



# **REGULAR MEETING OF THE RICHMOND RENT BOARD**

May 19, 2021 | City Council Chambers/Virtual Meeting

***This page intentionally left blank***

## Political Reform Act and the Fair Political Practices Commission

■ **Background:** In response to the Watergate Scandal, Californians sought to put an end to corruption in politics by reducing the amount of money spent in elections and eliminating anonymous contributions. In 1974, voters amended California's constitution to enact the Political Reform Act (Act), which among other things:

1. Imposed strict conflict of interest laws and required cities and states to establish conflict of interest codes.
2. Banned anonymous contributions of \$100 or more
3. Placed limitations on the value of gifts an official may receive. (Legislature)

Additionally, the voters created The Fair Political Practices Commission (FPPC) to enforce the Act through regulation and Administrative prosecution.

## **I. Conflicts of Interest**

**A. Political Reform Act**

**B. Government Code Section 1090**

**C. Gifts and Other Ethics Implications**

## Political Reform Act: Conflicts of Interest

- ▶ **Basic Rule:** A public official may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a **disqualifying financial interest**.

# Disqualifying Financial Interest

- A public official has a **disqualifying financial interest** if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any qualifying financial interest.
- The Fair Political Practices Commission employs a **4-step** (previously 8-step) analysis to determine whether a disqualifying financial interest exists.

## Step One

- Is it **reasonably foreseeable** that the governmental decision will have a financial effect on any of the public official's **financial interests**?

# Step One: Financial Interest

- ▶ Do you or an immediate family member, or a business in which you are a 10% or more owner, have a **financial interest** in the decision?
  - ▶ Types of financial/economic interests:
    - ▶ Investments in business entities
    - ▶ Interests in real property
    - ▶ Sources of income
    - ▶ Sources of gifts (including agents and intermediaries)
    - ▶ Positions within business entities (including director, officer, partner or trustee)
    - ▶ Personal finances of the official and the official's immediate family

## Step One: Reasonably Foreseeable

- Is it **reasonably foreseeable** that the governmental decision will have a financial effect on that interest?
  - A financial effect is *presumed* to be reasonably foreseeable if the financial interest is a named party/subject of a governmental decision before your agency.
  - Even if a financial interest is not explicitly involved in a decision, there *may* still be a reasonably foreseeable financial effect.
    - As a general rule, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.
    - FPPC provides factors to help determine whether a financial effect is reasonably foreseeable.

## Step Two

- ▶ Will the reasonably foreseeable financial effect be **material**?
  - ▶ Materiality: important or substantial.
  - ▶ Whether a particular effect is material depends on the type of interest.
    - ▶ Interest involving Real Property implicate materiality concerns on numerous basis, one of which is where a decision impacts a property located 500 feet from the Boardmembers property line and such a decision would have an appreciable impact on the members property.
    - ▶ Interest involving Leaseholds implicate materiality where the decision would 1) change the termination date of the lease; 2) increase or decrease the potential rental value of the property ; 3) change the legal use of the property; and/or 4) impact the officials use and enjoyment of the property

## Step Three

- ▶ Is the material financial effect **indistinguishable from its effect on the public generally?**
  - ▶ A significant segment of the public will be affected by the decision, and the effect on the official's interest is not unique compared to the effect on that significant segment.
    - ▶ Significant segment=at least 25% of all businesses, real property, or individuals within the official's jurisdiction
      - ▶ Where the only interest the Boardmember has is the member's primary residence, a significant segment is at least 15% of residential real property rather than 25%.
  - ▶ Examples of a unique effect include a disproportionate effect on development potential of real property, and income producing potential of official's business entity due to proximity of a property that is the subject of a decision.

## Step Three

- ▶ This exception is known as the **Public Generally** exception.
- ▶ Aside from the **Public Generally** exception, the FPPC has established an exception for those interest involving **Rental Properties**
- ▶ Where the interest involves **Rental Property** and the decision is limited to affecting the respective rights or liabilities of tenants and landlords, including decisions regarding rent control or tenant protection measures, the decisionmaker qualifies for an exception to the rule where the following are met:
  - ▶ 1) The decision is applicable to all rental properties other than those exempted under Costa-Hawkins.
  - ▶ 2) The Boardmember owns three or fewer residential rental units.
  - ▶ 3) The only interest affected by the decisions are either: a) interests resulting from the Boardmembers's lease of residential real property, as the lessor and/or ; b) an interest in the Boardmember's primary residence as either a lessee or owner of the property.

