

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

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DATE: September 4, 2020
TO: Honorable Councilmembers
FROM: City Attorney
SUBJECT: Legal Update: New FPPC Rules Regarding Disclosure of Conflicts of Interest

INTRODUCTION

The California Fair Political Practices Commission (FPPC) administers the ethical rules for public officials (officials), including city councilmembers, under the Political Reform Act. FPPC rules provide guidance to members of a legislative body regarding their obligation to disclose conflicts of interests during a public meeting.¹ Under current rules, officials must disclose financial interests that give rise to a conflict immediately before the affected item is considered. The FPPC recently adopted rule amendments clarifying that an official's partial absence from a meeting does not excuse the official's public disclosure obligation. This memorandum provides additional guidance regarding the new rules.

BACKGROUND

A public official holding office, such as a city councilmember, is precluded from using his or her position to influence a government decision in which he or she may have a financial interest. Cal. Gov't Code § 87100. An official is required to publicly identify a financial interest that gives rise to a conflict, or potential conflict, of interest. Cal. Code Regs. title 2, § 18707. A public official is also disqualified from participating in a decision in which the councilmember has a conflict relating to an agenda item noticed for consideration at a public meeting subject to the Brown Act. Cal. Gov't Code 54950, et seq.

On June 18, 2020, the FPPC adopted amendments to California Code of Regulations section 18707. The amendments impact a number of officials listed under California Government Code section 87200, including city councilmembers. Previously, the California Code of Regulations included a subsection outlining a specific exception to the requirement to identify conflicts if an official is absent from the meeting. However, the FPPC recently amended the regulations after

¹ The FPPC website states that: "[t]he Fair Political Practices Commission is a five-member independent, non-partisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act. The Act regulates campaign financing, conflicts of interest, lobbying, and governmental ethics. The Commission's objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process, to promote transparency in government, and to foster public trust in the political system." *About the FPPC*, California Fair Political Practices Commission, <http://www.fppc.ca.gov/about-fppc.html>.

receiving a report of a county public official who circumvented the public identification duty by leaving a public meeting before the agenda item was announced and returning after its consideration without publicly identifying his financial interests in the matter. Through this amendment, the FPPC seeks to clarify that the obligation to disclose exists even if the conflicted official is absent during discussion of the item.

ANALYSIS

The current regulations require that a public official identify a disqualifying financial conflict of interest and then recuse themselves from participating in that agenda item. Until recently, officials could avoid disclosure requirements by being absent for part of a meeting. The FPPC addressed the “partial absence” loophole by clarifying the timing for public identification of a financial interest in a meeting. The newly adopted language provides in relevant part:

Public identification of the financial interest must be made *immediately prior* to consideration of the agenda item. Partial absence from a meeting does not excuse the official’s public identification requirement. If an 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. An official first joining a meeting after the consideration of an agency item in which the official is disqualified must publicly identify the agenda item and the financial interest immediately upon joining the meeting. Cal. Code Regs. title 2, § 18707(a)(2). (Emphasis added)

Applying this newly revised rule to the City of San Diego, if a councilmember has a disclosable financial interest in an item on the Discussion Agenda, **immediately prior** to the consideration of the agenda item, the councilmember should:

- (1) publicly identify the financial interest in detail sufficiently for the public to understand²;
- (2) recuse themselves from the agenda item under consideration; and
- (3) leave the dais and the meeting room until after the matter is concluded.³

If the councilmember has a disclosable financial interest in an item on the Consent Agenda, the public official may remain in the room once the public identification and recusal requirements are fulfilled. Cal. Code Regs. title 2, § 18707(a)(3)(A).⁴

² Specific disclosure requirements for the various financial interests are set out in California Code of Regulations section 18707(a)(1)(A).

³ In the case of virtual meetings, in lieu of leaving the dais a councilmember should announce that he or she is leaving the room from which they are teleconferencing. Alternatively, we recommend disconnecting the phone call after recusal and resuming the call after the discussion of that item has been completed.

