

ADDENDUM

REFERENCE DEFINITIONS FOR CONFLICT OF INTEREST CODE OF THE CITY OF ONTARIO

(Updated through December 1, 2005)

[All amendments or changes to the provisions of the Political Reform Act of 1974 and the FPPC Regulations effective through December 1, 2005, have been incorporated into this Code and its Addendum.]

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DEFINITIONS

1. "Other Public Officials Who Manage Public Investments":

(a) As used in the City's Conflict of Interest Code and the Act, this term means:

(1) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(2) High-level officers and employees of the City who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This definition shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(3) Individuals who, pursuant to a contract with the City, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in this definition.

(b) The following definitions shall apply to this Section:

(1) "*Public Investments*" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(2) "*Public Moneys*" means all moneys belonging to, received by, or held by the City, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other

evidence of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which the City is a party.

(3) ***“Management of public investments”*** means the following non-ministerial functions:

- (A) Directing the investment of public moneys;
- (B) Formulating or approving investment policies;
- (C) Approving or establishing guidelines for asset allocations; or
- (D) Approving investment transactions.

(c) Those public officials coming within the definition contained in Subsection (a) above are subject to the conflict-of-interest disclosure requirements of Article 2, Chapter 7 of the Political Reform Act and must file a Statement of Economic Interests accordingly. [2 Cal. Code of Regs. § 18701(b)]

2. **“Designated Employee”**: Any officer, employee, member or consultant of the City whose position is so designated in the Appendix of the City’s Conflict of Interest Code. The Appendix sets forth those positions which entail the making or participation in the making of decisions which may foreseeably have a material effect on financial interests, but does not include any unsalaried member of any board or commission which serves a solely advisory function, or any public official specified in Government Code Section 87200. [Gov. Code § 82019]

3. **"Public Official"**: Any natural person who is a member, officer, employee or consultant of the City. The term "*public official*" also includes individuals who perform the same or substantially the same duties as an individual holding an office or a position listed in Government Code Section 87200 or the Conflict of Interest Code including "*other public officials who manage public investments*" as defined in Definition No. 1, above.

(a) "*Member*" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decision-making authority. A committee, board or commission possesses decision-making authority whenever:

(1) It may make a final governmental decision;

(2) It may compel a governmental decision, or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(3) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or the City.

(b) A committee, board, or commission does not possess decisionmaking authority under subsection (a) if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.

(c) "*Consultant*" means an individual who, pursuant to a contract with the City:

- (1) **Makes a governmental decision** whether to:
 - (A) Approve a rate, rule, or regulation;
 - (B) Adopt or enforce a law;
 - (C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (D) Authorize the City to enter into, modify, or renew a contract provided it is the type of contract which requires City approval;
 - (E) Grant City approval to a contract which requires City approval and in which the City is a party or to the specifications for such a contract;
 - (F) Grant City approval to a plan, design, report, study, or similar item;
 - (G) Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof;or
- (2) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Definition 5, below, or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code. [Gov. Code § 82048; 2 Cal. Code of Regs. § 18701(a)]

4. **“Making Governmental Decisions”**: A public official “*makes a governmental decision*,” except as provided in Definition 5(b) herein, when the official, acting within the authority of his or her office or position:

- (a) Votes on a matter;
- (b) Appoints a person;
- (c) Obligates or commits the City to any course of action;
- (d) Enters into any contractual agreement on behalf of the City;
- (e) Determines not to act, within the meaning of Subsections (a), (b), (c), or (d), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official’s financial interest, the official’s determination may be accompanied by an oral or written disclosure of the financial interest.

When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the City, board or committee and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.

During a closed meeting of the City, board or committee, a disqualified official shall not be present when the decision is considered, or obtain or review a recording or any non-public information regarding the governmental decision. [2 Cal. Code of Regs. § 18702.1]

5. **“Participating in the Making of Governmental Decisions”:**

(a) A public official ***“participates in the making of a governmental decision,”*** except as provided in Subsection (b) of this definition, when the official, acting within the authority of his or her office or position:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding a decision to:

(A) Approve a rate, rule, or regulation;

(B) Adopt or enforce a law;

(C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

(D) Authorize the City to enter into, modify, or renew a contract provided it is the type of contract which requires City approval;

(E) Grant City approval to a contract which requires City approval and in which the City is a party, or to the specifications for such a contract;

(F) Grant City approval to a plan, design, report, study, or similar item;

(G) Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof;
or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision as referenced in Subsection 5(a)(1) above; or

(B) Preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision as referenced in Subsection 5(a)(1), above.

