the official's property compared with the location of other properties contained within the significant segment;

(h) The neighborhood in which the official's property is located is comparable to the neighborhoods in which other properties contained within the significant segment are located;

(i) The quality of the structure contained on the official's property compared with the quality of other structures contained on properties within the significant segment;

(j) The current fair market value of the property as compared to other properties in the significant segment;

(k) Improvements made to the official's property as compared with other properties contained within the significant segment;

(l) The developmental potential or income producing potential of the real property in which the official has an economic interest compared with other properties contained within the significant segment; and

(m) The character of the effects on the neighborhood of the property in which the official has an economic interest including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood compared with the neighborhoods of other properties contained within the significant segment.

(D) The term "affect all members of the public", as used above, is intended to cover decisions affecting the public in general but to exclude decisions that uniquely benefit a public official.

(v) Special Rule for Rates, Assessments, and Similar Decisions: The financial effect of a governmental decision on the official's economic interest is indistinguishable from the decision's effect on the public generally if any of the following apply: [Reg. 18707.2]

(A) The decision is to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions which are applied on a proportional basis on the official's economic interests and on a significant segment of the jurisdiction, as defined in subsection (iv)(B) above.

(B) The decision is made by the governing board of a landowner voting district and affects the official's economic interests and ten percent of the landowners or water users subject to the jurisdiction of the district in proportion to their real property interests or by the same percentage or on an "across-the-board" basis for all classes.

(C) The decision is made by the governing board of a water, irrigation, or similar district to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions, such as the allocation of services, which are applied on a proportional or "across-the-board" basis on the official's economic interests and ten percent of the property owners or other persons receiving services from the official's agency.

(vi) Appointed Members of Boards and Commissions: [Reg. 18707.4]

(A) For the purposes of Government Code section 87103, the "public generally" exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in section 87103(a) through (d), if all of the following apply:

(1) The statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.

(2) The member is required to have the economic interest the member represents.

(3) The board's or commission's decision does not have a material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.

(4) The decision of the board or commission will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent. For purposes of this regulation, a significant segment constitutes fifty percent of the persons the member was appointed to represent.

(B) In the absence of an express finding and declaration of the type described herein, the "public generally" exception only applies if such a finding and declaration is implicit, taking into account the language of the statute, ordinance, or other provision of law creating or authorizing the creation of the board or commission, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

(viii) Sources of Income to Owners of Retail Business Entities. [Reg. 18707.5]

(A) Significant Segment Test

(1) For purposes of Government Code section 87103.5, as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the retail customers constitute a significant segment of the public generally if either of the following applies:

(a) The retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction; or

(b) The retail customers of the business entity during the preceding 12 months number at least 10,000.

(2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail business, the retail customers constitute a significant segment of the public generally if the retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction.

(3) For purposes of this subdivision, a customer of a retail business entity is each separate and distinct purchaser of goods or services, whether an individual, household, business or other entity. If records are not maintained by customer name, a good faith estimate shall be made to determine what percentage of sales transactions represent multiple transactions by repeat customers. The total number of sales transactions shall then be reduced by the estimated percentage of repeat customers to yield the number of customers for purposes of applying this subdivision.

(B) Indistinguishable Income Test

(1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the amount of income

received from a retail customer is no distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question is less than one-tenth of one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.

(2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, the amount of income received from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question does not exceed one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.

(C) For purposes of Government Code section 87100, an official who owns 10 percent or more of a retail business entity which meets the criteria in either subsection (A)(1)(a), (A)(1)(b), or (A)(2) above, does not "have reason to know" that a decision will affect a source of income to the retail business entity when either of the following applies:

(1) If all of the following are true:

(a) The customer does not have a charge account or open book account with the retail business;

(b) The retail business does not maintain records for noncharge customer transactions by customer name or other method for tracking transactions which would provide the customer name; and

(c) The fact that the person is a customer is not personally known to the official; or

(2) If all of the following are true:

(a) The accounts and books of the retail business entity are maintained by someone other than the official or a member of the official's immediate family; and

(b) The fact that the person is a customer is not personally known to the official.

(D) For purposes of subsection (C) above, a credit card transaction utilizing a credit card not issued by the retail business entity is considered a "noncharge customer transaction."

