

# The Political Reform Act – Beyond the Basics

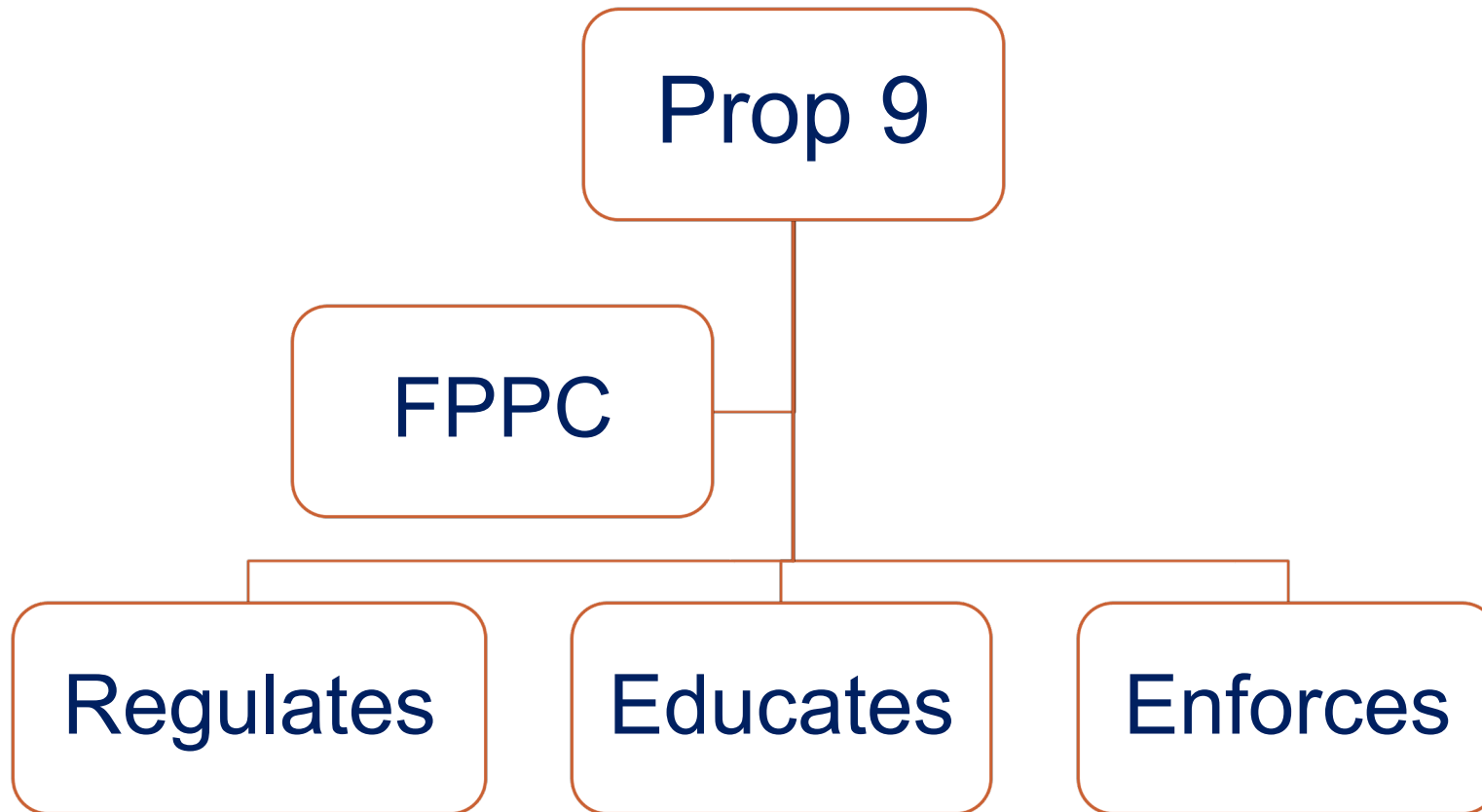


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Fair Political Practices Commission

DEC 14, 2023

# Fair Political Practices Commission (FPPC)

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# Today's Topics

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- Conflicts of Interest Under the Act
- Conflicts of Interest Under Government Code Section 1090
- Section 84308 Pay-to-Play Rules
- Online Campaign Advertising Rules
- What the FPPC Enforces and What it Doesn't
- Resources

# Purpose of Today's Presentation

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Today's presentation will provide a summarized overview of the areas of law listed on the previous slide.

The goal for today is to help you spot issues.

If a prospective issue or question regarding the application of these laws arises, please contact the FPPC for informal assistance or formal written advice.

# CONFLICTS OF INTEREST: POLITICAL REFORM ACT OF 1974



# Purpose of Conflict of Interest Rules

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**§ 87100:** No public official or employee shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows he has a financial interest.