[2 Cal. Code of Regs. § 18702.2]

(b) *"Making"* or *"participating in making"* a governmental decision shall not include:

(1) Actions of officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before the City or an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Definition 6(c), below [2 Cal. Code of Regs. § 18702.4(b)(1)]; or

(3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract.

In the case of public officials who are "*consultants*," as defined in Definition 3(b), above, this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the City, so long as they are acting in their private capacity. [2 Cal. Code of Regs. §§ 18702.2, 18702.4(a)]

6. "Using or Attempting to Use Official Position to Influence":

(a) With regard to a governmental decision which is within or before the City, or an agency appointed by or subject to the budgetary control of the City, an official is attempting to use his or her official position to influence a decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the City or agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) With regard to a governmental decision which is within or before an agency not covered by Subsection (a), above, the official is attempting to use his or her official position to influence the decision if, for the purpose influencing the decision, the official acts or purports to act on behalf of, or as the representative of, the City to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery. [2 Cal. Code of Regs. § 18702.3]

(c) Notwithstanding Subsections (a) and (b) of this definition, an official is not attempting to use his or her official position to influence a governmental decision of the City if the official:

(1) Appears in the same manner as any other member of the general public before the City or any other agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "*personal interests*" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family;

(B) A business entity wholly owned by the official or members of his or her immediate family; or

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

(2) Communicates with the general public or the press.

(3) Negotiates his or her compensation or the terms and conditions of his or her employment contract.

(4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before the City or any other agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for

necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.

(5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

(A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;

(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner. [2 Cal. Code of Regs. § 18702.4(b)]

7. **“Public Identification of a Conflict of Interest for Section 87200**

Filers”:

(a) Government Code Section 87105 and 2 California Code of Regulations Section 18702.5 apply when a public official who holds an office specified in Government Code Section 87200 has a financial interest in a decision within the meaning of Government Code Section 87100, and the governmental decision relates to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Gov. Code §§ 11120 et seq.) or the Brown Act (Gov. Code §§ 54950 et seq.).

(b) **Content & Timing of Identification:** The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:

(1) **The public official shall publicly identify:**

(A) Each type of economic interest held by the public official which is involved in the decision and gives rise to the conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and

(B) The following details identifying the economic interest(s):

(i) if an investment, the name of the business entity in which each investment is held;

(ii) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;

(iii) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;

(iv) if income or gifts, then identification of the source; and

(v) if personal financial effect, then identification of the expense, liability, asset or income affected.

(2) **Form of Identification:** If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.

(3) **Recusal/Leaving the Room:** The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and (b)(2) of 2 California Code of Regulations Section 18702.5 is made. He or she shall not be counted toward achieving a quorum while the item is discussed.

(c) **Special Rules for Closed Session:** If the governmental decision is made during a closed session of a public meeting, the public

identification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his or her recusal is because of a conflict of interest under Government Code Section 87100. The declaration shall be made part of the official public record. The public official shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(d) **Exceptions:**

(1) **Uncontested Matters:** The exception from leaving the room granted in Government Code Section 87105(a)(3) for a "matter [that] has been placed on the portion of the agenda reserved for uncontested matters" shall mean agenda items on the consent calendar. When the matter in which the public official has a financial interest is on the consent calendar, the public official must comply with subdivisions (b)(1) and (b)(2) of 2 California Code of Regulations Section 18702.5, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.

(2) **Absence:** If the public official is absent when the agenda item subject to subdivision (a) of 2 California Code of Regulations Section 18702.5 is considered, then Government Code Section 87105 and this regulation impose no public identification duties on the public official for that item at that meeting.