## Step Three

- **Public Generally** exception example:
  - San Jose Councilmember wanted to participate in decisions relating to the City's Apartment Rent Ordinance and Ellis Ordinance; however, she had a leasehold interest in an apartment subject to both ordinances.
  - The FPPC found the following:
    - The councilmember had an interest in real property since she held a lease in real property valued at \$2000 or more.
    - Decisions related to either City ordinance would have a reasonably foreseeable and material financial effect on the Councilmember's financial interest because the Councilmember's rental unit was subject to both Ordinances and decisions affecting either ordinance could foreseeably affect the potential value of her leasehold. (Prong two of the materiality test).
    - The Councilmember falls into the Public Generally exception as the amendments would impact a significant segment of the renters in her jurisdiction (all renters were impacted since the amendments would apply to any potential renter signing a leasehold, rather than a particular class of renters) and the impact of the amendments are indistinguishable between this Councilmember and other renters generally. So long as the only interest impacted is the Councilmembers residential leasehold, the Councilmember qualified for the exception.

## Step Three

- **Public Generally** exception example:
  - Glendale Councilmember wanted to participate in decisions relating to the proposed adoption of a Rent Control Ordinance; however, she had a financial interest in multifamily residential properties.
  - The FPPC found the following:
    - The councilmember had a business interest in a rental property based on an investment of \$2000 or greater in various LLCs; a real property interest in rental property based on an ownership interest of 10 percent or greater in various LLCs; a source of income interest based on the fact that she would receive an aggregate of \$500 or more from each of the LLCs she owned or invested in; and a interest in personal finances since an official always has an interest in their personal finances.
    - Decisions related to the City ordinance would have a reasonably foreseeable and material financial effect on the Councilmember's various interest because the decision of rent control would regulate or otherwise establish conditions for an activity in which her business and financial interest are implicated.
    - The Councilmember meets the first prong of the Public Generally exception as decision at issue would impact at least 25% of the total residential dwellings. However, the Councilmember did not meet the second prong of the exception as the impact of the decision would not be indistinguishable between this Councilmember and other landlords generally. Because the Councilmember had substantial investments in two residential properties, and ownership interest in multiple properties, the potential cumulative effect of the decision on the Councilmembers properties' would be substantially greater than those on a single residential rental unit.

## Step Four

- Is the public official making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision?
  - Making a decision includes voting, authorizing or directing an action, appointing a person, or entering into a contract.
  - Participating in a decision may include providing information, an opinion, or a recommendation.
  - Attempting to influence a decision includes contacting or appearing before an official in his or her own agency for the purpose of influencing a decision, *or appears before another agency* on behalf of his or her agency.

## Bottom Line

- ▶ PRA conflict of interest analysis is complex and highly fact specific.
- ▶ When in doubt, seek advice from your counsel or the FPPC.

# Seeking Legal Advice

- Attorney Client Privilege
  - The Privilege is with the Board as an entity and Executive Director, but not with an individual Boardmember
  - Advice may be shared with other members upon request
  - Privilege may be waived by the Board as a whole or the Executive Director
- Impact of receiving Attorney advice
  - Advice may guide your action but it does not protect you from liability if you are found to have violated the conflict of interest laws
- FPPC advice will protect decisionmaker from liability if decisionmaker strictly relies on FPPC advice.

## Other Conflicts of Interest

- ▶ Even if there is no conflict of interest under the Political Reform Act, there may be a conflict under other provisions of California law.

# Government Code § 1090

- ▶ **Government Code § 1090** prohibits elected officials and public employees from having a financial interest in any *contract* made by them in their official capacity.
  - ▶ **Examples of financial interest in a contract:** You have an employment relationship with the person/entity that seeks to contract with your agency; you are the attorney, agent or broker of a contracting party; you are a supplier of services or goods to a contracting party; you are the landlord or tenant of a contracting party; you are the officer or employee of a nonprofit corporation that is a contracting party. The official's interest also includes the community property and separate property interests of the official's spouse.
  - ▶ **Effect of a § 1090 violation:** A single official's financial interest in a contract prevents the entire governing board from entering into a contract; unlike a PRA conflict of interest, recusal is not an option.
    - ▶ Possible criminal consequences for a violation.
    - ▶ FPPC now has civil/administrative enforcement authority over § 1090, and can issue advisory opinions