# Conflicts of Interest-Basic Rule

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- A public official is prohibited from making, participating in making, or attempting to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.)
- The law looks at the decision's effect on the official's financial interest. For example, a decision may have a disqualifying effect on a source of income to the official without having any effect on the official.
- Provisions of the Act and Commission Regulations provide further detail on the application of this general rule. (See e.g. Regulation 18700 et seq.)

# Conflicts of Interest-Financial Interests

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An official's financial interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103:

- **Business:** An interest in a business valued at \$2,000 or in which the official holds a management position or is an employee.
- **Real Property:** An interest in real property valued at \$2,000 or more.
- **Source of Income:** An interest in a source of income totaling \$500 or more in the 12 months prior to the decision.
- **Source of Gifts:** An interest in a source of a gift or gifts totaling \$590 or more in the 12 months prior to the decision. (\$590 Gift limit in effect through end of 2024).
- **Personal Finances:** An interest in the official's personal finances and those of immediate family members.



# Conflicts of Interest- Identifying Financial Interests

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A City Council will soon consider approval a project to construct a large ACME Cineplex within the City. A City Councilmember owns a single-family home which serves as the Councilmember's residence, located within 500 feet of the project site. The Councilmember also owns \$20,000 in ACME Cineplex stock. The Councilmember is an architect and is the sole proprietor of the architectural firm. Within the past six months, the architectural firm was paid \$5,000 by ACME Cineplex for design work on a different project in a different city.

*What are the Councilmember's financial interests with respect to decisions relating to the project?*



# Conflicts of Interest - Identifying Financial Interests

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With respect to decisions relating to the project, the Councilmember would have the following financial interests:

A **Business Interest** in the architecture firm because the Councilmember holds a management position with the firm as its sole proprietor. (See Section 87103(a).) The Councilmember would also have a business interest in that firm if the Councilmember has an investment in the firm worth \$2,000 or more. (See Section 87103(d).)

A **Real Property Interest** in the Councilmember's residence, assuming the Councilmember's interest in the residence is worth \$2,000 or more. (See Section 87103(b).)

**Source of Income Interests** in the architecture firm, as well as AMCE Cineplex, because the Councilmember has received more than \$500 in income from each source within the 12 months prior to the decision at issue. (See Section 87103(c).)

An **Interest in the Councilmember's Personal Finances** including those of immediate family members. (See Section 87103.)

# Conflicts of Interest - Foreseeability & Materiality

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If a decision may have a financial impact or effect on the financial interests previously listed an official is disqualified from participating in the governmental decision if the following two criteria are met:

The financial impact or effect is reasonably foreseeable, and

The financial impact or effect is significant enough to be considered material.

# Conflicts of Interest - Foreseeability & Materiality

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Generally, a financial impact or effect is presumed to be both reasonably foreseeable and material if the financial interest is “explicitly” or directly involved in the decision.

A financial interest is explicitly involved in the decision whenever the interest is a named party in, or the subject of, a governmental decision before the official of the official’s agency.

If an interest is not “explicitly involved” in the decision, a financial impact or effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to occur to be considered reasonably foreseeable.

# Conflicts of Interest - Foreseeability & Materiality

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For interests not “explicitly involved” in the decision, different standards apply to determine whether a foreseeable effect on an interest will be material.

Materiality standards for each type of financial interest are provided in Regulations 18702.1 to 18702.5.

To determine if a decision’s reasonably foreseeable financial effect requires the official’s disqualification, apply the appropriate materiality standards.

# Conflicts of Interest - Foreseeability & Materiality

## Example Foreseeability Analysis

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We return to the prior hypothetical regarding the ACME Cineplex project and the City Councilmember.

After identifying the Councilmember's various financial interests at issue, we next analyze whether those decisions would have a disqualifying financial effect on each of those interests.

Although none of the Councilmember's financial interests are "explicitly involved" in decisions relating to the project, there is a realistic possibility—more than hypothetical or theoretical—that those decisions could have a financial effect on each of those interests. Therefore, those potential effects are reasonably foreseeable.



# Conflicts of Interest - Foreseeability & Materiality

## Example Materiality Analysis

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The decisions relating to the ACME Cineplex project would have a reasonably foreseeable financial effect on each of the Councilmember's financial interests. We next apply the appropriate materiality standards to each of those interests to determine if those decisions would have a disqualifying effect.

- Apply materiality standards of Regulation 18702.1(a)(2) and (3) to the effect on the Councilmember's business interest in his architectural firm.
- Apply materiality standard of Regulation 18702.2(a)(7) to the effect on the Councilmember's residence because the residence is located within 500 feet of the project site.
- Apply materiality standard of 18702.3(a)(4) to the effect on the Councilmember's respective source of income interests in the architecture firm and ACME Cineplex.
- Apply materiality standard of 18702.5(c) to the effect on the Councilmember's personal finances or those of immediate family.