(3) **Speaking as a Member of the Public Regarding an**

Applicable Personal Interest: When a personal interest found in 2 Cal. Code Regs. Section 18702.4(b) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of 2 California Code of Regulations Section 18702.5, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion of the matter with the members of the public.
[2 Cal. Code Regs. § 18702.5]

8. **“Financial Interest”:** An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more;

(b) Any real property in which the public official has a direct or indirect interest worth \$2,000 or more;

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made;

(d) Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management; or

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts by this subdivision shall be adjusted biennially by the FPPC.

(f) “Indirect Investment or Interest”: Any investment or interest owned by the spouse or dependent child of a public official, held or owned by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse and dependent children own directly, indirectly or beneficially, a 10% interest or greater. [Gov. Code § 87103]

9. “Investment”: Any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property within the jurisdiction, or does business or plans to do business within the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under the City’s Conflict of Interest Code. No asset shall be deemed an investment unless its fair market value equals or exceeds \$2,000.

Investments of an individual include a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10% interest or greater.

The term "*investment*" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, or any bond or other debt instrument issued by any government or government agency. [Gov. Code § 82034]

10. **"Doing Business in the Jurisdiction"**: A person is "doing business in the jurisdiction" if that person has business contacts on a regular or substantial basis with a person who maintains a physical presence in the jurisdiction of a public official. "Business contacts" include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. "Business contacts" do not include marketing via the Internet, telephone, television, radio, or printed media. [2 Cal. Code of Regs. § 18230]

11. **"Interest in Real Property"**: Includes any leasehold, beneficial or ownership interest, or an option to acquire such an interest in real property located within the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the

individual or immediate family owns, directly, indirectly or beneficially, a 10% interest or greater. [Gov. Code § 82033]

12. **“Real Property Within the Jurisdiction”**: Jurisdiction is the region, county, city, district, or other geographical area in which the City has control. Real property shall be deemed to be “*within the jurisdiction*” if the property or any part of a parcel of real property is located within or not more than two miles outside the boundaries of the jurisdiction of the City or within two miles of any land owned or used by the City [Gov. Code § 82035]

13. **“Income”**:

(a) “*Income*” means, except as provided in Subsection (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds of any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10% interest or greater.

(b) “*Income*,” other than a gift, does not include:

(1) Income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the

jurisdiction during the two years prior to the time any statement or other action is required;

(2) Campaign contributions required to be reported under Chapter 4 of the Political Reform Act of 1974;

(3) Salary and reimbursement for expenses or per diem, social security, disability, or other similar benefit payments received from a state, local or federal government agency, and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(4) Any devise or inheritance;

(5) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;

(6) Dividends, interest or any other return on a security which is registered with the Securities & Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures;

(7) Redemption of a mutual fund;

(8) Alimony or child support payments;

(9) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status;

(10) Any loan from or any payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph;

(11) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status;

(12) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(13) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser. [Gov. Code § 82030]

14. "Salary and Reimbursement for Expenses or Per Diem

Received":

(a) "*Salary*" means any and all payments made by a government agency to a public official, or accrued to the benefit of a public official, as consideration for the public official's services to the government agency. Such payments include wages, consultants' fees, pension benefits, health and other insurance coverage, rights to compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and similar benefits.

(b) "*Per Diem*" from an agency means payment of a fixed sum of money, accruing daily to a public official when the public official is required to incur increased daily living expenses.

(c) "*Reimbursement for Expenses*" received from an agency means a payment to a public official, in compensation for otherwise uncompensated actual expenses incurred or to be incurred within 60 days by the public official in the course of his or her official duties. [2 Cal. Code of Regs. § 18232]

15. "Gift":

(a) Except as provided in Subsection (b), below, a gift is any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received and 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 without regard to official

status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. [Gov. Code § 82028]

(b) **Exceptions:** None of the following is a gift and none is subject to any limitation on gifts:

(1) Informational material which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks. Informational material may include:

(A) Books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars;

(B) Scale models, pictorial representations, maps, and other such items, provided that where the item has a fair market value in excess of \$360, the burden shall be on the recipient to demonstrate that the item is informational material;

(C) On-site demonstrations, tours or inspections designed specifically for the purpose of assisting the recipient public officials or candidates in the performance of either their official duties or of the elective office they seek.

