



# AGENDA REPORT SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: June 19, 2012

Agenda 11A(1)  
Approvals: [Signature]  
City \_\_\_\_\_  
Dept. Head [Signature]  
Attorney \_\_\_\_\_  
Finance \_\_\_\_\_

**Department:** City Clerk  
**Prepared By:** Joanne Baade, City Clerk

**Subject:** *APPOINTMENT OF CITY REPRESENTATIVES/ALTERNATES TO THE SAN JOAQUIN HILLS AND FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCIES (TCAs)*

**Summary:** At its meeting of January 3, 2012, Council considered appointing City representatives to various committees, joint powers agencies and boards. Staff informed Council that the California Fair Political Practices Commission (FPPC) has interpreted FPPC Regulation 18705.5 to mean that Councilmembers that are interested in being appointed to a position that pays \$250 or more in any 12-month period must recuse themselves from participating in the selection process.

Among the positions that Council considered filling were the City's representatives to the San Joaquin Hills TCA and Foothill/Eastern TCA. Because the level of compensation for these positions was in excess of \$250 in a 12-month period, City Attorney Goldfarb advised that Councilmembers interested in serving as the City's representatives to the TCAs must recuse themselves from appointment deliberations. After expressing an interest in being considered for reappointment to both positions, Councilmember Dahl left the meeting room and the remaining four Councilmembers deliberated the appointment. A motion to reappoint Councilmember Dahl as the City's representative was made and seconded, but was defeated on a two-to-two vote. Because of the deadlock vote, the appointment was deferred to the Council meeting of January 17, 2012, to allow Councilmembers additional time to consider alternative courses of action.

At the Council meeting of January 17, 2012, City Attorney Goldfarb reported that the FPPC was in the process of reconsidering its interpretation of Regulation 18705.5. Mr. Goldfarb also pointed out that appointments to the TCAs are indefinite and only terminate when successors are appointed. Upon query, it was determined that no other member of Council was interested in representing the City on the TCAs. Council subsequently determined to defer appointments to a later date, with the understanding that Councilmember Dahl would continue to represent the City until successors are appointed.

On March 15, 2012, the FPPC revised Regulation 18705.5 to provide that Councilmembers are no longer required to abstain when they are interested in serving in a position that pays \$250 or more in any 12-month period, **provided** that the City posts on its website, *on a form provided by the FPPC*, a list that sets forth each appointed position for which compensation is paid, the salary or stipend for each appointed position, the name of the public official who has been appointed to the position, the name of the public official, if any, who has been appointed as an alternate, and the term of the position. The FPPC has recently issued Form 806, which must be used to post paid appointments on the City's website. Copies of Form 806, as well as Revised Regulation 18705.5, are attached for Council's reference.

Because the FPPC issue is now resolved, Staff recommends that all five Councilmembers consider appointing the City's representatives to the San Joaquin Hills and Foothill/Eastern Transportation Corridor Agencies. Staff further recommends that Council appoint an alternate representative to each agency.

**Recommended  
Action:**

1. Appoint one Councilmember to serve as the City's representative to the San Joaquin Hills Transportation Agency and one Councilmember to serve as the City's representative to the Foothill/Eastern Transportation Corridor Agency, and appoint an alternate representative to each agency.
2. Direct the City Clerk to include the necessary appointment information on FPPC Form 806 and post it to the City's website in accordance with State law.

**Fiscal Impact:** None

**Attachments:** 1) FPPC Form 806  
2) Revised Regulation 18705.5

**Notification:** None.

**Agency Report of:  
Public Official Appointments**

**A Public Document**

<b>Agency Name</b>			<b>California Form 806</b>
Division, Department, or Region <i>(If Applicable)</i>			For Official Use Only
Designated Agency Contact <i>(Name, Title)</i>			
Area Code/Phone Number	E-mail	Page ____ of ____	Date Posted:  <i>(Month, Day, Year)</i>

**2. Appointments**

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
	▶ Name _____ <i>(Last, First)</i>  Alternate, if any _____ <i>(Last, First)</i>	▶ _____ <i>Appt Date</i>  _____ <i>Length of Term</i>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <i>Other</i>
	▶ Name _____ <i>(Last, First)</i>  Alternate, if any _____ <i>(Last, First)</i>	▶ _____ <i>Appt Date</i>  _____ <i>Length of Term</i>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <i>Other</i>
	▶ Name _____ <i>(Last, First)</i>  Alternate, if any _____ <i>(Last, First)</i>	▶ _____ <i>Appt Date</i>  _____ <i>Length of Term</i>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <i>Other</i>
	▶ Name _____ <i>(Last, First)</i>  Alternate, if any _____ <i>(Last, First)</i>	▶ _____ <i>Appt Date</i>  _____ <i>Length of Term</i>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <i>Other</i>