# Common Law Conflicts of Interest

- ▶ **“Common Law”**: When acting in an adjudicatory or quasi-judicial role, an official’s predisposition or personal bias may result in a disqualifying conflict of interest. Whether there exists a disqualifying interest turns on the presentation of evidence of “an unacceptable probability of actual bias on the part of those who have actual decision making power.” (*BreakZone Billiards v. City of Torrence* (2000) 81 Cal. App. 4th 1205, 1236.)
- ▶ **Richmond Rent Board Regulation 318**: Where the Rent Board sits as an adjudicative body to hear matters that fall within its jurisdiction, those members must strive to uphold the integrity of the Rent Board by avoiding impropriety and the appearance of impropriety. Thus, Rent Boardmembers must strive to perform their duties in adjudicating matters that fall within its jurisdiction in a fashion that is impartial, competent, and diligent. To that end, no Rent Boardmember may participate in the consideration or decision of any adjudicative matter in which such person has any personal interest, including equity interest, financial interest, an interest as a landlord, tenant, or management person, or is related by blood or marriage or adoption to a landlord or tenant involved. For the purposes of this Chapter, a personal interest is one where a Boardmember has a vested interest in the outcome of a matter thereby impairing their ability to evaluate the matter impartially. Where issues of partiality arise, Rent Boardmembers shall treat such partiality as a conflict of interest and adhere to Regulation 317, as it relates to disclosure and recusal.

## What happens where there is a conflict?

- ▶ **Disclosure:** Those with conflicts must disclose the existence of the conflict and describe with particularity the nature of the financial interest. Additionally, the Boardmember or staff member must give a brief statement describing the circumstances under which they believe the conflict may arise.
- ▶ **Timing:** Pursuant to Richmond Rent Board Regulation 317, the Boardmember must disclose the conflict prior to the item, wherein the conflict exist, is to be called and discussed.
- ▶ **Recusal:** Prior to the discussion of the item where the conflict arises, the conflicted Boardmember shall request the Chair and the Chair shall grant permission to step down from the Dias and leave the Council Chamber or other room where the meeting is held. The Boardmember shall not return until the conclusion of the item wherein the conflict exists.
  - ▶ However, under certain circumstance a conflicted Boardmember may participate as a member of the public and offer comments on the item.
- ▶ **Quorum:** A conflicted Rent Boardmember shall not be counted as part of a quorum and shall be considered as absent for the purpose of determining the outcome of any vote on such matter.

### **III. Gifts and Select Other Ethics Considerations**

# Gifts

- ▶ **What is a “Gift”?** A “gift” is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value in return. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.
- ▶ **Exceptions:** Certain items are not considered gifts, including gifts from close family members, informational materials that assist you in the performance of your official duties, and items of value provided when you are making a speech.
- ▶ **Valuation:** Gifts are generally valued at the fair market value at the time the gift is received. There are some exceptions for specific items (e.g., attendance at certain types of events).

## Gifts

- **\$520 Gift Limit:** State and local officials and employees are prohibited from receiving a gift or gifts totaling more than \$520 in a calendar year from a single source (company or person). This gift limit is adjusted every odd-numbered year.
- **Gifts to Family Members:** Under most circumstances, a gift to a family member (spouse, domestic partner, or child) is considered a gift to the official.
- **Disqualification:** Gifts aggregating \$520 or more from certain sources per rolling 12-month period generally disqualify you from participating in matters involving the source of the gifts.
- **Disclosure:** Gifts aggregating \$50 or more from certain sources must be disclosed on your Form 700 Statement of Economic Interests.
- **Gifts to the School District:** Under certain circumstances, an item may be considered a gift to the official's agency instead of a gift to the official. Special reporting requirements apply.

# Honoraria

- ▶ **Honorarium:** An “honorarium” is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Government Code § 89501.)
- ▶ **Prohibition:** A public official or employee of a local government agency who is designated in the agency’s conflict of interest code may not accept honoraria payments from any source, if the employee is required to report receiving income or gifts from that source on his or her Statement of Economic Interests. (Government Code §89502(c).) There are some limited exceptions to this prohibition.

