

RESOLUTION NUMBER R- 290854

ADOPTED ON OCT 19 1998

RESOLUTION ADOPTING THE CONFLICT OF INTEREST
CODE FOR THE LOCAL ENFORCEMENT AGENCY [LEA]
HEARING PANEL.

WHEREAS, the members of the LEA Hearing Panel were confirmed by the Council of
The City of San Diego on May 4, 1998; and

WHEREAS, the Political Reform Act (Cal. Gov't Code §§ 81000-91015) requires state
and local government agencies to adopt and promulgate conflict of interest codes for boards and
commissions with decision making powers (Gov't Code §§ 87300, 87302, 82019; 2 Cal. Code
Regs. § 18700(a)(1)(A)); and

WHEREAS, the City Manager in consultation with the City Attorney has determined that
the LEA Hearing Panel will not be "solely advisory" within the meaning of Government Code
section 82019 and 2 California Code of Regulations section 18700(a)(1) and, therefore, must be
subject to a conflict of interest code; and

WHEREAS, the Fair Political Practices Commission [FPPC] has adopted a regulation
(located at 2 Cal. Code Regs. § 18730), which contains the terms of a standard conflict of interest
code; and

WHEREAS, after public notice and hearing this regulation may be amended by the FPPC
to conform to amendments in the Political Reform Act; and

WHEREAS, as The City of San Diego's code reviewing body, the City Council finds it in the public interest to adopt the standard conflict of interest code promulgated by the FPPC in Regulation 18730 and hereby declares its intention to incorporate by reference the terms of FPPC Regulation 18730 and any amendments to that regulation duly adopted by the FPPC as part of each conflict of interest code for which the City Council has responsibility; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That the terms of 2 California Code of Regulations section 18730, and any amendments to that regulation duly adopted by the FPPC, are hereby adopted and incorporated by reference into the Conflict of Interest Code for the LEA Hearing Panel.

2. That a copy of 2 California Code of Regulations section 18730 and any amendments to that regulation to this date be placed on file in the Office of the City Clerk as Document No. RR- 290854-1.

3. That Appendix A, in which LEA Hearing Panel members are designated, and Appendix B, in which the disclosure category is set forth, are hereby approved and are incorporated into its Conflict of Interest Code.

4. That Appendices A and B be placed on file in the Office of the City Clerk as Document No. RR- 290854-2

5. That LEA Hearing Panel members file their Statements of Economic Interest [SEIs] with the Development Services Manager, who shall make and retain a copy and forward the originals to the City Clerk.

6. That the SEIs filed by the LEA Hearing Panel members be retained by the Office of the City Clerk and be made available for public inspection and reproduction.

7. That the Conflict of Interest Code for the LEA Hearing Panel become effective upon the date of adoption of this resolution.

APPROVED: CASEY GWINN, City Attorney

By Elisa A. Cusato for
Elisa A. Cusato
Deputy City Attorney

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HISTORY

1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
2. Amendment of subsections (a)(1) and (b) filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

§ 18728. Reporting of Income and Gifts; Honoraria and Awards (87207).

COMMENT: For free admission, food, beverages, transportation, lodging, and subsistence provided to an official, or state candidate in connection with a speech, panel, seminar, or similar service, see California Code of Regulations, Title 2, Section 18950.3.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207, Government Code.

HISTORY

1. New section filed 10-24-75; effective thirtieth day thereafter (Register 75, No. 43).
2. Repealer and new section filed 6-17-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 25).
3. Amendment of subsection (b) filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
4. Repealer and new COMMENT filed 1-27-93; operative 2-26-93 (Register 93, No. 5).

§ 18729. Leasehold Interests—Value, Disclosure.

(a) When an official is required to disclose a leasehold interest as defined in Government Code Section 82033, the official shall:

- (1) Identify the interest as a leasehold interest.
- (2) Disclose the number of years remaining on the lease.
- (3) Provide the address or other precise location of the leased property.
- (4) Provide the date upon which the lease became effective or terminated if either such date occurred during the period covered by the statement.
- (5) Disclose the value of the leasehold interest in the manner required by Government Code Section 87206(d).

(b) The value of a leasehold interest is the amount of rent owed during a 12-month period. For purposes of disclosure on a Statement of Economic Interests, the value of a leasehold interest is the amount of rent owed during a 12-month period. The 12-month period shall be computed as follows:

(1) In the case of an annual or leaving office statement, the first day of the 12-month period is the first day of the reporting period or the first day of the lease, which occurs later.