(E) Subsection (C) above shall not be utilized in determining whether an official "knows" of a financial interest in a decision within the meaning of Government Code section 87100. When such knowledge exists, or the fact that a person is a source of income is brought to the attention of the official prior to the governmental decision, the provisions of subsection (C) above shall have no effect on the official's duty to disqualify.



(ix) States of Emergency. [Reg. 18707.6] Notwithstanding Title 2, California Code of Regulations, sections 18707 through 18707.5, inclusive, the financial effect of a governmental decision on an official is indistinguishable from its financial effect on the public generally if both of the following apply:

(A) The decision will affect an economic interest of the official, other than an economic interest as defined in section 87103(e), in substantially the same manner as other persons subject to a state of emergency, proclaimed by the Governor pursuant to Government Code section 8625, or proclaimed by the governing body of a city or county.

(B) The decision is required to mitigate against the effects directly arising out of the emergency, and strict adherence to the Act will prevent, hinder, or delay the mitigation of the effects of the emergency.

(x) Industries, Trades or Professions. [Reg. 18707.7] Where a decision will affect an industry, trade, or profession in substantially the same manner as the decision will affect an official's economic interest, the industry, trade, or profession constitutes a "significant segment" of the jurisdiction only as set forth below:

(A) In the case of an elected state officer, an industry, trade, or profession constitutes a significant segment of the public generally, as set forth in section 87102.6 of the Government Code.

(B) In the case of any other official, an industry, trade, or profession constitutes a significant segment of the public generally if that industry, trade, or profession is a predominant industry, trade, or profession in the official's jurisdiction or in the district represented by the official. An industry, trade, or profession that constitutes fifty percent or more of business entities in the jurisdiction of the official's agency or the district the official represents is a "predominant" industry, trade, or profession for purposes of this regulation. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

(xi) Residential Properties. [Reg. 18707.9]

(A) For purposes of this regulation, the effect of a governmental decision on a public official's real property interests is indistinguishable from the effect on the public generally if 5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents are affected by the decision and the official owns three or fewer residential property units. A public official's principal residence, as defined in this Definition subparagraph (d)(vi)(B) (See Title 2, California Code of Regulations, section 18707.3(b)), does not count as one of these residential property units.

(B) The effect of a governmental decision on any of a public official's economic interests (including real property and business interests) is indistinguishable from the effect on the public generally if all of the following apply:

(1) The decision is to establish, eliminate, amend, or otherwise affect the respective rights or liabilities of tenants and owners of residential property pursuant to a resolution, rule, ordinance, or other law of general application;

(2) No economic interest of the public official other than one created by ownership of residential real property, or the rental of that property, is analyzed under this regulation;

(3) The official's economic interests are not directly involved in the decision (as provided in Title 2, California Code of Regulations, sections 18704.1, 18704.2(a), and 18705.1);

(4) The decision affects at least ten percent of the residential property units in the jurisdiction of the public official or district he or she represents; and

(5) The decision will affect the official's economic interests in substantially the same manner as it will affect other residential property owners or owners of residential rental property. A public official will be affected in substantially the same manner for purposes of this subdivision if the decision will be applied on a proportional or "across-the-board" basis on the official's economic interests as on other residential property owners or other owners of residential rental property affected by the decision.

#### **18. "LEGALLY REQUIRED PARTICIPATION":**

(a) A public official who has a financial interest in a decision may establish that he or she is legally required to make or to participate in the making of a governmental decision within the meaning of Government Code section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall state the existence of the potential conflict as follows:

(i) The public official shall disclose the existence of the conflict and describe with particularity the nature of the economic interest. "Particularity" as used in this section shall be satisfied if the official discloses:

(A) whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans or gifts;

(B) if the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact. For income, loans or gifts, the official shall disclose the person or entity that is the source.

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

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

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

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

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

(C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s) shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision.

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

(i) Not be construed to permit an official, who is otherwise disqualified under Government Code section 87100, to vote to break a tie.

(ii) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code section 87100, whether or not such other members are actually present at the time of the disqualification.

(iii) Require participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, he or she is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.