# Conflicts of Interest Exceptions & Other Considerations

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Does the “Public Generally Exception” (see Regulation 18703) or another exception apply?

If the decision at issue is complex, could it be “segmented” into component decisions (see Regulation 18706) to allow the official to participate in some components?

If a quorum cannot be formed due to disqualification, are any disqualified officials “legally required to participate” under Regulation 18705?



# Conflicts of Interest Disqualification Requirements

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If an official listed in Section 87200 is disqualified from taking part in a decision, the official must recuse from the decision as directed in Regulation 18707. The key elements to a proper recusal are:

- Public identification of the specific financial interest(s) at issue immediately prior to consideration of the decision.
- The official must recuse and leave the room after the public identification and must refrain from any participation in the decision.

\*If an official has a personal interest in the agenda item as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, following the public identification of the financial interest and recusal the official may leave the dais and speak or observe from the area reserved for members of the public.

# Conflicts of Interest FPPC Assistance

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Resources on FPPC's website. <http://www.fppc.ca.gov/learn.html>.

[www.fppc.ca.gov](http://www.fppc.ca.gov) →

Learn →

Conflict of Interest Rules

# Conflicts of Interest

## Types of Advice: Informal Assistance

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Advice Email:  
[advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)

Telephone Advice:  
(866) 275-3772 Monday – Thursday, 9-11:30 AM

<http://www.fppc.ca.gov/advice/get-advice.html> for more information.

Past advice letters searchable on FPPC website, Lexis, Westlaw

# Conflicts of Interest

## Types of Advice: Formal Written Advice

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Formal advice is provided to officials with duties under the PRA and Section 1090 upon request. (Gov. Code Sections 83114(b) and 1097.1(c)(2).)

Can provide immunity from administrative enforcement action.

21 working day response time for PRA, not applicable to Section 1090.

Issued by Legal Division without formal Commission action.

CA Code of Regulation, title II, section 18329(a) and Gov. Code Section 1097.1(c)(2).

# Conflicts of Interest

## Formal Written Advice Request Requirements

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- Must be from the official or the official's authorized representative and must concern the official's duties.
- Must provide all relevant facts and ensure their accuracy.
- Must not concern past conduct or be the subject of an enforcement action. Prospective only.
- Must present a specific question, not broad or hypothetical.
- See FPPC website for additional guidance on submitting a formal written advice request.

# GOVERNMENT CODE SECTION 1090



# Section 1090

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- The FPPC was granted limited jurisdiction over Section 1090 in 2014.
- Section 1090 provides in pertinent part:

*“Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”*

# Section 1090

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**Basic Rule:** If a public official has a financial interest in a public contract, Section 1090 generally prohibits: (1) the official from making or participating in making the contract, and (2) the official's agency from entering into the contract.

**Public Policy:** Contracts in violation of Section 1090 are contrary to the public policy of California.

**Long Established:** Section 1090 codified the common law prohibition against "self-dealing" in public contracting, and the statute can be traced back to an act passed in 1851.



# Section 1090

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**Contract in Violation is Void:** A public contract made in violation of Section 1090 is void, not merely voidable, regardless of whether the contract is fair and equitable.

**Subject to Disgorgement:** Profits from a contract made in violation of Section 1090 may be required to be paid back.

**Prohibition Applies to Entire Governing Body:** When a member of a governing body is financially interested in a public contract, the entire governing body is prohibited from entering into the contract.

# Section 1090 Example Analysis

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A County Board of Supervisors will soon consider whether to enter into a contract with a fire-alarm installation company for the procurement and installation of fire alarms in a County building. A Supervisor has an ownership interest in the fire-alarm installation company.



Section 1090 would prohibit the Supervisor from making or participating in making the contract because the Supervisor has a prohibited financial interest in that contract due to an ownership interest in the fire-alarm installation company unless an exception applies. Section 1090 would also prohibit the County from entering into the contract because Section 1090's prohibition is imputed to the governing body, unless an exception applies.

# Section 1090

## Penalties for a Violation of Section 1090

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**Civil Penalties:** An official found to have violated Section 1090 is subject to multiple types of civil penalties.

**Administrative Penalties:** The FPPC also may impose administrative penalties for a violation of Section 1090.

**Criminal Penalties if Conduct Willful:** If the conduct at issue was willful, the official is also subject to criminal penalties, including imprisonment and permanent disqualification from holding public office.

# Section 1090

## Broadly Applied to Guard Against Self-Dealing

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**Broadly Interpreted:** Section 1090 is broadly interpreted “to ensure that the public has the official’s absolute loyalty and undivided allegiance.”