(2) In the case of an assuming office or candidate's statement, the first day of the 12-month period is the date the statement is due.

(c) If the value of an official's leasehold interest is less than \$1,000 when the rent owed is computed under subsection (b), but the official knows that the actual fair market value of the leasehold during the 12-month period exceeds \$1,000, the value of the leasehold is the actual fair market value, rather than the rent owed, during the 12-month period.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82033 and 87206, Government Code.

HISTORY

1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
2. For history of former section see Registers 85, No. 25 and 76, No. 40.

§ 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87307 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, *et seq.* The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest con-

tained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100, *et seq.*), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, *et seq.*

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under Article 2 of Chapter 7 of the Political Reform Act, Government Code section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

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Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

- (1) File a written resignation with the appointing power, and
- (2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property exceeds one thousand dollars (\$1,000), exceeds ten thousand dollars (\$10,000), or exceeds one hundred thousand dollars (\$100,000).

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source,

was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000):

3. A description of the consideration, if any, for which the income was received:

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$290.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$290 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code Section 89503 shall apply to the prohibitions in this section.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable 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 designated employee has a direct or indirect investment worth one thousand dollars (\$1,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth one thousand dollars (\$1,000) 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 two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made:

(D) Any business entity in which the designated employee 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 \$290 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

(10) Section 10. Manner of Disqualification.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act must be accompanied by disclosure of the disqualifying interest. In the case of a voting body, this determination and disclosure shall be made part of the agency's official record; in the case of a designated employee who is the head of an agency, this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other designated employees, this determination and disclosure shall be made in writing to the designated employee's supervisor.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91015. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300-87302, 89501, 89502, 89503 and 89504, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of NOTE filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding HISTORY 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and NOTE filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

¹ Designated employees who are required to file statements of economic interest under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.

² See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$1,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

R-290854

**LOCAL ENFORCEMENT AGENCY [LEA] HEARING PANEL
CONFLICT OF INTEREST CODE**

APPENDIX A

DESIGNATED POSITIONS, DUTIES, AND CATEGORIES

Position LEA Hearing Panel Member

Duties Preside over all hearings conducted by the LEA dealing with the denial, suspension, revocation, or inappropriate conditions of solid waste facility permits or any enforcement action taken by the LEA. Render decision after hearing.

Category 1

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

R-290854

LOCAL ENFORCEMENT AGENCY [LEA] HEARING PANEL CONFLICT OF INTEREST CODE

APPENDIX B

DISCLOSURE CATEGORY

- 1 All reportable investments and/or business positions in any firm or entity in the solid waste management industry whether or not currently doing business in San Diego County.

All reportable income, including income from contracts, or gifts from any individual, firm, or entity in the solid waste management industry whether or not currently doing business in San Diego County.

All interests in real property located within the City of San Diego, or within a two mile radius of the City's boundaries or of City owned or leased property.

CERTIFICATION

The City of San Diego Local Enforcement Agency [LEA] Hearing Panel Conflict of Interest Code was prepared by The City of San Diego Local Enforcement Agency after a fair opportunity was offered to the members of the LEA Hearing Panel to present their views.

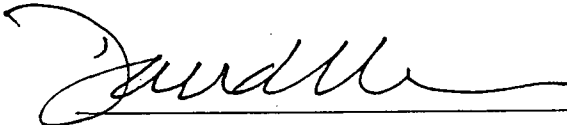
LEA Hearing Panel Member

SEPT 20 1998

(Date)

DAVID MERK

(Print Name)



(Signature)

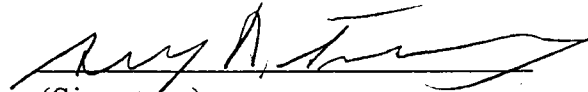
CERTIFICATION

The City of San Diego Local Enforcement Agency [LEA] Hearing Panel Conflict of Interest Code was prepared by The City of San Diego Local Enforcement Agency after a fair opportunity was offered to the members of the LEA Hearing Panel to present their views.

LEA Hearing Panel Member

Sept 14, 1998
(Date)

GARY R. STEPHANY
(Print Name)


(Signature)


CERTIFICATION

The City of San Diego Local Enforcement Agency [LEA] Hearing Panel Conflict of Interest Code was prepared by The City of San Diego Local Enforcement Agency after a fair opportunity was offered to the members of the LEA Hearing Panel to present their views.

LEA Hearing Panel Member

SEPTEMBER 22, 1998
(Date)

THOMAS L. BOWR
(Print Name)


(Signature)