No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in

connection therewith, shall be deemed "*informational material*" except insofar as such transportation is not commercially obtainable. [Gov. Code § 82028(b)(1); 2 Cal. Code of Regs. § 18942.1]

(2) Except for passes and tickets as provided in 2 Cal. Code of Regs. § 18946.1, a gift that is not used and that, within 30 days after receipt or acceptance, is returned to the donor or donor's agent or intermediary, or donated to a non-profit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or a government agency without being claimed as a charitable contribution or deduction for tax purposes. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense.

(3) Gifts for which, within 30 days after receipt or acceptance, reimbursement is made to the donor, or the donor's agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement.

(4) In order to relieve the recipient of an otherwise disqualifying financial interest based upon the receipt or acceptance of a gift valued at \$360 or more pursuant to Government Code Section 87100, the return, donation, or reimbursement of the gift pursuant this section or to 2 Cal. Code of Regs. Section 18943(a):

(A) Must occur within 30 days of receipt or acceptance and prior to the date the recipient makes, participates in making, or uses his or her official position to influence the government decision in question; or

(B) If the return, donation, or reimbursement has not been made prior to the decision, the recipient must publicly disclose the receipt or acceptance of the gift on the public record, disclose its value, and declare that the return, donation, or reimbursement will occur within two working days following the decision. The subsequent return, donation, or reimbursement must be made within two working days, and within 30 days from receipt or acceptance, and must be documented in the public record.

(5) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, unless the donor is acting as an agent or intermediary for any person not identified by this paragraph.

(6) Gifts given directly to members of an official's immediate family unless used or disposed of by the official or given by the recipient member of the official's immediate family to the official for disposition or use at the official's discretion.

(A) Gifts delivered by mail or other written communication are given directly to members of the official's

immediate family if the family members' names or familial designations (such as "spouse") appear in the address on the envelope or in the communication tendering or offering the gift and the gift is intended for their use or enjoyment.

(B) A gift given to the official, but designated for the official and spouse or family, is a gift to the official if the official exercises discretion and control over who will actually use the gift.

(C) If the official enjoys direct benefit from a single gift, as well as members of the official's family, the full value of the gift is attributable to the official.

(7) Campaign contributions required to be reported under Chapter 4 of the Act.

(8) Any devise or inheritance.

(9) Personalized plaques or trophies with an individual value of less than \$250.

(10) Hospitality to an official (including food, beverages, or occasional lodging) provided by an individual in his or her home when the individual or a member of the individual's family is present. [NOTE: See 2 Cal. Code of Regs. § 18630 for rule concerning "home hospitality" provided by a lobbyist.]

(11) Presents exchanged between an official who is required to file a statement of economic interests and an individual, other

than a lobbyist, on holidays, birthdays, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.

(12) Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position. This shall not include donations of cash.

(13) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if such payments are available to members of the public without regard to official status.

(14) Free admission, and refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. These items are not payments and need not be reported by any filer.

(15) The transportation, lodging, and subsistence specified by 2 Cal. Code of Regs. Section 18950.4 (in connection with campaign activities).

(c) The following items, if they are otherwise gifts, are exempt from the limitations on gifts described above:

(1) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Government Code Section 89506 and 2 Cal. Code of Regs. Sections 18950, et seq.

(2) Wedding gifts.

(A) Notwithstanding the provisions of 2 Cal. Code of Regs. Section 18944 (Subsection (b)(5), above) wedding gifts given to an official and his or her spouse or spouse-to-be-to-be are considered as gifts to both spouses equally, and the official is deemed to receive one-half of the value as determined by 2 Cal. Code of Regs. Section 18946, unless the gift is peculiarly adaptable to the personal use and enjoyment of one spouse or specifically and unequivocally intended exclusively for the use and enjoyment by one spouse, in which event the full value of the gift is attributed to that spouse. [Gov. Code § 82028; 2 Cal. Code of Regs. §§ 18942, 18942.1, 18943, 18944, 18946.3]

16. **"Honorarium":**

(a) "*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.