**Appearance of Impropriety Sufficient:** Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.”

# Section 1090

## “Officer or Employee”

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**Subject to Section 1090:** Section 1090 applies to virtually all state and local officers, employees, and members of governing bodies, whether elected or appointed.

**Broad Interpretation:** For purposes of Section 1090, the term “officers and employees” has been interpreted broadly to include some independent contractors.

**Examples Include:** County Supervisor, City Councilmember, County Administrator, City Manager, County Counsel, City Attorney, and some advisory board members, consultants, and independent contractors.

# Section 1090

## “Financial Interest”

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For purposes of Section 1090, the phrase “financially interested” broadly encompasses anything that would tie a public official’s fortunes to the existence of a public contract.

An official is deemed to have a financial interest in a contract if the official may profit from it in any way.

A financial interest may be direct or indirect, or may involve financial losses, the possibility of losses, or the prospect of financial gains.

# Section 1090

## Statutory Exceptions

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**Noninterests:** Section 1091.5 sets forth “noninterest” exceptions to Section 1090’s prohibition, or financial interests so minimal that the official is deemed not to have a financial interest in the contract. If an official merely has a noninterest in a contract, Section 1090 does not prohibit that official from participating in the making of that contract.

**Remote Interests:** Section 1091 provides “remote interest” exceptions to Section 1090’s prohibition. If a remote interest applies, the contract may be made if (1) the officer discloses the remote interest, (2) the interest is noted in the official record, and (3) the officer completely abstains from participating in the making of the contract.

# Section 1090

## Limited Rule of Necessity

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A limited “rule of necessity” applies where public policy concerns require the public contract at issue, ensuring that essential government functions are performed despite a conflict of interest.

If the Rule applies, the agency may enter into a public contract that Section 1090 otherwise would prohibit.

The Rule only applies in two narrow situations:

- Procurement of essential supplies or services when no other option is available.

- To carry out essential duties of the office when the official or governing body is the only one authorized to act.



# Section 1090 Analysis

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A six-step analysis is used to determine whether the prohibition of Section 1090 applies:

- (1) Is the official subject to Section 1090?
- (2) Does the decision involve a public contract?
- (3) Is the official making or participating in the making of the contract?
- (4) Does the official have a financial interest in the contract?
- (5) Does a statutory exception apply?
- (6) Does the Rule of Necessity apply?

If an issue arises in conducting this analysis, you should seek advice from your agency's counsel or the FPPC.

# Section 1090

## Example Analysis

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We now return to our previous example of a County's potential fire-alarm contract, where a County Supervisor has an ownership interest in the contract provider, and we apply Section 1090's six-step analysis.

- (1) The Supervisor is subject to Section 1090.
- (2) The decisions at issue involve the potential fire-alarm contract.
- (3) Given the Board's role in approving the contract, the Supervisor would participate in the making of the contract.
- (4) The Supervisor has a financial interest in the fire-alarm company due to an ownership interest .
- (5) There is no indication a noninterest or remote interest applies.
- (6) There is no indication the rule of necessity applies.

Thus, Section 1090 prohibits the County from entering into the contract.



# Section 1090 Resources

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Educational resources regarding Section 1090 are available on the FPPC's website:

<https://fppc.ca.gov/learn/section-1090.html>

The FPPC's website also provides guidance on submitting a request for formal written advice regarding Section 1090:

<https://www.fppc.ca.gov/advice/formal-advice.html>

If an issue arises under Section 1090, we encourage you to seek formal written advice. More information may be found here:

<http://www.fppc.ca.gov/advice/get-advice.html>.

The Attorney General's Guide to Conflicts of Interest Guide (2010) provides further insights:

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf>

# Section 1090

## Limitations on FPPC's Authority to Provide Advice Regarding Section 1090

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**No Informal Assistance:** The FPPC only provides formal written advice regarding Section 1090. Requests regarding Section 1090 must be sent by the FPPC to the local DA and the AG prior to providing advice, and the FPPC must share any comments in response with the requestor.

**No Past Conduct:** Requested advice must be prospective and cannot relate to past conduct.

# Section 1090

For more information, please see:

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To access more on Section 1090:

[www.fppc.ca.gov](http://www.fppc.ca.gov) → [Learn](#) → [Section 1090](#)

The FPPC's "Quick Guide to Section 1090"

<https://fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/section-1090/Section%201090%20-%20Quick%20Guide%20-%20Oct%202020.pdf>

The FPPC's "Overview of Section 1090 and FPPC Advice"

<https://fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/section-1090/Section%201090%20-%20Overview%20-%20Oct%202020.pdf>

# Section 84308 of the Political Reform Act: Pay-to-Play



# What is Section 84308?

- Commonly referred to as “the Levine Act”
- California law originally enacted in 1982, originally applied only to officials that were acting in an appointed capacity.
- Amended in 2022 to address inconsistent application
- Aimed at combatting “pay-to-play” or *quid pro quo* practices, and the appearance of such practices

# Today's Objectives

- Learn the types of proceedings and individuals Section 84308 applies to;
- Recognize the distinctions between parties, participants, and agents;
- Examine the basic requirements and limitations of Section 84308 and when they apply;
- Familiarize ourselves with the concept of aggregation for purposes of calculating total contributions; and
- Learn where to access additional information and how to request assistance from the FPPC.



