

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

CATHERINE M. BRADLEY
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Jan I. Goldsmith

CITY ATTORNEY

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REPORT TO THE SAN DIEGO ETHICS COMMISSION

PROPOSED CHANGES TO ETHICS COMMISSION CONFLICT OF INTEREST CODE

INTRODUCTION

As required by California law, the City Council has adopted a conflict of interest code (code) for the Ethics Commission. The code describes categories of financial interests that must be disclosed by individuals serving in designated positions. These financial interests are disclosed in the Statement of Economic Interests (Form 700) filed when an individual assumes a position designated in the code and annually thereafter. The code provides that Commission members, the Executive Director, and certain other positions are subject to broad disclosure requirements. The Ethics Commission has proposed narrowing the disclosure categories to tailor the financial disclosures more closely to the duties of the Ethics Commission. This report discusses the factors to consider when establishing disclosure categories.

DISCUSSION

I. PURPOSE OF CONFLICT OF INTEREST CODES

Under the Political Reform Act (Act), all public agencies are required to adopt a conflict of interest code.¹ Cal. Gov't. Code § 87300. The City Council is the "code reviewing body" for the City and is legally required to adopt codes for every City department, agency, independent office, and certain boards and commissions. Cal. Gov't. Code § 82011. The codes designate positions and assign disclosure categories specifying the types of interests to be reported in the Form 700. The Form 700 is a public document intended to alert public officials and members of the public to the financial interests that may create conflicts of interest.

Those who hold positions in which they make or participate in making government decisions are required to disclose their economic interests. Typically, such activities might involve voting on matters, negotiating contracts, or making recommendations on purchases without substantive review. Department heads and other management officials usually assist the Council in determining which positions should be included in the codes. The Council also adopts codes for City boards and commissions that are considered decision-making bodies.

¹ Elected officials and certain other positions (i.e., Treasurers, City Managers, Planning Commission members) are "statutory" or "high level" filers whose disclosure categories are specified in state law.

The codes require disclosure of investments, interests in real property, sources of income and business positions that may affect a person's decision-making. California law requires the City to balance the public's interest in full disclosure of the economic interests of public officials and employees against the privacy rights of the individuals who must disclose their financial interests. *City of Carmel-By-The-Sea v. Young*, 2 Cal. 3d 259, 268-69 (1970). Thus, financial disclosures must be tailored to the interests that may be affected by the individual's decision-making authority. On the other hand, codes cannot be drafted too narrowly, because they are intended to capture essential information that must be disclosed to the public. The disclosure of financial interests may be limited only to those transactions or holdings with some relationship, direct or indirect, to the official duties of the public officer or employee. *Id.* at 271.

The Fair Political Practices Commission (FPPC) provides guidance to agencies that must adopt a code. For example, the FPPC advises that the manager of an agency should be assigned full disclosure (all investments, interests in real property, sources of income and business positions) because the manager makes decisions that affect a wide range of interests. Alternatively, a purchasing agent whose decision-making is limited to the purchase of office supplies should only be assigned disclosure of investments, sources of income and business positions in entities that provide office supplies, equipment or merchandise of the type used by the agency. *See*, <http://www.fppc.ca.gov/index.php?id=228>.

The FPPC has developed model disclosure categories to assist agencies in drafting or amending their conflict-of-interest codes. *See*, <http://www.fppc.ca.gov/index.php?id=396>. Here are a few examples:

Full Disclosure

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

General Contracting Categories

All investments, business positions and income, including gifts, loans and travel payments, from sources that provide leased facilities, goods, equipment, vehicles, machinery or services, including training or consulting services, of the type utilized by the (employee's department or area of authority).

Regulatory, Permit or Licensing Agency

All investments, business positions and income, including 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 (name of agency).

II. THE ETHICS COMMISSION'S CONFLICT OF INTEREST CODE

The Ethics Commission's purpose is: "to monitor, administer, and enforce the City's governmental ethics laws, propose new governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics

laws.” SDMC § 26.0401. These duties are described more fully in San Diego Municipal Code section 26.0414. The San Diego Charter gives the Commission broad authority, subject to procedures approved by Council, to: “subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission’s duties or exercise of its powers.” Charter § 41(d).

The Ethics Commission members and staff are required to file statements of economic interest pursuant to a code adopted by the Council. The current code requires the Commission members and staff to disclose broad categories of interests as described in Appendix B of the attached code:

CATEGORY 1 (CURRENT):

- a. Investments and business positions in any business entity located in or doing business in the City of San Diego.
- b. Income (including loans, gifts, and travel payments) from sources located in or doing business in the City of San Diego, with the exception of gifts from designated employee’s departmental supervisor.
- c. Interests in real property located in the City of San Diego, including property located within a two-mile radius of any property owned or used by the City.