(b) In addition to the exceptions contained in Definition 14(b), above, (2 Cal. Code of Regs. § 18942), the term "*honorarium*" does not include:

(1) Earned income for personal services which are customarily provided in connection with the practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(2) Any honorarium which is not used and, within 30 days after receipt is either returned to the donor or delivered to the City for donation to the City's general fund or equivalent without being claimed as a deduction from income for tax purposes. [Gov. Code § 89501; 2 Cal. Code of Regs. § 18932]

17. **"Economic Interests":** The term "economic interest" includes interests in business entities, real property, source of income, source of gifts, and personal financial effect. For purposes of disqualification, see these terms defined below:

(a) **Economic Interest - Business Entities:** A public official has an *economic interest* in a business entity if any of the following are true:

(1) The public official has a *direct* or *indirect* investment worth \$2,000 or more in the business entity.

(2) The public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.

(3) An official has an *economic interest* in a business entity which is a *parent or subsidiary of, or is otherwise related to,* a business entity in which the official has one of the interests defined in this Definition. [See 2 Cal. Code Regs § 18703.1(d) for definition of "*Parent, Subsidiary, Otherwise Related Business Entity.*"]

(4) Although a public official may not have an *economic interest* in a given business entity pursuant to Subsections (1)-(3), above, the public official may nonetheless have an *economic interest* in the business entity if it is a source of income to him or her.

(b) **Economic Interest - Real Property:** A public official has an *economic interest* in any real property in which the public official has a direct or indirect interest worth \$2,000 or more in fair market value. [See Definition 11, above, for detailed definition of *interest in real property.*]

(c) **Economic Interest - Source of Income:** A public official has an *economic interest* in any person from whom he or she has received income, including commission income and incentive compensation as defined in 2 Cal. Code of Regs. Section 18703.3, aggregating \$500 within 12 months prior to the time when the relevant government decision is made. For purposes of

Government Code Sections 87100 and 87103(c), a public official's *income* includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income. [See Definition 13, above, for detailed definition of *income*.] [See 2 Cal. Code of Regs. section 18703.3 regarding former employers, sources of commission income to brokers, agents and salespersons, and sources of incentive compensation.]

(d) **Economic Interest - Source of Gifts:** A public official has an *economic interest* in any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$360 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. [See Definition 15, above, for detailed definition of *Gift*.]

(e) **Economic Interest - Personal Finances:** A public official has an *economic interest* in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official, or his or her immediate family increasing or decreasing. [See Definition 13, above, for detailed definition of *income* and see Definition 23, below, for detailed definition of *immediate family*.] [2 Cal. Code of Regs. §§ 18703 - 18703.5]

18. **"Directly or Indirectly Involved":** In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic

interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision.

(a) Business Entities, Sources of Income, Sources of Gifts:

A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request, or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code of Regs. Sections 18705.1(a), 18705.3(a) or 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code of Regs. Sections 18705.1(b), 18705.3(b), or 18705.4(b), respectively.

(b) Interest in Real Property: Real property in which a public official has an economic interest is directly involved in a governmental decision if that real property is the subject of the governmental decision, or if any part of that real property is located within 500 feet of the boundaries (or proposed

boundaries) of the real property which is the subject of the governmental decision. Real property is the "subject of the governmental decision" if:

(1) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting such real property. For purposes of this Section, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land designation on the subject real property. The terms "zoning" and "rezoning" shall NOT refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under 2 Cal. Code of Regs. Section 18705.2(b).

(2) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such real property.

(3) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such real property.

(4) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a

project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area. For purposes of this Section, real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

(5) The governmental decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property will receive new or improved services. As used in this Section, "new or improved services" does NOT include repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(6) Real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:

(A) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable

to all other properties designated in that category, which shall be analyzed under 2 Cal. Code Regs. Section 18705.2(b).

(B) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(C) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

(i) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official, or by a person representing either the public official or an economic interest of the public official.

(ii) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

(iii) The decision does not concern an identifiable parcel or parcels or development project. A

decision does not “concern an identifiable parcel or parcels” solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency’s jurisdiction and economic interests of the official are not singled out.