# General Overview of Requirements

- Limits government **officers'** ability to accept contributions greater than \$250 during specific periods
- Limits **parties', participants', and their agents'** ability to contribute more than \$250 to an officer during specific periods when they are involved in certain proceedings before the officer's agency
- **Officers who have accepted contributions must recuse** themselves from specified proceedings **or return** portion of contribution exceeding \$250
- **Disclosure** is required by officers and parties of contributions
- Violations of the Act may result in fines of up to **\$5,000 per violation**

# Scope of Section 84308

- However, these restrictions and requirements **only** apply in a specific context: proceedings involving a license, permit, or other entitlement for use, or “**entitlement for use proceeding,**” for short.
- Section 84308 **does not apply** to proceedings involving general policy decisions or rules where the interests affected are many and diverse. It also **does not apply** to ministerial (i.e., completely objective) decisions.

# What is an Entitlement for Use Proceeding?

- Section 84308 defines “license, permit, or other entitlement for use” to mean “all business, professional, trade, and land use licenses and permits and **all other entitlements for use**, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.”

# Entitlement for Use Proceeding Examples

- Building Permits
- Conditional Use Permits
- **Event Permits**
- Professional License Revocations
- Rulemaking Procedure Affecting Small Industry w/ Limited Businesses
- Subdivision/Parcel Maps
- Charter School Petitions
- **Contracts (w/ exceptions)**
- Private Development Plans
- Rezoning of Specific Parcels
- Special District Formations
  - Zoning Variances

# Entitlement for Use Proceeding DO NOT Include

- Applications Decided Based Solely on Objective Criteria
  - City/County Ordinances
  - City/County Measures
  - City/County/Departmental Policies
  - Competitively-Bid Contracts
- Labor/Personal Employment Contracts

# Who Does Section 84308 Apply to?



Officers



Parties



Participants



Agents

# Officers

- Section 84308 defines “officer” to include two categories:
  - 1) Candidates for office; and
  - 2) Officers of the agency
- FPFC regulations further define “officer of the agency” to include:
  - 1) Elected Officials;
  - 2) Board & Commission Members;
  - 3) Chief Executives of the Agency; and
  - 4) Agency employees with decisionmaking authority in the proceeding, who are candidates for office or have been candidates within the preceding 12 months



# Officers

- “Agency employees with decisionmaking authority in the proceeding, who are candidates for office or have been candidates within the preceding 12 months”
- Who does this apply to?
  - Example: A city employee with discretion to approve or reject an event permit application, and who is running for a position on a local school board.
- This person doesn’t have to be a member of the City Council or Planning Commission to be an “officer of the agency.”





# Excluded Officers

- Very few officers and agencies are excluded from the scope of Section 84308:
  - Courts or any agency in judicial branch;
  - The Legislature;
  - The Board of Equalization;
  - Constitutional Officers (e.g., Governor, Lieutenant Governor, Secretary of State)
- If an individual is an elected or appointed official at the local level (or running for such an office), they are subject to Section 84308.



# Requirements for Officers of the Agency

- Section 84308 places restrictions on those who qualify as an “officer of the agency.”
- Prohibited from accepting, soliciting, or directing a contribution greater than \$250 from a party, participant, or their agent while the entitlement for use proceeding is pending, and for 12 months after a final decision in the proceeding.
- Officers of the agency who have received a contribution exceeding \$250 within the past 12 months must either recuse themselves or return the excess contribution.
  - Must also disclose such contributions.



# Requirements for Parties

- Section 84308 defines a “party” as “any person who files an application for, or is **the subject of, a proceeding** involving a license, permit, or other entitlement for use.”
  - Examples: applicants, claimants, respondents, contracting parties
- Parties and their agents **cannot contribute more than \$250** to an officer of the agency **while the entitlement for use proceeding is pending, and for 12 months after** a final decision in the proceeding.
- Parties **must disclose** any contribution greater than \$250 they have made to an officer of the agency within the 12 months prior to the entitlement for use proceeding.



# Participants

- A “participant” in an entitlement for use proceeding is a person (or entity) who:
  - (1) is **not a party**; but
  - (2) who **actively supports or opposes** a particular decision in a proceeding involving a license, permit, or other entitlement for use; and
  - (3) who **has a financial interest** in the decision.