The above disclosure categories typically are found in City codes for individuals with broad decision-making authority. The broad disclosures generally require disclosure of income and interests from sources “located in or doing business in the City of San Diego.” The proposed revisions to the code are more narrowly drawn and would require Commission members and staff to disclose interests more closely related to those subject to the Commission’s jurisdiction:

CATEGORY 1 (PROPOSED):

- (a) Investments and business positions in any business entity located in or doing business in the City of San Diego that has engaged in one or more of the activities identified in subsection (c) within the past two years.
- (b) Income (including loans, gifts, and travel payments) from sources located in or doing business in the City of San Diego that have engaged in one or more of the activities identified in subsection (c) within the past two years.
- (c)
 - (1) Seeking elective office;
 - (2) Providing campaign goods or services to a City of San Diego candidate, a City of San Diego general purpose recipient committee, or a City of San Diego primarily formed recipient committee;

- (3) Serving as a sponsor or principal officer of a committee that has made expenditures to support or oppose City of San Diego candidates or ballot measures;
 - (4) Operating as a committee that has made independent expenditures to support or oppose City of San Diego candidates or ballot measures;
 - (5) Lobbying in the City of San Diego as a lobbying firm, organization lobbyist, or expenditure lobbyist, or as an individual paid by a lobbying firm or organization lobbyist;
 - (6) Serving as an elected City Official, an unclassified City Official, an employee of a City agency, a City consultant, or a member of a City board or commission if required, in this capacity, to file a Statement of Economic Interests;
 - (7) Providing legal or accounting services to one or more individuals or entities subject to an Ethics Commission investigation or audit; or,
 - (8) Providing legal, accounting, or other consulting services to the Ethics Commission.
- (d) Notwithstanding the above, a "gift" does not include a gift to a designated employee from his or her departmental supervisor.

Whether the narrower code is appropriate is a decision for the Council. The Council will need to consider the duties of the Commission and balance the public's interest in disclosure with the individual's privacy rights. The code approved by the Council must ensure that all foreseeable potential conflict of interest situations will be disclosed. Cal. Gov't. Code § 87309(a).

Attached for comparison is a chart of disclosure categories for ethics and campaign enforcement entities similar to the Ethics Commission. The disclosures range from the broad disclosures of the Fair Political Practices Commission to the narrower disclosures of the Berkeley Fair Campaign Practices Commission. The chart also includes the San Diego Ethics Commission, Planning Commission and Civil Service Commission. Although all three conduct hearings, the Ethics Commission's enforcement authority, duties and responsibilities are broader than those of these other City commissions.

CONCLUSION

The City Council is responsible for adopting conflict of interest codes for City positions that make or participate in making governmental decisions. The codes require disclosure of investments, interests in real property, sources of income and business positions that may affect individuals in their decision-making. In adopting a code, the Council must balance the public's interest in full disclosure of the economic interests of public officials against the privacy rights of the individuals who must disclose their financial interests.

The Ethics Commission's proposed code would narrow the disclosures required to be made by the Commission and its staff. Whether the scope is appropriate is a decision for the City Council. The codes in the attached chart are provided for comparison with other ethics and campaign-related commissions in the state. Any revisions recommended by the Ethics Commission should provide the Council with assurance that all foreseeable conflicts will be disclosed.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Catherine M. Bradley
Catherine M. Bradley
Deputy City Attorney

CMB:sc
Attachments
RC-2014-10
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**ETHICS COMMISSION
CONFLICT OF INTEREST CODE**

**APPENDIX A
DESIGNATED POSITIONS, DUTIES AND CATEGORIES**

<u>Position</u>	<u>Duties</u>	<u>Category</u>
Ethics Commissioner	To oversee all Commission activities, including training and education, formal advisory opinions, investigations and enforcement of alleged violations of governmental ethics law, audits of campaign committees and registered lobbyist, recommendation to the City Council regarding proposed amendments to government ethics laws, and other related duties.	1
Executive Director	To serve at the Commission's direction; to oversee the training and education programs, to oversee the provision of informal and formal advice, to oversee investigations and enforcement activities, to oversee audit program, to hire and manage staff, to contract for consultants as necessary, and to perform administrative work as necessary.	1
Ethics Commission Senior Investigator	To supervise Ethics Commission's Investigator and Financial Investigator, and to perform investigations related to violations of City governmental Ethics Laws and to perform related work.	1
Ethics Commission Investigator	To perform investigations related to violations of City governmental Ethics Laws and to perform related work.	1
Ethics Commission Financial Investigator	To perform audits and financial investigations related to violations of City governmental Ethics Laws and to perform related work.	1
Ethics Commission General Counsel	To provide legal services to the Commission and Commission staff	1
Program Manager	To administer education and training program, to provide technical assistance, to support the Ethics Commission General Counsel, and to perform related work.	1
Training Officer	To conduct live training sessions for City Officials, candidates, political committees, and lobbyist, and to prepare related training materials.	1
Consultant	To perform services as specified in contract.	2

**ETHICS COMMISSION
CONFLICT OF INTEREST CODE**

**APPENDIX B
DISCLOSURE CATEGORIES**

CATEGORY 1:

- a. Investments and business positions in any business entity located in or doing business in the City of San Diego.
- b. Income (including loans, gifts, and travel payments) from sources located in or doing business in the City of San Diego, with the exception of gifts from designated employee's departmental supervisor.
- c. Interests in real property located in the City of San Diego, including property located within a two-mile radius of any property owned or used by the City.

