

Date: January 11, 2023

To: Honorable Ethics Commission Members

From: Monique De La Garza, City Clerk

Subject: 2022 Biennial Conflict of Interest Code Review

This report is intended to provide an update on the 2022 Biennial Conflict of Interest Code review for departments and commissions (Attachment A).

#### **Background**

The Political Reform Act requires every local government agency to review its conflict of interest (COI) code biennially. A COI code designates which public officials, governmental employees, and consultants must file a Statement of Economic Interests (Form 700). The City Council is the code reviewing body for the City of Long Beach, where the biennial notice and all amendments to the COI codes must be filed.

The Fair Political Practices Commission provides instructions (Attachment B) and additional information for local agencies on the biennial review including a <u>video tutorial</u> and PowerPoint presentation (Attachment C).

#### 2022 Biennial Review

The 2022 Biennial Conflict of Interest Code review for departments and commissions (2022 Biennial review) had no amendments or changes to the COI codes. There was a total of 25 amendments made between the 2020 Biennial review and the start of the 2022 Biennial review. The amendment totals for the recent Biennial reviews are as follows:

Biennial Review	Total Amendments
2022	0
2020	0
2018	11
2016	3

If you have any questions, please let us know.

#### **ATTACHMENTS**

CC: APRIL WALKER, ADMINISTRATIVE DEPUTY CITY MANAGER
JULIAN CERNUDA, ASSISTANT TO THE CITY MANAGER

HEATHER VAN WIJK, ETHICS OFFICER

TAYLOR M. ANDERSON, DEPUTY CITY ATTORNEY JONATHAN NAGAYAMA, CITY CLERK ANALYST

## **ATTACHMENT A**

## Office of the City Clerk



411 West Ocean Boulevard, 11<sup>th</sup> Floor, Long Beach, CA 90802 (562) 570-6101

September 13, 2022



HONORABLE MAYOR AND CITY COUNCIL City of Long Beach California

#### RECOMMENDATION:

Recommendation that City Council receive and approve changes for the Biennial Conflict of Interest Code for departments and commissions filed, in compliance with State law.

#### **DISCUSSION**

The Political Reform Act requires every local government agency to review its conflict of interest code biennially. If an amendment is need, the proposed amendment(s) should be submitted to the City Council no later than October 1<sup>st</sup>, 2022. All agencies have been notified and submitted their review, in compliance with the law.

The following agencies have determined that no amendments are necessary, see attached Summary:

Airport Advisory Commission - LBA

Belmont Shore Parking & Business Improvement Area Advisory Commission - CD

Bixby Knolls Parking & Business Improvement Area Association - CD

Board of Examiners, Appeals and Condemnation

Board of Health and Human Services - HHS

Citizen Police Complaint Commission - CM

Citizens Advisory Commission on Disabilities - HR

City Officials - Planning Commission

Civil Service Commission - CS

Commission on Youth & Families

Community Investment Company

**Cultural Heritage Commission** 

Downtown Long Beach Associates - CC

**Economic Development Commission** 

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The following agencies have determined that no amendments are necessary, see attached Summary (Continued):

Equity and Human Relations Commission - HHS

**Ethics Commission** 

Fourth Street Parking and Business Improvement Area

Harbor Commission - HD

Homeless Services Advisory Commission - HHS

Housing Authority of the City of Long Beach, California

Independent Redistricting Commission

Long Beach Area Convention and Visitor's Bureau - CC

Long Beach Transit Board of Directors - LBT

Magnolia Industrial Group Property & Business Improvement District - CC

Marine Advisory Commission - PRM

Midtown Property and Business Owners Association

Parks and Recreation Commission - PRM

Pedestrian Safety Advisory Committee - CM

Port of Long Beach Community Grants Advisory Committee

Public Corporation for the Arts (aka Arts Council for Long Beach)

Senior Citizen Advisory Commission - PRM

Sustainable City Commission - CM

Technology and Innovation Commission - TS

Transactions and Use Tax Citizens' Advisory Committee

Uptown Property and Business Improvement District

**Veterans Affairs Commission** 



## HONORABLE MAYOR AND CITY COUNCIL September 13, 2022 Page 3

The following agencies have determined that no amendments are necessary, see attached Summary (Continued):

Water Commission - WD

Zaferia Parking and Business Improvement Area

City Auditor Department

City Clerk Department

City Manager Department

City Prosecutor Department

Civil Service Department

**Development Services Department** 

Disaster Preparedness and Emergency Communications

**Economic Development** 

**Energy Resources Department** 

**Financial Management Department** 

Fire Department

**Harbor Department** 

Health and Human Services Department

**Human Resources Department** 

Law Department

Legislative Department

Library Services Department

Long Beach Airport Department

Long Beach Transit

Parks, Recreation and Marine Department



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The following agencies have determined that no amendments are necessary, see attached Summary (Continued):

Police Department

**Public Works Department** 

Technology & Innovation Department

Water Department

## **FISCAL IMPACT**

None.

## SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

y, D. Forfay

MONIQUE DE LA GARZA

CITY CLERK

Enclosures,

MD:pm



#### **FAIR POLITICAL PRACTICES COMMISSION**

# 2022 Conflict of Interest Code Biennial Notice Instructions for Local Agencies

The Political Reform Act requires every local government agency to review its conflict of interest code biennially. A conflict of interest code tells public officials, governmental employees, and consultants what financial interests they must disclose on their Statement of Economic Interests (Form 700).

By **July 1**, **2022:** The code reviewing body must notify agencies and special districts within its jurisdiction to review their conflict of interest codes.

By October 3, 2022: The biennial notice must be filed with the agency's code reviewing body.

The FPPC has prepared a 2022 Local Agency Biennial Notice form for local agencies to complete or send to agencies within its jurisdiction to complete before submitting to the code reviewing body. The City Council is the code reviewing body for city agencies. The County Board of Supervisors is the code reviewing body for county agencies and any other local government agency whose jurisdiction is determined to be solely within the county (e.g., school districts, including certain charter schools). The FPPC is the code reviewing body for any agency with jurisdiction in *more than one county* and will contact them.

## The Local Agency Biennial Notice is not forwarded to the FPPC.

If amendments to an agency's conflict of interest code are necessary, the amended code must be forwarded to the code reviewing body for approval within 90 days. An agency's amended code is not effective until it has been approved by the code reviewing body.

# If you answer yes, to any of the questions below, your agency's code probably needs to be amended.

- Is the current code more than five years old?
- Have there been any substantial changes to the agency's organizational structure since the last code was approved?
- Have any positions been eliminated or re-named since the last code was approved?
- Have any new positions been added since the last code was approved?
- Have there been any substantial changes in duties or responsibilities for any positions since the last code was approved?

If you have any questions or are still not sure if you should amend your agency's conflict of interest code, please contact the FPPC. Additional information including an online webinar regarding how to amend a conflict of interest code is available on FPPC's website.

## **ATTACHMENT C**

# Conflict of Interest Code Presentation for Local Agencies

Fair Political Practices Commission Legal Division 866-275-3772 www.fppc.ca.gov advice@fppc.ca.gov



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The visual aids used in FPPC workshops are guides which contain only highlights of selected provisions of the law. They do not carry the weight of the law.

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## **OVERVIEW**

- ☐ What is a conflict of interest code?
- ☐ Types of Form 700 filers
- ☐ 3 components of a conflict of interest code
- ☐ How to identify necessary changes to your agency's conflict of interest code
- □ Approval process for multi-county agencies



## **CONFLICT OF INTEREST CODES**

Every government agency must adopt a conflict of interest code.

A conflict of interest code is the legal instrument requiring those individuals holding designated positions to disclose their financial interests to help avoid conflicts of interest.



## **HOW IT WORKS**

- Public official/employee holds a position that involves:
  - Making or participating in making governmental decisions.
- Position is designated in the code:
  - Disclosure is based on a position's level of decision making.
- Official/employee files Statements of Economic Interests (Form 700):
  - Serves as a reminder to official/employee of potential conflicts.
  - Public document.



## **TYPES OF FORM 700 FILERS**

#### **Code Filers**

A designated position in a conflict of interest code is often referred to as a "code filer" because the position files a Form 700 based on its designation in the conflict of interest code.

#### 87200 Filer

Position specifically listed in Section 87200 or meets the criteria in Regulation 18700.3 as a public investment manager is an 87200 filer.



# WHO IS LISTED IN GOV. CODE SECTION 87200?

## **County Officials**

- Board of Supervisors
- Chief Administrative Officer
- County Counsel
- District Attorney
- Planning Commissioners
- County Treasurer

## **City Officials**

- Mayor/Council members
- Chief Administrative Officer
- City Manager
- City Attorney
- Planning Commissioners
- Treasurer



# 87200 FILERS (Public Investment Managers)

Public officials and employees who manage public investments are also listed in Government Code Section 87200. Regulation 18700.3 contains the definition of a public investment manager.