# Requirements for Participants

- Like parties, participants and their agents **cannot contribute more than \$250** to an officer of the agency **while the entitlement for use proceeding is pending, and for 12 months after** a final decision in the proceeding.
- Unlike parties, participants are **not required to disclose** any contribution greater than \$250 they have made to an officer of the agency within the 12 months prior to the entitlement for use proceeding.



# Active Support or Opposition

- **Communication** with an officer or employee of an agency **for the purpose of influencing** a decision
  - Can be made via agent
  - Examples: Providing public comment during a public meeting, directing a message to an officer or employee of the agency via phone, email, physical mail, or in person
- Does **not** include communications made to public outside the proceeding
  - Examples: Protesting outside government buildings, publishing op-ed articles, advertisements



# Financial Interests

- An individual generally has a “financial interest” in an entitlement for use proceeding if it would have a **reasonably foreseeable, material financial effect** on one or more of their economic interests.
- To determine “reasonable foreseeability,” ask:
  - Is a material financial effect a **realistic possibility**, and not just hypothetically or theoretically possible?
  - Use same list of interests and materiality standards as we mentioned during the conflict of interest discussion.



# Agents

- A person is an “agent” of a party or participant in a pending entitlement for use proceeding if the person:
  - **Represents** that party or participant **for compensation**; and
  - Appears before or otherwise **communicates** with the governmental agency **for the purpose influencing** the proceeding.
- An agent’s contributions are combined with those of the party or participant they represent for purposes of calculating the \$250 contribution limit.
- Like parties, agents’ contributions exceeding \$250 within the past 12 months must be disclosed.





# Section 84308

Now let's address:

- How is the \$250 contribution calculated?
- When is a proceeding “pending”?
- What disclosure is required?

# How is the \$250 Contribution Calculated?

- The \$250 limit applies to any 12-month period.
  - Example: A company contributes \$100 to a City Councilmember on January 1, then submits a permit application to the City on January 2. At that point, an entitlement for use proceeding is pending with respect to the company. During the next 12 months, the company may only contribute an additional \$150 to that City Councilmember.
  - Example: An individual submits a permit application to the City on January 1, 2024, then contributes \$250 to each City Councilmember on January 2. On January 2, 2025, the proceeding is still pending before the City with no final decision having been made yet. The individual may contribute another \$250 to each City Councilmember, even though the proceeding is still pending, because it has been 12 months since any contribution was made.

# Aggregation

- Contributions by a party or participant are combined with contributions by:
  1. Their respective agent(s) (e.g., the employee paid to represent the non-profit at the proceeding);
  2. Those who direct or control the party's/participant's contribution (e.g., a CEO or CFO);
  3. Entities with contributions controlled by that same person or a majority of the same persons (e.g., a "parent organization" with contributions controlled by the same person(s))
  4. The majority owner and other entities majority-owned by that person.

**NOTE:** Contributions by **non-compensated** non-profit officers are **not aggregated**

# Participants vs. Agents Example

A non-profit focused on a specific medical issue has submitted an application to the City's Parks and Recreations Department for an event permit that would allow the non-profit to host a large fundraising and issue awareness event at a City park.

- The non-profit is a party in the proceeding.

The non-profit has an employee who serves as the organization's Community Outreach Coordinator. In her capacity as an employee, the Community Outreach Coordinator writes to the Executive Director of the Parks and Recreation Department and appears at a Parks and Recreation Department meeting to express support for the application and explain how the event will benefit the City.

- The Outreach Coordinator is an agent in the proceeding.

Another employee of the non-profit is not authorized or tasked with speaking on behalf of the organization, but submits a public comment in their personal capacity because the issue is important to them and they also believe the event will be beneficial to members of the community. Because the employee's source of income—the non-profit organization—is the subject of the proceeding, the employee automatically has a financial interest in the proceeding.

- Therefore, the employee qualifies as a participant in the proceeding.



# When Do These Restrictions and Requirements Apply?

- Parties, participants, and agents are prohibited from contributing more than \$250 while the proceeding is pending and for 12 months after a final decision is rendered.
- For parties, participants, and their agents, an entitlement for use proceeding is “pending” when it is before the jurisdiction of the agency for its decision or other action.
  - Examples:
    - After a company submits a permit application to the City;
    - After contract bid has been submitted or negotiations have begun.

# When Do These Restrictions and Requirements Apply?

- For officers, an entitlement for use proceeding is “pending” when either:
  - 1) The decision is before the officer for the officer’s consideration;
    - Example: A party’s development agreement proposal is placed on the City Council’s meeting agenda for discussion or decision.
  - 2) The officer knows or has reason to know a proceeding involving a license, permit or other entitlement for use is before the jurisdiction of the agency for its decision or other action, and it is reasonably foreseeable the decision will come before the officer in the officer’s decisionmaking capacity.
    - Example: Before the party’s development agreement proposal comes before the City Council, it is first presented to the City’s Planning Commission. A Planning Commissioner discusses the party’s proposal with a City Councilmember.

