




SFERS
San Francisco Employees' Retirement System

**City and County of San Francisco
Employees' Retirement System**

**RETIREMENT BOARD CALENDAR SHEET
Retirement Board Meeting of May 23, 2018**

To: Retirement Board

From: Jay Huish, 
Executive Director

Date: May 23, 2018

Agenda Item:

Educational Presentation on Fiduciary Duties – California Government Code Section 1090

Background:

In accordance with the recommendation that the Retirement Board approved at its July 11, 2017 special meeting following the 2016 Funston Advisory Services Board performance evaluation, Board members will receive training from Robert Bryan, Deputy City Attorney, which addresses their responsibilities for both the Defined Benefit and Defined Contribution plans.

Recommendation:

Discussion item only.

California Government Code Section 1090

Summary of Law

Section 1090

(a) 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. . . .

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

Remedies/Penalties

- Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. . . . (Section 1092).
- Every officer or person prohibited by the laws of this state from making or being interested in contracts, . . . who willfully violates any of the provisions of those laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state. (Section 1097).

Remote Interests

An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest. (Section 1091 (a))

Remote Interests/Penalties

The willful failure of an officer to disclose the fact of his or her [remote] interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed. (Section 1091(d))

1090 Hypotheticals

Hypothetical #1

Retirement Board entered into a consulting contract. Mr. Advisor was the owner of the contracting firm. The contract required the Board to reasonably adjust the rates of payments to the contractor on the fifth anniversary of the contract. One year before the fifth anniversary, Mr. Advisor was elected to the Board. On the fifth anniversary, the Board refused to set reasonable rates because it believed doing so would violate Section 1090.

Hypothetical #2

Company X was the insurance brokerage contractor for a Retirement Board. The Board requested Company X to procure insurance contracts for the Board. Ms. Holder was a 40% owner of Company X, and a member of the Retirement Board. At the time of the request, Ms. Holder disclosed her interest in Company X to the Board. She announced that she would not take any part in any discussions or actions related to insurance contracts to be procured by Company X, and that she had divested herself of all financial interests in the insurance contracts. Ms. Holder did not participate in any manner in procurement, solicitation, or servicing of Board insurance, nor directly or indirectly sought to influence other members of the board regarding

Hypothetical #2, continued

insurance. Furthermore, Ms. Holder entered into an agreement with Company X in which she agreed not to participate in any profits or losses arising out of business with the Board, and that profits or losses would be shared only by other partners of Company X.

Hypothetical #3

In approving a housing development project, the Park City city council voted to accept a developer's offer to allocate \$600,000 for the purchase of property to be transferred to the city for a park. Land owned by council person, Peter Rich, was one of three parcels suitable for use as the park. Peter Rich abstained from voting on acceptance of the offer. Peter Rich agreed to sell his property to the developer for \$260,000, knowing that the developer would convey the property to the city. The city council voted to approve the developer's purchase of the Peter Rich parcel. Council person Rich abstained from the vote. Peter Rich received \$260,000 from the developer, which received \$260,000 from the City for the conveyance.

Hypothetical #4

In February, the Executive Director of the Retirement System of West City resigned. At a retirement system board meeting in May, Mr. Exec, a member of the board, announced his interest in being considered for the position of Executive Director. In September, the board voted to offer the Executive Director position to Mr. Exec. The board announced its vote in open session. Mr. Exec, who was present for the closed session, abstained from the closed session vote. Mr. Exec accepted the board's offer of employment upon his resignation from the board. A few days later, Mr. Exec submitted his written resignation to the board and commenced his employment as the Executive Director.