# Behested Payments

- **Behested Payments:** A “behested payment” is a donation made at the request of an elected official principally for legislative, governmental, or charitable purposes. For example, an elected board member may ask a third party to contribute funds to a school in his or her district, or to a job fair or health fair. Generally, a donation will be made “at the behest” if it is requested, solicited, or suggested by the elected officer, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of, the elected officer. This includes donations made on behalf of the official at the behest of his or her agent or employee.
- **Reporting:** Behested payments totaling \$5,000 or more from a single source in a calendar year must be disclosed by the official on a Form 803, which is filed with the official’s agency within 30 days of the date of the payment(s). (Government Code § 82015; FPPC Regulation 18215.3.)

## Form 700 Statement of Economic Interests

- State and local government officials and employees designated in their agency's conflict-of-interest code must file a Form 700 Statement of Economic Interests disclosing their personal assets and income. Form 700s are typically required of candidates, upon assuming office, annually, and upon leaving office. Form 700s are public documents and any member of the public may inspect and receive a copy of any statement.

***This page intentionally left blank***

# Item H-1: Regulation Establishing the 2021 Annual General Adjustment



May 19, 2021 | Regular Meeting of the Richmond Rent Board

***This page intentionally left blank***

## Item H-1: Statement of the Issue

Section 11.100.070(b) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (Rent Ordinance) requires that no later than **June 30** of each year, the Board announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective **September 1** of that year.

# Item H-1: AGA Background

- The Rent Board is required to announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year.
  - This rent percentage increase is referred to as the Annual General Adjustment or “AGA”
- The AGA reflects 100% of the Consumer Price Index for all urban consumers, measured for the San-Francisco-Oakland-San Jose region (“CPI”).
- The U.S. Bureau of Labor Statics quarterly publishes the CPI change in a given 12-month period.
- For our purposes, according to the Bureau of Labor Statistics, the CPI change for the annual period beginning in **February 2020 and ending in February 2021 was 1.6%**

# Item H-1: Proposed Regulation 609

To maintain compliance with the Rent Ordinance, staff members are proposing adoption of Regulation 609, which would:

- Announce the 2021 AGA at 1.6%
- Authorize Landlords who are in compliance with the Rent Ordinance and other applicable Regulations, to increase rents by no more than 1.6% for tenancies that began prior to September 1, 2020
- Require a valid notice of rent increase be served on tenants prior to increasing the rents by the AGA
- It would also reaffirm the following noticing obligations:
  - Prior to increasing rents Landlords must serve tenants with a notice of rent increase in a manner consistent with Civil Code Section 827
  - Serve the Rent Board with a copy of the Rent increase notice
  - File a copy of proof of service of the Rent increase with the Rent Board

# Item H-1: Next Steps

- Staff members will prepare a drafted a template rent increase notice and Maximum Allowable Rent Calculator for Landlord use based on the new 2021 Annual General Adjustment. These forms will be posted on the Rent Increase page on the Rent Program website ([www.richmondrent.org](http://www.richmondrent.org)).
- Announcement of the 2021 AGA will also be published through the Rent Program listserv and on social media accounts.

<b>MAXIMUM ALLOWABLE RENT (MAR) CALCULATOR</b>	
DISCLAIMER: This resource applies to rent-controlled units only. Information has not been verified by City staff. Questions? Please call (510) 234-RENT.	
<b>STEP 1: ENTER THE BASE RENT</b>	
The Base Rent is the rent in effect as of July 21, 2015, or the first rent charged for Tenants that moved in after July 21, 2015.	
LINE 1	Enter the Base Rent: <input type="text"/>
<b>STEP 2: CALCULATE THE MAXIMUM ALLOWABLE RENT</b>	
The Annual General Adjustment is equal to 100% of the Consumer Price Index and is adopted annually by the Rent Board. In order to be eligible to apply the Annual General Adjustment rent increase for a given year, the Tenant must have resided in the unit prior to September 1 of the prior year.	
LINE 2	If the Tenant moved into the Rental Unit prior to September 1, 2015, multiply Line 1 by 0.03 (if the Tenancy began on or after September 1, 2015*, enter "0") <input type="text"/>

## Item H-1: Recommended Action

ADOPT Regulation 608, establishing the 2021 Annual General Adjustment in the amount of 1.6% for tenancies commencing prior to September 1, 2020 – Rent Program (Nicolas Traylor, 510-620-6564).

***This page intentionally left blank***