



LOCAL AGENCY FORMATION COMMISSION OF SANTA CRUZ COUNTY

CONFLICT OF INTEREST POLICY

Adopted on September 5, 1979 (Resolution No. 141-H)
Previous Revision on June 2, 2004 (Resolution No. 2004-9)
Last Revision on May 6, 2020 (Resolution No. 2020-08)

1. OVERVIEW

LAFCO's Conflict of Interest Policy outlines conflicts of interest rules and the role of LAFCO's legal counsel. The goal of this policy is to provide consistency and fairness to the Commission's decision-making process. Commissioners have a personal responsibility to comply with conflict of interest regulations as promulgated by the California Fair Political Practices Commission ("FPPC"), but they may consult with LAFCO's legal counsel to assist in making decisions in the event of a potential conflict of interest.

2. THE CALIFORNIA POLITICAL REFORM ACT

The California Political Reform Act (Government Code section 81000, *et seq.*) (the "Act") requires state and local government agencies to establish a conflict of interest code. The FPPC, as the state agency responsible for administering and enforcing the Act, enacted regulations to implement the law. FPPC Regulation section 18730 (Tit. 2, Div. 6, Cal. Code of Regs.) states that an agency can incorporate by reference its model conflict of interest code, which the FPPC amends from time to time. LAFCO adopted and incorporated this model code along with the designation of positions and formulation of disclosure categories in section 18730.

The Act prohibits a Commissioner from using their official position to influence a governmental decision in which they have a financial interest. To help identify potential conflicts of interest, the Act and the FPPC Regulations require Commissioners to report their financial interests (i.e., reportable investments, real property interests, business positions, income and its sources, and other financial interests that may give rise to a conflict of interest) on a form called Statement of Economic Interests ("Form 700"). The conflict of interest code and the Form 700s provide transparency in local government and are fundamental tools in ensuring that officials are acting in the public's best interest and not their own.

3. CONFLICTS OF INTEREST RULES

Under the Act, a Commissioner has a disqualifying conflict of interest in a LAFCO decision if it is foreseeable that the decision will have a financial impact on their personal finances or other financial interests. A Commissioner with a disqualifying conflict of interest must not make, participate in making, or use their position to

influence a LAFCO decision. Commissioners must publicly identify the presence of a conflict of interest and recuse themselves from participating in the affected decision. Recusal allows Commissioners to avoid actual biased decision-making or any appearance of improprieties in favor of the public's interest over their own.

There are five types of interests that might result in disqualification:

- *Business Entity.* A business entity in which a Commissioner has an investment of \$2,000 or more and is a director, officer, partner, trustee, employee, or manager.
- *Real Property.* Real property in which a Commissioner has an interest of \$2,000 or more, including leaseholds.
- *Income.* An individual or an entity from whom a Commissioner has received income or promised income aggregating to \$500 or more in the previous 12 months, including the Commissioner's community property interest in the income of their spouse or registered domestic partner.
- *Gifts.* An individual or an entity from whom a Commissioner has received gifts aggregating to \$500 or more in the previous 12 months.
- *Personal Finances.* A Commissioner's personal finances, including their expenses, income, assets, or liabilities, as well as those of their immediate family.

The financial impact or effect on any of the above interests disqualifies a Commissioner from a LAFCO decision if: (1) the financial impact or effect is foreseeable, and (2) the financial impact or effect is significant enough to be considered material. The FPPC has rules called "materiality standards" to inform which financial effects are important enough to trigger a conflict of interest.

There are two limited exceptions to the conflict of interest rules:

- *The Public Generally Exception.* A Commissioner is not disqualified from a decision if the effect on the Commissioner's interests is indistinguishable from the effect on the public.
- *Legally Required to Participate.* In certain rare circumstances, a Commissioner may be randomly selected to take part in a decision if a quorum cannot be reached because too many Commissioners are disqualified under the Act.

4. ROLE OF LEGAL COUNSEL

- A.** Commissioners are individually responsible for understanding and following the duties and responsibilities of their office, including making determinations on whether they have disqualifying conflicts of interest in LAFCO decisions. Commissioners are encouraged to consult with legal counsel regarding potential conflicts, exceptions, and recusal. However, counsel's advice cannot provide a Commissioner with any immunities from criminal or civil prosecutions. Only good faith reliance upon written advice from the FPPC on a specific situation can protect a Commissioner. Legal counsel will provide assistance in obtaining an advice letter from the FPPC. Legal counsel is authorized to engage experts, such as appraisers or business consultants in an amount not to exceed \$5,000 if counsel deems such experts are necessary to provide this assistance.
- B.** Legal counsel represents LAFCO as an agency governed by the Commission as a corporate body. Therefore, individual consultations with legal counsel are not separately protected by the attorney-client privilege.
- C.** Upon consultation, legal counsel will respond directly to the individual Commissioner seeking advice and shall not share the advice with the entire Commission, unless the advice provided involves a Commissioner with a disqualifying interest who intends to participate in a LAFCO decision notwithstanding that advice.
- D.** Legal Counsel is not available to provide advice relating to past conduct, to investigate conflicts of interest, or to enforce conflict of interest laws.
- E.** Legal Counsel is not available to provide advice to one Commissioner about the implications of another Commissioner's financial interest. However, at the request of the Commission, legal counsel may provide the Commission advice about the validity of its decisions under Government Code section 1090, which restricts Commissioners and designated employees from making a contract in which they are financially interested.
- F.** When a member of the public or government agency submits an inquiry about whether a Commissioner has a disqualifying interest under the Act or a financial interest in a contract under Government Code section 1090, that inquiry will be forwarded to the entire Commission, with a copy to legal counsel. It shall be the responsibility of the individual Commissioner, who is the subject of the inquiry, to determine whether they will seek advice from legal counsel, the FPPC, or their own counsel in addressing these inquiries.