Typically, this means your retirement board or investment board, but may include...

- ✓ Employees or consultants who establish policy or make decisions concerning the investment of public monies.
- Does not include individuals who work under the supervision of a financial manager.



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# SAMPLE LANGUAGE 87200 FILERS (Public Investment Managers)

The following positions are not covered by the code because they must file under Government Code Section 87200 and, therefore, are listed for informational purposes only:

Board Members
Alternate Board Members
Executive Director
Chief Financial Officer

Individuals holding the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

## **2016 BIENNIAL NOTICE**



- Each local agency must review its conflict of interest code biennially.
- By July 1: Code reviewing body must notify all agencies.
- By October 3: All agencies must submit the notice to the code reviewing body.
- Before completing the notice, review the agency's organizational chart and current code, including the disclosure categories.



#### 2016 Multi-County Agency Biennial Notice

Name of Agency: Orange Fire Protection District

Mailing Address: PO Box 428, Orange City, CA 9555

Contact Person: Jeff Meyers Phone No. 555.555.5555

Email: jeffmeyers@ofpd.org Alternate Email: staff@ofpd.org

Counties Served: Solano, Yolo

No. of Employees: 10 No. of Form 700 Filers: 8

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

Please identify which statement accurately describes your agency's status.

- ☐ This agency has reviewed its conflict of interest code. The current code designates all positions which make or participate in making governmental decisions. The designated positions are assigned accurate disclosure categories that relate to the job duties of the respective positions. The code incorporates FPPC regulation 18730 so that all relevant Government Code Sections are referenced.
- This agency has reviewed its conflict of interest code and has determined that an amendment is necessary. An amendment may include the following:
  - New positions which involve the making or participating in the making of decisions which
     The property of the property in the making of decisions which
  - may foreseeably have a material impact on a financial interest.

    Current designated positions need renaming or deletion.
  - Statutorily required provisions of the code need to be addressed.
  - Disclosure categories need revision.

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## **CODE REVIEWING BODY**

City: City Council

**County:** Board of Supervisors

(including most school districts and public charter schools, water

districts, fire districts, etc., if wholly within the county)

Multi-County: Fair Political Practices

Commission



# **Code Review Process**

Compare existing conflict of interest code against current organizational structure.

- □ Have new positions or divisions been created? Abolished? Duties merged?
- □ Have duties of positions designated in the code changed to warrant adjusting their disclosure obligations?



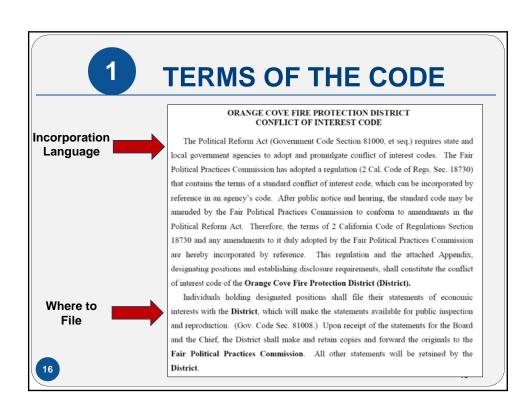
Three Components of a Conflict of Interest Code



# THREE COMPONENTS OF A CODE

- 1 Terms of the code (Incorporation of Regulation 18730)
- 2 List of designated positions
  (The positions in your agency that are required to file a Form 700)
- 3 Disclosure categories
  (The specific interests to be reported on a Form 700)

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# LIST OF DESIGNATED POSITIONS

Every position in your agency that is involved in making or participating in making governmental decisions must be designated in your agency's code.



# WHAT DOES IT MEAN TO "MAKE" A DECISION?

## Making a decision means:

- Voting on a matter
- □ Approving the budget
- Adopting policy
- □ Making purchasing decisions
- □ Entering into contracts



# WHAT DOES IT MEAN TO "PARTICIPATE" IN A DECISION?

"Participates" means:

- Negotiating the terms of a contract
- Writing the specifications of a bid
- □ Advising or making recommendations to the decision-maker or governing body without significant intervening substantive review



# DEVELOPING YOUR LIST OF "DESIGNATED POSITIONS"

- Maintain in the code your broad policy/decision makers
- Eliminate positions whose duties are clerical, secretarial, ministerial, or manual

## Then

 Review the duty statements of everyone between these two levels. Look closely at how many levels of substantive review these positions have.