# What is a Party Required to Disclose?

- When a party has contributed, in the aggregate, more than \$250 to an officer of the agency, the party must disclose:
  - The **amount of the contribution(s)** made within the past 12 months; and
  - The **names** of the persons whose contributions are required to be aggregated with contributions by the party (e.g., contributions by the party's agent or the company officer who directs and controls the party's contributions)
- Generally, **disclosure must be made on the date the party files** the application or other request initiating the proceeding.

# What is an Officer Required to Disclose?

- An officer is required to disclose any contribution the officer knows of or has reason to know of, either **orally or in writing, on the public record** at the beginning of a public meeting, if a meeting is held.
- If an officer learns of a contribution *during* a public meeting, the officer shall make the disclosure on the public record prior to continuing to take part in the proceeding.
- If no public record is held, written disclosure shall be entered into the agency's official records.



# What is an Officer Required to Disclose?

- An officer is required to disclose:
  - The fact that they have received contributions from the party, participant, or agent greater than \$250 within the past 12 months; and
  - The names of the contributor(s).

# What if a Party or Participant Contributed More Than \$250 Before the Proceeding?

- A party or participant does not violate Section 84308 by contributing more than \$250 to an officer of an agency **before** an entitlement for use proceeding is pending.
- However, the officer will likely either have to recuse themselves from the proceeding or return the portion of the contribution exceeding \$250.
- An officer is eligible to return a contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding.

# Summary

## Officers and Parties

- Section 84308 applies to officers, parties, participants, or agents in entitlement for use proceedings.
- Officers of an agency cannot accept—and parties, participants, and agents cannot give—more than \$250 while a proceeding is pending and for 12 months after a final decision.
- If a person is directly involved in the proceeding, the person is a party.

# Summary

## Participants and Agents

- If the person is not a party, but is advocating for a decision in the proceeding and has a financial interest in the proceeding, the person is a participant.
  - “Financial interest” means the person’s economic interest would experience a reasonably foreseeable, material financial effect
- If a person is paid to represent a party or participant by communicating with the agency to influence the proceeding, the person is an agent.
- Disclosure is required for parties and their agents, but not participants.

# Section 84308 Resources

- Resources are available on the FPPC Website
  - [Section 84308 Guide for Officers](#)
  - [Section 84308 Guide for Parties, Participants, and Agents](#)
  - [Section 84308 webpage](#).
  - Email the FPPC at [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov) with any requests for informal assistance or formal advice
  - FPPC is offering a webinar on Section 84308 on December 19, 2023 at 2:00-3:30pm. You can register on the FPPC website under the “Learn” tab > Training & Outreach > Upcoming Training Opportunities.

Nov. 2023



# Campaign Advertising Online

# Regular Ads & “Online Platform Disclosed Advertisements”

- Under the Political Reform Act there are two main “buckets” online ads fall into.
- (1) Online Platform Disclosed Advertisements
  - Electronic media advertisements made via social media for which a committee pays the online platform, or
  - Electronic media advertisements that are in the form of a graphic, image, animated graphic, or animated image that an online platform hosting the advertisement does **not allow** to hyperlink to an internet website containing required disclosures.
  - The online platform collects information from the committee and places the disclosures on the ad.
- (2) All Other Online Campaign Ads
  - The committee is responsible for placing disclosures on the ad








# Ads By Candidate Committees For Their Own Election (Non-Online Platform Disclosed Ads)

- For non-social media ads such as those on websites or blogs and images or graphics no disclosure is required but we recommend placing “Paid for by” and the committee name and ID number on the ad.
- Social media ads posted on the candidate’s account page must include “Ad paid for by” on each individual post that is an advertisement in contrasting color, easily readable and no less than 10 pt. font.
  - Exceptions: Only cost is compensated staff time unless account was only created for purpose of posting ads.
  - For social media ads paid for by the committee but posted on another account there must be a tag to candidate’s account page.



