

1 Adopt 2 Cal. Code Regs. Section 18438.7 as follows:

2 **§ 18438.7. Prohibitions and Disqualification Under Section 84308.**

3 (a) Knowledge of a Financial Interest. An officer knows or has reason to know that a
4 participant has a financial interest in a decision only if the officer has actual knowledge of the
5 financial interest, or the participant reveals facts in written or oral statements during the
6 proceeding before the officer that make the person’s financial interest apparent.

7 (1) In determining whether facts revealed by a participant in written or oral statements
8 before the officer have made the participant’s financial interest apparent, all relevant facts known
9 by the official at the time of the decision must be considered including, but not limited to, the
10 specificity with which the participant has described their economic interests, the potential for a
11 material financial effect on those interests as a result of the decision, and the likelihood of such a
12 financial effect.

13 (2) Notwithstanding subdivision (a)(1), an official aware of any of the following facts has
14 reason to know of a participant’s potential financial interest, and may not take part in the
15 proceeding if the participant and the participant’s agent have contributed more than two hundred
16 fifty dollars (\$250) to the official within the preceding 12 months:

17 (A) The participant has an interest in property located within 500 feet of the real property
18 at issue in the proceeding;

19 (B) The participant has an economic interest in a business entity that may see a significant
20 increase or decrease in customers as a result of the proceeding; or

21 (C) The participant has a business relationship with the applicant that may result in
22 additional services provided to the applicant.

23 (3) An officer with reason to know of a participant’s financial interest as specified in
24 subdivision (a)(2) may take part in the proceeding if clear and convincing evidence known by the

1 officer establishes it is not reasonably foreseeable the decision will have material financial effect
2 on the participant's interests.

3 (4) An officer does not know or have reason to know of a participant's financial interest
4 in a decision solely as a result of the participant identifying an economic interest located in the
5 general vicinity of a business entity or real property at issue in the proceeding.

6 (b) Willful or Knowing Receipt of a Contribution. For purposes of Section 84308(c), an
7 officer may not make, participate in making, or in any way attempt to use the officer's official
8 position to influence the decision if the officer willfully or knowingly received a contribution
9 from a party, or participant with a financial interest, in the proceeding.

10 (1) An officer willfully or knowingly received a contribution if:

11 (A) The officer has actual knowledge of the contribution;

12 (B) The contribution has been disclosed by the party pursuant to Section 84308(e); or

13 (C) The officer is aware of facts establishing other reasons to know of the contribution
14 including, but not limited to:

15 (i) The party, participant, or another person has otherwise informed the officer that a
16 contribution or contributions have been made to the officer;

17 (ii) The party or participant has previously made two or more contributions of more than
18 \$250 to the officer;

19 (iii) The officer personally solicited the party or participant for a contribution; or

20 (iv) The officer personally accepted a contribution from the party or participant.

21 [Option 1] (2) An officer, without actual knowledge of a contribution from a party or
22 participant with a financial interest, does not have reason to know of the contribution based
23 solely on the fact that the contribution was previously reported under the Act's reporting
24 provisions.

1 [Option 2] An officer has reason to know of a contribution previously reported under the
2 Act’s reporting provisions by a party in a proceeding noticed on an agenda for a public meeting
3 before the body or board or, for officers not on a body or board, where the proceeding is
4 otherwise before the officer in the officer’s decisionmaking capacity.

5 (3) As used above, the phrase “make, participate in making, or in any way attempt to use
6 the officer’s official position to influence the decision” has the same meaning as specified in
7 Regulation 18704.

8 (c) Return of Contribution. For purposes of Section 84308(d)(1), an officer can return a
9 contribution if:

10 (1) The contribution was received from a party prior to the officer knowing or having
11 reason to know that a proceeding involving the party had commenced. For purposes of this
12 provision, an officer serving on a governing body or board knows or has reason to know a
13 proceeding involving the party has commenced if the proceeding has been noticed on the agenda
14 for a public meeting of the body or board; or

15 (2) The contribution was received from a participant prior to the officer knowing or
16 having reason to know that the participant had a financial interest in the proceeding.

17 (d) Taking Part in Proceeding prior to Return of Contribution. An officer serving on a
18 governing body or board, otherwise disqualified under Section 84308 from taking part in a
19 proceeding, may take part in the proceeding prior to returning the contribution if all of the
20 following criteria are met:

21 (1) The decision is made at a public meeting of the governing body or board;

22 (2) The officer has known or should have known about the contribution and proceeding
23 for fewer than 30 days;

24 (3) After learning of the contribution or proceeding and prior to taking part in any further

1 discussion or decision, the officer discloses the fact of the disqualifying contribution on the
2 record of the proceeding, as required by Section 84308(c), and confirms that the return will occur
3 within 30 days from the time the officer knew, or should have known, about the contribution and
4 proceeding; and

5 (4) The contribution is returned within that timeframe.

6 Note: Authority cited: Section 83112, Government Code. Reference: Section 84308,
7 Government Code.