# DEVELOPING YOUR LIST OF "DESIGNATED POSITIONS"

#### **KEEP**

Broad policy decisions makers. For example, Directors and executive staff.

## **REVIEW DUTY STATEMENTS FOR**

Positions that aren't broad policy decision makers or clerical, secretarial, ministerial, or manual. For example, Information Systems Analyst, Fleet Manager, Purchasing Agent, and Administrative Officer.

#### **ELIMINATE**

Positions whose duties are clerical, secretarial, ministerial, or manual. For example, secretary and tree trimmer.



# DESIGNATION BASED ON DUTIES

Based on the stated duties, which of the following positions should be in the agency's code?

#### **Director of Operations**

Prepares and administers the department budget. Works independently in the development of capital improvement projects. **YES** 

## **Administrative Assistant**

Prepares accounting spreadsheets and meeting minutes, schedules meetings, posts information on website.





## **NEW BOARDS & COMMISSIONS**

Other than those which are solely advisory, when a board or commission is formed, the members must file under full disclosure until the positions are included in a conflict of interest code.

For board and commission members, including alternates, Form 700s are due no later than 30 days after assuming office.



Regulation 18700 and 18754 Government Code Section 87302.6

## **POSITION LIST SAMPLE**

Designated Positions <u>C</u>	Disclosure Catego	<u>ries</u>
Board Members & Alternates	1	
Chief Executive Officers	1	
Principals	2	
Director of Information Technology	2	
Risk Manager	3	
Transportation Commissioners	3	
Purchasing Agent	4	
Consultants/New Positions	*	

## **NEW POSITIONS-FORM 804**

- Individuals serving in a new position created on or after January 1, 2010, must file under the broadest disclosure category in your agency's code.
- Agency may provide more limited disclosure by using Form 804.
- Add newly created positions to the conflict of interest code when it is amended.



Regulation 18734

## **CONSULTANTS-FORM 805**

- Use Form 805 to limit disclosure.
- Unsure of who is a consultant?
  - Contact your agency attorney.
  - Contact your code reviewing body.
  - Utilize FPPC advice services if you still cannot decide.



Regulation 18700.3

# SAMPLE CONSULTANT/NEW POSITION LANGUAGE

\*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation:

The [head of agency or his/her designee] may determine in writing that a particular consultant or new position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The [head of agency or his/her designee's] determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Section 81008.)



# **Disclosure Categories**

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## **DISCLOSURE CATEGORIES**

Disclosure categories describe the types of interests to be disclosed on a Form 700.

Designated positions can only be required to disclose interests that they may effect in the course of performing the position's duties.

City of Carmel-by-the-Sea v. Young
County of Nevada v. MacMillen



# **Real Property Limitations**

Does the designated position participate in decisions affecting real property?

If the answer is "no," do not require the disclosure of interests in real property.



## **QUIZ**

Which of the following positions should be required to report real property interests?

**Claims Manager** 

Information Technology Director

**Planning Director** 

**Appraiser** 

Personnel Director



# Sample Vendor Category

Designated positions in this category must disclose investments, business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources of the type that provide services, supplies, materials, machinery or equipment <u>for the Agency.</u>

OR

for the designated position's department/division.



# **Authority/Services Category**

Designated positions in this category must disclose investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources of the type that provide health care products and services. Such sources include dental, mental, and ambulance services and medical products, including prescriptions and well being programs.



# **Regulatory Category**

Designated positions in this category must report investments, business positions in business entities, and income, including receipt of gifts, loans and travel payments, from sources subject to the Agency's regulatory, permit or licensing authority.



# **IT Category**

Designated positions in this category must report investments, business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources that provide information technology and telecommunications goods, products or services, including but not limited to, computer hardware or software companies, computer consultant services, training, data processing firms, and media services.



# **Other Categories**

- 1. Does the Agency issue grants?
- 2. Does the Agency license entities?
- 3. Does the Agency have enforcement authority?
- 4. Does the Agency have an auditing function?
- 5. Does the agency process claims?



## Gift and Honoraria Ban

The gift limit and honoraria ban are tied to sources of income required to be disclosed on statements of economic interests.

Please note that effective January 1, 2015, the gift limit is \$460 and will be adjusted again on January 1, 2017.