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

(e) Nothing in the provisions of subdivision (b)(iv)(B) is intended to cause an agency or public official to reveal the confidences of a closed session contemplated by law. For example, under the Brown Act (Government Code sections 54950 *et seq.*) a city council may enter a closed session to discuss personnel matters and need not publicly disclose the name of the employee who is the subject of the meeting. (Government Code section 54957.) This regulation does not require a city council person who is legally required to participate in that closed session to disclose that employee's name when the council member makes the record required by this regulation. [See Reg. 18708]

#### **19. "FAIR MARKET VALUE":**

"Fair market value" means the estimated fair market value of goods, services, facilities or anything of value other than money. Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this Code, the amount reported shall be the fair market value, and a description of the goods, services, facilities, or other thing of value shall be appended to the report or statement. "Full and adequate consideration" as used in this Code means fair market value. [Govt. Code 82025.5; See also Reg. 18946 (Valuation of Gifts), 18946.1 (Valuation of Tickets), 18946.2 (Valuation of Invitation-Only Events), 18946.3 (Valuation of Wedding Gifts), 18946.4 (Valuation of Attendance at Non-Profit and Political Fundraisers) and 18946.5 (Valuation of Air Travel)]

#### **20. "GIFT":**

(a) "Gift" means, except as provided in subparagraph (b) below, any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. [Govt. Code 82028(a)]

Gifts to an agency shall be considered a gift to the official's agency, and not a gift to the official, if all of the following requirements are met: (i) agency controls use of payment; (ii) payment used for official agency business; and (iii) the agency reports the gift within 30 days after use of the payment (on a form prescribed by the Commission that includes certain specified information; a local jurisdiction may require additional filing) to the filing officer who receives the agency employees' statements of economic interests. This exception does not apply for (i)

travel, lodging and meal expenses for a state or local elected officer, as defined in Govt. Code Section 82020, or an official specified in Govt. Code 87200; (ii) a payment for travel to the extent it exceeds the agency's reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses, or if the agency has no standard policy regarding reimbursement rates, the State per diem rates may be applied; (iii) a payment for travel that the agency head or designee has not preapproved in writing in advance of the trip date; and (iv) passes or tickets described in Regulation 18944.1. [Reg. 18944]

Except as provided in Regulations 18944 (gifts to a state or local government agency), 18944.1 (agency provided tickets or passes to events) and 18944.2/18944.4 (agency raffles and exchanges of presents), a payment by a government agency from that agency's assets that provides food, beverage, entertainment, goods, or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys. [Reg. 18944.3]

(b) Except as otherwise indicated, the following payments that otherwise meet the definition of gift, are neither gifts nor income [Reg. 18942; Govt. Code 82028(a), 82028(b), 82030]:

(i) Informational material such as books, reports, pamphlets, calendars, periodicals, videotapes, free/discounted admission to informational conferences or seminars, on-site demonstrations, tours, or inspections (and, in certain circumstances, transportation provided in connection therewith), etc. which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks. No payment for travel or reimbursement for any expenses shall be deemed "informational material." [See also Reg. 18942.1]

(ii) Gifts which are not used and which, within 30 days after receipt or acceptance, are either returned to the donor; delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (provided that neither the official donating such gift to the charity, nor any member of the official's immediate family, holds a position with such charity) without being claimed as a charitable contribution for tax purposes; delivered to a state, local or federal government agency without being claimed as a charitable contribution for tax purposes; or, for which reimbursement is paid for all or a portion of the gift (in the event of partial reimbursement, the amount of any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement). [Reg. 18941(c)(2); See also Reg. 18943]

(iii) Gifts from an individual's current or former spouse, child or step-child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed, or the current or former spouse of any such person (other than of a former in-law); provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this subparagraph. [Govt. Code 82028(a)(3)]

(iv) Campaign contributions required to be reported under Chapter 4 of this title.

(v) Any devise or inheritance.

(vi) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(vii) (A) The cost of home hospitality (defined in Reg. 18942.2, including food, beverages, typical home entertainment, or occasional lodging) provided to an official by an individual with whom the official has a relationship, connection, or association unrelated to the official's position and the hospitality is provided as part of that relationship, connection, or association, in the individual's home when the individual is present, unless one of the following provisions applies:

(1) Any part of the cost of the hospitality provided by the host is paid directly or reimbursed by another person.

