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FPPC Disclosure Revisions to Close Conflict of Interest Loophole

The Fair Political Practices Commission (“FPPC”) recently made changes to Title 2, Division 6, of the California Code of Regulations, section 18707 (Disqualification Requirements) to close a loophole to prevent public officials identified in Government Code 87200 from leaving a meeting to avoid disclosing a disqualifying interest at that public meeting. The newly adopted section 18707, which can be found [here](#), clarifies that a public official specified in Government Code section 87200 must publicly identify a conflict of interest in a public meeting agenda item, where the official attends any portion of the meeting. This change to section 18707 reminds us all of the importance of identifying disqualifying conflicts of interest as early as possible so that public identification of that disqualifying interest can be done correctly and in conformance with the Political Reform Act.

Government Code section 87200 identifies a number of elected and appointed officials, including city councilmembers, members of planning commissions, members of board of supervisors, mayors, city managers, and any public official who manages public investments, as statutory filers who are required to file Statements of Economic Interests. Generally, Government Code section 87100 states that no public official shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Government Code section 87105 governs the manner of disqualification for a public official identified in Government Code section 87200 and generally requires that section 87200 officials, immediately prior to the consideration of the matter, publicly identify the financial interest that gives rise to the conflict, recuse themselves from discussion and voting on the matter, and leave the room until after the matter is concluded. Regulation section 18707 provides further specificity with regard to the disqualification requirements for section 87200 officials. However, the prior section 18707(a)(3) permitted an exception to the public identification duties where the section 87200 public official was absent providing, “... [i]f the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, there are no public identification duties on the public official for that item at that meeting.”

Concerned citizens reported to the FPPC an elected official in their county attended a public meeting, in which they understood the

official to have a financial interest in an item on the agenda, left the meeting prior to the particular agenda item, and then returned to the meeting after the item was completed, with no disclosure as to his financial interest. The FPPC felt that such actions circumvented the disclosure requirements and needed to be addressed through a revision to section 18707.

The newly adopted section 18707, eliminates the former absence exception in the former subsection (a)(3) entirely and clarifies the “Timing” requirements found in subsection (a)(2) by indicating that the public identification of the financial interest must be made immediately prior to consideration of the agenda item and a partial absence from a meeting does not excuse the section 87200 public official’s public identification requirement. If a public official leaves a meeting in advance of the agenda item in which the official is disqualified, the official must publicly identify the agenda item and the financial interest prior to leaving the meeting. If a public official joins a meeting after the consideration of an agency item in which the official is disqualified, he or she must publicly identify the agenda item and the financial interest immediately upon joining the meeting. Other non-substantive changes were also made to section 18707, including clarification and reorganization of the language relating to recusals and leaving the room in subsection (a)(3). The newly adopted section 18707 does not identify recusal requirements where the public official with the conflict of interest is completely absent from the entire meeting.

The League of California Cities’ FPPC Committee of the City Attorneys’ Department submitted written public comment on the item prior to the FPPC’s consideration of the revisions to section 18707 seeking amendments to, among other things, the “Timing” requirements found in subsection (a)(2), which require disclosure “immediately prior to consideration” or disclosure “immediately upon joining the meeting.” The public comment from the League’s Committee asked for changes to the language to provide greater flexibility to public officials who must deal with the practicalities of suddenly leaving a meeting and/or returning to a meeting in progress. The FPPC discussed this request and concluded that the term “immediately” is used throughout the Regulations and when enforced, the FPPC interprets the term “immediately” using a “reasonable person” standard. Thus, the FPPC did not feel any changes were necessary.