## Quiz

A person's duties include approving licensing programs for health care providers. Which of the following disclosure categories best suits this type of position:



# Quiz

All interests in real property in the State of California, as well as investments, business positions and sources of income, including receipt of gifts, loans, and travel payments.

OR

All investments, business positions and income, including receipt of gifts, loans, and travel payments, from sources that are subject to the regulatory, permit or licensing authority of, or have an application for a license or permit pending before the agency.



## **PITFALLS TO AVOID**

- Do not give full disclosure to positions with limited decision-making authority.
- Do not cite Form 700 schedules as your "disclosure categories."
- Do not include provisions that go beyond the scope of the Political Reform Act.
- Do not include the gift limit or due dates.



## THE NEXT STEP

- You have amended your code to include all positions that should be designated in the code, and,
- You have assigned clear and concise disclosure categories.

Now...

Contact your "code reviewing body" for further instructions.



# **DUTIES OF CODE REVIEWING BODY**

- Review proposed code or amendments to ensure legal compliance (Gov. Code Section 87302)
- May not approve a code that exceeds requirements of the Political Reform Act
- Conflict of interest code is not effective until approved by the code reviewing body



# **PROVIDING NOTICE**

Review and preparation of codes by <u>local</u> <u>government agencies</u> must be carried out under procedures that guarantee to officers, employees, members, and consultants of the agency, and to residents of the jurisdiction, **adequate notice** and a **fair opportunity** to present their views.



# Approval Process for Multi-County Agencies



## **NON-SUBSTANTIVE AMENDMENTS**

These amendments do <u>not</u> require public notice and are limited to the following:

- Title changes
- Deleting positions that have been abolished
- Minor changes such as correcting typographical errors or adding clarifying language

However, if you discover you need to add positions or change disclosure categories, your amendment will be substantive.



## STARTING THE AMENDMENT

## **Submit the Required Documents to FPPC**

- Proposed conflict of interest code in Word in a strikeout/underline format
- > Current organizational chart
- > Written description of changes
- > Job descriptions/duty statements will be requested on an as-needed basis
- Brief justification when an official is designated to report all financial interests
- CEO Declaration (may be turned in before or after the notice period has concluded)

Send these documents via email to advice @fppc.ca.gov.



## **MULTI-COUNTY AGENCIES**

# Prepare the amendment in strikeout and underscore format

- A. Outreach Services Community Services
  - 1. Community Services Director.....2
  - 2. Community Services Manager......3
  - 2. Community Services Assistant Manager......3
  - 3. Cultural Services Manager.....4
  - 4. Senior Recreation Supervisor.....4

#### Comments:

- -Outreach Services became Community Services.
- -The Community Services Assistant Manager was reclassified to Community Services Manager.



Or include explanations in a separate letter.

## **FPPC REVIEW**

- Once a draft conflict of interest code and the required documents are received, the FPPC will conduct an initial review.
- FPPC staff will follow up with you on any questions or concerns regarding the draft conflict of interest code, and may request additional documentation.
- This consultation process may result in changes to the draft conflict of interest code. Once the FPPC and the agency agree on the draft conflict of interest code, it is ready for public notice.



## **NOTICE**

- □ Agencies must provide a public comment period of at least 45 days. All employees must be notified and provided 45 days to comment. Notification may be completed via e-mail or internet.
- □ Agencies provide FPPC with public comments, if any.
- ☐ The FPPC also conducts a 45-day public notice period with the Office of Administrative Law.
- ☐ If suggestions during the public comment period result in changes or modifications to the draft code, no further public notice is required as long as the code is substantially similar to the originally noticed code.



# SAMPLE NOTICE TO EMPLOYEES | Same |

# Form 700 Filings

Type of Position	When To File Next Form 700
Positions with revised disclosure categories	Next Annual
Newly created positions, Form 804 and assuming office Form 700 on file	Next Annual
Newly added positions	File assuming office Form 700 within 30 days of effective date of code
Deleted positions due to changed duties	File leaving office Form 700 within 30 days of effective date of code
Positions listed in code that were determined to have never participated in government decisions	The agency may remove the position from the list of Form 700 filings and is not required to obtain a leaving office Form 700

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# Resources for Multi-County Agencies

- How to Amend Multi-County Agency's
   Conflict of Interest
   Code Factsheet
- Internal Multi-County
   Amendment
   Checklist
- Sample DisclosureCategories



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Fair Political Practices Commission Legal Division 866-275-3772 www.fppc.ca.gov advice@fppc.ca.gov