(iv) The decision does not concern the agency’s prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

(v) The following definitions apply to this subsection.

a. A decision “*solely concerns the adoption or amendment of a general plan*” when the decision, in the manner described in Government Code Sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement of development policies, maps, diagrams, and texts, or any other component setting forth

objectives, principles, standards, and plan proposals, as described in Government Code Sections 65402 and 65303.

b. “*General Plan*” means “general plan” as used in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 5, sections 65300, et seq.

c. “*Specific plan or its equivalent*” means a “specific plan” or any equivalent plan adopted by the jurisdiction to meet the purposes described in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 8, sections 65450, et seq.

(vi) Determining the applicable materiality standard

a. If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations Section 18705.2(a).

b. If a real property interest is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations Section 18705.2(b).

(c) **Economic Interest in Personal Finances:** A public official or his or her immediate family are deemed to be directly involved in a

governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family. [2 Cal. Code of Regs. §§ 18704 - 18704.5]

19. **“Materiality Standards”**:

(a) **Specific Rules.** In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material:

(1) For governmental decisions which affect economic interests in business entities -- apply 2 Cal. Code of Regs. Section 18705.1;

(2) For governmental decisions which affect economic interests in real property -- apply 2 Cal. Code of Regs. Section 18705.2;

(3) For governmental decisions which affect economic interests in sources of income -- apply 2 Cal. Code of Regs. Section 18705.3;

(4) For governmental decisions which affect economic interests in sources of gifts -- apply 2 Cal. Code of Regs. Section 18705.4;

(5) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his or her immediate family (personal financial effect) apply 2 Cal. Code of Regs. Section 18705.5.

(b) **General Rule.** Whenever the specific provisions of 2 Cal. Code of Regs. Sections 18705.1 through 18705.5, inclusive, cannot be applied, the following general rule shall apply:

The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official.

(c) **Special Rules.** Notwithstanding 2 Cal. Code of Regs. Sections 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if:

(1) Although a conflict of interest would otherwise exist under 2 Cal. Code of Regs. Section 18705.1 through 18705.4, inclusive, and 18706, the decision will have no financial effect on the person or business entity who appears before the official, or on the real property in which the official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family. [2 Cal. Code of Regs. § 18705]

20. **"Public Generally":** Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the governmental decision affects the public official's economic interests in a manner which is indistinguishable from the manner in

which the decision will affect the public generally, as set forth in 2 Cal. Code of Regs. 18707 - 18707.9.

(a) To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth above, apply Steps One through Four below:

(1) **Step One:** Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.

(2) **Step Two:** For each person or real property identified in Step One, determine the applicable "significant segment" rule according to 2 Cal. Code of Regs. Section 18707.1(b).

(3) **Step Three:** Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two-part test set forth in Section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.

(4) **Step Four:** Following the provisions of 2 Cal. Code of Regs. Section 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not

distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in 2 Cal. Code of Regs. Sections 18707.2 - 18707.9 applies to each person or real property triggering the conflict of interest. [2 Cal. Code of Regs. § 18707]

21. **"Determining Whether a Material Financial Effect is Reasonably Foreseeable":**

(a) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision.

(b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subsection (a) above, the following factor should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:

(1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;

(2) The market share held by the official or the official's source of income in the jurisdiction;

(3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;

(4) The scope of the governmental decision in question; and

(5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

(c) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable. [2 Cal. Code of Regs. § 18706]

22. **"Business Entity"**: Any organization or enterprise operated for profit, including but not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. [Gov. Code § 82005]

23. **"Immediate Family"**: Immediate Family means the spouse and dependent children.

24. **"Spouse"**: The term "spouse" shall include domestic partners registered with the California Secretary of State's Office and recognized by California State Law. [2 Cal. Code of Regs. § 18229; Fam. Code § 297]

25. **"City"**: City of Ontario.
26. **"City Council"**: City Council of the City of Ontario.
27. **"Filing Officer"**: The filing officer is the person who receives and retains original statements of economic interests with duties as set forth in 2 Cal. Code of Regs. Section 18115. The filing officer shall also be the filing official for statements filed by all other public officials who manage public investments.

The filing officer/official for the City shall be the Director of Records Management.

28. **"Act"**: Political Reform Act of 1974, Government Code Sections 81000 et seq.
29. **"FPPC"**: The Fair Political Practices Commission which was established by the Act to administer and implement the Act.
30. **"Code Reviewing Body"**: The Code Reviewing Body for the City is the City Council.