(2) Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.

(3) There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home.

"Home" includes a vacation home owned, rented, or leased, by the individual for use as his or her residence, including a timeshare with deed ownership or a continual right-to-use ownership benefit, and a motor home or boat owned, rented, or leased by the individual for use as his or her residence; plus, any facility in which the individual has a right-to-use benefit by his or her home residency, such as a community clubhouse. [Reg. 18942.2]

(B) In determining the applicability of subparagraph (A), the following apply:

(1) The cost of providing the hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.

(2) An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.

(viii) (A) Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on holidays, birthdays, or similar occasions (including reciprocal exchanges identified in subparagraph (B) below where benefits are commonly exchanged) to the extent the value of the gifts exchanged are not substantially disproportionate in value. For purposes of this subdivision (notwithstanding Reg. 189462(b)), "gifts exchanged" includes food, beverages, entertainment, and nominal benefits provided to guests at an event, by the honoree or another individual, other than a lobbyist, hosting the event.

(B) Reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment that is equal to or greater than the amount specified in Regulation 18940.2.

(ix) Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position. This shall not include donations of cash.

(x) Payments received under a governmental agency program or a program established by a bona fide charitable organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if such payments are available to members of the public without regard to official status.

(xi) Free admission to an official and one guest of the official, to an event at which the official performs a "ceremonial role" (i.e., gives a speech, participates in a panel or seminar, or provides a similar service) at the request of the holder of the event [Reg. 18942.3], and transportation and any necessary lodging and subsistence that is exempt under Regulation 18950.3. The focus of the event must be, for a period of time, on the ceremony being performed by the official. Any official who attends as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift/income by attending the event.

(xii) A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery.

(xiii) Benefits received as a guest attending a wedding or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.

(xiv) Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.

(xv) Acts of Neighborliness. A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances.

(xvi) (A) Bona Fide Date or Dating Relationship. Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act's conflict of interest provisions if the value meets the amount specified in Regulation 18940.2.

(B) Acts of Human Compassion. Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(D) The limitations placed on the exceptions contained within this paragraph (17) apply to the following persons:

(i) A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.

(ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.

(iii) A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

(xvii) Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is *no evidence whatsoever at the time the gift is made* that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

(c) The following items, if they are



otherwise gifts, are exempt from the limitations on gifts described in Section 89503 (gifts from single source within calendar year):

(i) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Section 89506 (travel payments reasonably related to a legislative or governmental purpose or to an issue of state, national or international public policy).

(ii) Wedding gifts. [Reg. 18942(b)]

(d) Gifts to family members of Officials (e.g., spouse, dependent child, a child who is between 18 and 23, is a full/part-time student, has the same principal place of residence as the official and does not provide over one-half his/her own support) may be treated as if they were gifts to the Official. [Reg. 18943]. Absent an exception under Regulation 18942, a payment provided to or for the use of a family member is a gift to the Official if there is no established relationship between the donor and the family member what would suggest an association appropriate for making the type of payment made, or there is evidence to suggest the donor had a purpose to influence the official (e.g., (i) payment was made by a donor who is a lobbyist, lobbying firm, lobbyist employer, etc., (ii) the payment was made by a donor/donor's agent if the donor is involved in an action/decision before the official's agency, which is reasonably foreseeable, or was involved in such an action/decision before the official's agency or (iii) the payment was made by a person who contracts with or engages in a business that regularly seeks contracts with or comes before the agency, and the official could foreseeably participate in that decision). [Reg. 18943]

(e) Agency Raffles

(i) When an agency holds an employee raffle and the item awarded in the raffle has been received by the agency from a source other than an agency employee and the agency did not purchase the item from its funds, the payment is a gift to the employee from the source who provided the item to the agency, and the agency is the intermediary of the gift. The value of the gift is the fair market value less any consideration paid by the employee to participate in the raffle. If the value of the gift is \$50 or more and the employee is required to report the gift on his or her statement of economic interests, the agency and the employee shall comply with Section 87210 or Section 87313 as applicable.

(ii) When an agency holds an employee raffle and the item awarded in the raffle has been obtained with agency funds or is otherwise an asset of the agency and not donated to the agency by a non-agency source, the provisions of Regulation 18944.3 apply.