CATEGORY 2:

Consultants shall be included in the list of designated positions and shall disclose pursuant to the broadest category in the code subject to the following limitation:

The Ethics Commission Chairperson or the Executive Director may determine in writing that a particular consultant, 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 described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chairperson's or Executive Director'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.

Ethics Commission Conflict of Interest Code – Comparison

<u>Agency</u>	<u>Designated Positions</u>	<u>Disclosure Categories - Requirements</u>
Fair Political Practices Commission	Members of the Commission	Statutory filers. (Cal. Gov't. Code § 87200)
	Executive Director	Category 1: A designated position in this category must report all investments, business positions, interests in real property, and sources of income, including receipt of gifts, loans, and travel payments. (Cal. Code Regs. title 2, § 18351).
San Francisco Ethics Commission	Commission members and Executive Director	Category 1: Persons in this category shall disclose income (including gifts) from any source, interests in real property, investments, and all business positions in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management. (S.F. Campaign and Governmental Conduct Code; Sec. 3.1-107; 3.1-230)
City of Los Angeles Ethics Commission	Commission members and Executive Director	General Provision: A designated employee is required to disclose that he or she is a director, officer, partner, trustee, employee or holds any position of management in a business entity if he or she would be required to disclose income from that entity. Income includes loans and gifts. Category 1: All interests in real property located within the City of Los Angeles, as well as investments, business positions, and sources of income (including gifts and loans).

City of San Jose Elections Commission	Commission members	<p>Investments, business positions, sources of income; real property interests following instructions in the Form 700;</p> <p>Gifts from sources located in or doing business in the City. (R-76519 (2012); Appendix I-23).</p>
City of Oakland Public Ethics Commission	Commission members	<p>Category 1: All investments and business positions in business entities, sources of income and interests in real property.</p> <p>Note: A business entity or any parent, subsidiary or otherwise related business entity that has an interest in real property in the City of Oakland, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the filing of any statement is to be reported. Real property located in the jurisdiction is to be reported. Income, including a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction or not having done business within the jurisdiction during the two years prior to the filing of any statement is to be reported. (O-12990 (2010)).</p>
City of Berkeley Fair Campaign Practices Commission	Commission Members	<p>All members of the Commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee, or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is required to file campaign reports under the Berkeley Election Reform Act of 1974, or acts as a consultant on campaign matters.</p>

San Diego Ethics Commission	Commission members and Executive Director	<p>Category 1:</p> <ul style="list-style-type: none"> a. Investments and business positions in any business entity located in or doing business in the City of San Diego. b. Income (including loans, gifts, and travel payments) from sources located in or doing business in the City of San Diego, with the exception of gifts from designated employee's departmental supervisor. c. Interests in real property located in the City of San Diego, including property located within a two-mile radius of any property owned or used by the City. (R-302192 (2006))
San Diego Planning Commission	Commission members	<p>Statutory filers. (Cal. Gov't. Code § 87200)</p>
San Diego Civil Service Commission	Commission members	<p>Category 1:</p> <ul style="list-style-type: none"> a. All interests in real property within the jurisdiction of the City or not more than two miles outside the jurisdiction of the City, in which any City officer or employee also has an interest. b. All investments or business positions in for-profit or not-for-profit business entities in which any City officer or employee also has an interest. Investments in publicly traded stocks, bonds, commodities, and other generally available investment devices are not required to be disclosed, unless the associated company has a connection to the City or a City employee. c. All income & all gifts from any officer or employee of the City or any representative of a recognized bargaining organization. (R-299966 (2004))

<p>Personnel Director</p>	<p>All Categories:</p> <ol style="list-style-type: none"> 1 Investments and business positions in any entity located in or doing business with the City. Income and gifts from sources located in or doing business with the City. Interests in real property located in the City, including property located within a two-mile radius of any property owned or used by the City 2 Investments and business positions in any firm or entity which supplies goods or services to the Personnel Department of the City of San Diego. 3 Interests in real property owned or used by any person, firm or entity which supplies goods or services to the Personnel Department of the City of San Diego. 4 Interests in real property located within the City, including property located within a two-mile radius of any property owned or used by the City. 5 Income or gifts from any person, firm or entity which supplies goods or services to the Personnel Department of the City of San Diego. (R-294191 (2000))
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