# FPPC Advertising Charts

The disclaimer requirements are based on the type of advertisement and who paid for it, and are summarized in the following charts:

1.  Communications by Candidate Committees for their own Election
2.  Independent Expenditure Ads on Candidates (except ads by candidates and political party committees)
3.  Independent Expenditure Ads on Ballot Measures (except ads by candidates and political party committees)
4.  Independent Expenditure Ads on Ballot Measures by Candidates and Political Party Committees
5.  Independent Expenditure Ads on Candidates by Candidates and Political Party Committees
6.  All Non-Independent Expenditure Ads (except ads by candidates and political party committees)
7.  All Non-Independent Expenditure Ads by Candidates and Political Party Committees

# FPPC Advertising Charts Example

## Independent Expenditure Ads on Candidates (except ads by candidates and political party committees)

Communication	Disclosure and Manner of Display
<p>Electronic media ads that are a graphic, image, animated graphic, or animated image that an online platform hosting the ad allows to link to an internet website not covered below (except video ads, see above)</p>	<ul style="list-style-type: none"> <li>• <b>Include for the duration of the advertisement, “Ad paid for by [committee name],” and “Ad Committee’s Top Funder(s) [top funder(s) names]” disclosures in a box with a solid white or black background at the bottom of the advertisement. Text shall be in a contrasting color, in at least 11-point, non-condensed standard Arial Regular type.*</b> <ul style="list-style-type: none"> <li>○ <b>Committee Name:</b> the text for the name of the committee may be shortened by either of the following:               <ol style="list-style-type: none"> <li>(1) Displaying only enough of the first part of the committee name to uniquely identify the committee. If the committee is a sponsored committee, then the name displayed must include the portion of the committee name that identifies the sponsor or sponsors, unless all of the sponsors are disclosed on the ad as top contributors.</li> <li>(2) Committee name may be replaced by displaying the words “Committee ID” followed by the committee’s identification number if committee has top funders to disclose.</li> </ol> </li> <li>○ May disclose only the largest contributor; may also use <b>“Top Funder(s)”</b> instead of <b>“Ad Committee’s Top Funder(s)”</b></li> <li>○ <b>“Not authorized by”</b> disclosure shall be displayed at the bottom of the box, separated from previous disclosures by a blank horizontal line.</li> <li>○ <b>NOTE:</b> If the image takes up fewer than 65,000 square pixels (smaller than a standard 728 x 90 pixel leaderboard image advertisement), then the advertisement may instead include <b>“Who funded this ad?”</b> in at least 8-point standard Arial Regular type with a hyperlink to a website containing the required disclosures.</li> </ul> </li> <li>• Unless the disclosure area includes full <b>“Ad Paid for by,” “Ad Committee’s Top Funder(s),”</b> and <b>“Not authorized by”</b> disclosures, the advertisement must also link to a website containing the full disclosures in a contrasting color and in no less than 11-point font.</li> <li>• <b>“Ad Committee’s Top Funder(s)”</b> and <b>“Not authorized by”</b> disclosures may not appear in all capital letters.</li> <li>• An internet website that is hyperlinked to the ad shall remain online and available to the public until 30 days after the date of the election.</li> <li>• Any text or image not required shall not appear in the disclosure area, except as otherwise authorized or required by applicable law.</li> </ul>
	<p>*This text is not required if including it or the abbreviated “Who funded this ad?”, would take up more than 10 percent of the graphic. In such circumstances the ad need only include a hyperlink to a website containing the website disclosures.</p>

# New Law Effective Jan 1, 2024

## SB 678 – Online Influencers

- Applies when a committee pays a person to post content on an internet website, web application, or digital application to support or oppose a candidate for elective office or a ballot measure.
- Post should include language stating “The author was paid by [name of committee and committee identification number] in connection with this posting.”
  - Exceptions:
    - Content requiring a disclosure pursuant to Section 84504.3 or subdivision (c) of Section 84511.
    - Content posted on the committee’s own website, profile, or landing page by a person compensated by the committee to post such content.
    - Content posted by a compensated employee of a committee on the employee’s own social media page or account where the only expense or cost of the communication is compensated staff time unless their principal duties are to post content on their own social media page or account.

\*A committee must notify the person paid to post the content of the requirement to include a disclaimer.

\*FPPC will be working on regulations to distinguish and clarify this new requirement next year.

# What the FPPC Enforces and What It Doesn't

## Common Advertisement Violations of the Act include:

- Failure to include “Paid for by” or “Ad paid for by” in same manner and immediately adjacent to a committee name on mass mailings
- Disclosures in a font type, color, position, or size that does not comply with a requirement
- Committee name does not match the name as stated in the statement of organization (Form 410)
- Failure to disclose top contributor information
- Required size or time length of disclosure on video or radio advertisements is not met

## Violations of the Act do *not* include:

- Placement of campaign signs
- Vandalism of campaign signs
- False or misleading campaign materials
- Failure to include committee identification (ID) number
- Failure to include “Paid for by committee name” on candidate yard signs, flyers, door hangers *for their own election*

# Resources

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FPPC webpage:  
[www.fppc.ca.gov](http://www.fppc.ca.gov)

Advice Email:  
[advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)

Telephone Advice:  
(866) 275-3772 Monday – Thursday, 9-11:30 AM