(iii) When an agency holds an employee raffle and the item awarded in the raffle has been received by the agency from an agency employee who is not acting as an intermediary for another donor, the item is not a gift to the employee who wins the raffle. [Reg. 18944.2(b), 18944.4(b)]

(f) Agency Gift Exchanges. When an employee of an agency participates in an employee gift exchange, any item received by the employee in the gift exchange is not a gift so long as the item received is provided by another employee of the agency and the gifts are not substantially disproportionate in value. [Reg. 18944.2(c), 18944.4(c)]

(g) Sections 20(d) and 20(e) shall not apply to passes or tickets of the type described in Regulation 18944.1, which shall be governed by that regulation.

**21. "SOURCE OF GIFTS":**

(a) The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions:

(i) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift;

(ii) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or

(iii) the person receives a payment from a source after the payment was solicited by the official or the official's agent for the purpose of making a gift to the official.

(b) Under any of the conditions identified in subdivision (a)(i)-(iii), the source of the payment is the source of the gift.

(c) If a public official's pro-rata share of the cost of the benefit provided at an event constitutes a gift to the official, the person hosting the event, unless the admission to the event was provided by someone other than the host, shall be deemed the source of the gift so long as the event is widely attended by persons other than governmental officials.

(d) **Presumption of Source by Official.** Notwithstanding subdivision (a), an official may presume that the person delivering the gift or, if the gift is offered but has not been delivered, the person offering the gift to him or her is the source of the gift unless it is clear from the surrounding circumstances at the time the gift is delivered or offered that the person delivering or offering the gift is not the actual source of the gift.

(e) **Presumption of Source by Intermediaries.** A person that qualifies as an intermediary as a result of a payment solicited from an official pursuant to subdivision (a)(iii) may presume that he, she, or it is the source of the gift unless the person does not know or have reason to know of the official's solicitation. [Reg. 18945]

(f) **"Single" Source.** For purposes of Section 86203 and 89503 gift limits, separate gifts may be aggregated, and considered from a "single" source, in any of the following circumstances:

(i) The separate gifts are from an individual and an entity in which the individual has an ownership interest of more than 50 percent unless the individual did not direct and control the gift from the entity. An individual who has an ownership interest of more than 50 percent is presumed to direct and control the gift from the entity. This presumption may be rebutted if the payment is made by another individual who, in fact, directed and controlled the payment.

(ii) The separate gifts are from an individual and an entity and the individual in fact directed and controlled the decision of the entity to make the gift.

(iii) The gifts are from two or more entities and the same person or a majority of the same persons directed and controlled the decisions of the entities to make the gifts to the official.

(iv) Business entities in a parent-subsiary relationship, or business entities with the same controlling (more than 50 percent) owner, shall be considered a single source unless the business entities acted independently in their decisions to make the gifts. For purposes of this regulation, a parent-subsiary relationship exists when one business entity owns more than 50 percent of another business entity. [Reg. 18945.1]

(g) Group Gifts. If an official receives a gift valued at \$50 or more from a group of persons, the official need only report any source(s) of the gift who donates \$50 or more to the overall value of the gift. In addition, any donation to the group gift made by any person for whom the official is required to report a gift shall be aggregated with any other gift made by that person. A gift from a single organization is not a group gift from the members of that organization.

**22. "LOCAL GOVERNMENT AGENCY":**

"Local government agency" means a county, city or district of any kind including school district or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. [Govt. Code 82041]

**23. "PERSON":**

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. [Govt. Code 82047]

**24. "GOVERNMENTAL DECISION: SEGMENTATION":**

(a) An agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all of the following conditions apply:

(i) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

(ii) The decision in which the official has a financial interest is segmented from the other decisions;

(iii) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and

(iv) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

(b) For purposes of this regulation, decisions are "inextricably interrelated" when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

(c) **Budget Decisions and General Plan Adoption or Amendment Decisions Affecting an Entire Jurisdiction:** Once all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan. [Reg. 18709]

**25. "COMMITTEE":**

"Committee" means any person or combination of persons who directly or indirectly does any of the following:

(a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.

(b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

(c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214. [Gov. Code 82013]