**3. Verification**

*I have read and understand FPPC Regulation 18705.5. I have verified that the appointment and information identified above is true to the best of my information and belief.*

_____	_____	_____	_____
<i>Signature of Agency Head or Designee</i>	<i>Print Name</i>	<i>Title</i>	<i>(Month, Day, Year)</i>

Comment: \_\_\_\_\_

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## Agency Report of: Public Official Appointments

### Background

This form is used to report additional compensation that officials receive when appointing themselves to positions on committees, boards or commissions of a public agency, special district, and joint powers agency or authority. For example, a city councilmember may be appointed to serve as the city's representative on a joint powers insurance authority or a metropolitan planning organization or mayor. (Regulation 18705.5, amended 03.2012)

Each agency must post on its website a single Form 806 which lists all the paid appointed positions. When there is a change in compensation or a new appointment, the Form 806 is updated to reflect the change. The form must be updated promptly as changes occur.

### Initial Agency Posting

As soon as possible, each agency should prepare a Form 806 identifying all of the current paid appointments to other governmental agencies. Thereafter, the form may be amended to include the future appointments.

### Instructions

This form must be posted prior to a vote (or consent item) to appoint a governing board member to a paid position on another agency.

### Part 1. Agency Identification

Identify the agency name and information on who should be contacted for information.

### Part 2. Appointments

Identify the name of the other agency, board or commission. List the name of the official, and an alternate, if any.

List the appointment date and the length of term the agency official will serve. Disclose the stipend provided per meeting and the estimated annual payment. The annual salary is an estimate as it will likely vary depending on the number of meetings. It is not necessary to revise the estimate at the end of the calendar year.

### Part 3. Verification

The agency head or his/her designee must sign the verification.

### Frequently Asked Questions (FAQs)

- When does an agency need to complete the Form 806?  
A Form 806 is required when an agency's board members vote on an appointment for a board member to serve on another governmental agency and pay is provided.
- The city council votes to serve as the city's housing authority, a separate entity. Will the Form 806 be required?  
If the council members receive an additional compensation for serving on the housing authority, the Form 806 is required. If there is no payment, the Form 806 is not required.

- Are appointments made by a governing board to appoint one of its members to serve as an officer of that board for additional pay (e.g. mayor) required to be disclosed on Form 806?

Yes. Regulation 18705.5 permits voting on your own appointment to position of mayor as well as other boards and commissions so long as proper disclosure on the Form 806 is made. This exception and disclosure apply to agencies with governing boards that are elected or appointed.

- In determining the salary, must the agency include mileage reimbursements, travel payments, health benefits, and other compensation?

No. The FPPC regulation only requires the reporting of the stipend or salary.

- Which agency must post the Form 806?

The agency that is voting to appoint a public official must post the Form 806 on its website. The agency that the official will serve as a member is not required to post the Form 806. The form is not sent to the FPPC.

- When must the Form 806 be amended?

The Form 806 should be amended promptly upon any of the following circumstances: (1) the number of scheduled meetings is changed, (2) there is a change in the compensation paid to the members, or (3) there is a change in membership on the board or commission.

- When a body meets irregularly, how should the annual compensation be estimated?

The agency should estimate compensation using the highest number of meetings.

- In 2013 our agency will have a new appointment to a new agency. How is the Form 806 updated?

Before the agency votes on the appointment, the agency should update the Form 806 and identify the other governmental entity's name. If known, also include other information such as the number of meetings and stipend. As long as that information is posted prior to a vote of the governing board on an appointment, the agency is in compliance with Regulation 18705.5. Following the vote, the agency must update the form to identify the individual that will serve.

### Privacy Information Notice

Information requested by the FPPC is used to administer and enforce the Political Reform Act. Failure to provide information may be a violation subject to penalties. All reports are public records available for inspection and reproduction. Direct questions to FPPC's General Counsel, Fair Political Practices Commission, 428 J Street, Ste. 620, Sacramento, CA 95814.

**Agency Report of:  
Public Official Appointments  
Continuation Sheet**



Page \_\_\_\_ of \_\_\_\_

<b>1. Agency Name</b>	<b>Date Posted:</b> _____ <small>(Month, Day, Year)</small>
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Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ _____/_____/_____ <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ _____/_____/_____ <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ _____/_____/_____ <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ _____/_____/_____ <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ _____/_____/_____ <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ _____/_____/_____ <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18705.5. Materiality Standard: Economic Interest in Personal Finances.**

(a) A reasonably foreseeable financial effect on a public official's or his or her immediate family's personal finances is material if it is at least \$250 in any 12-month period. When determining whether a governmental decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered.

(b) The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family is the only person in the job classification or position.

(c) Notwithstanding subsection (b), pursuant to Section 82030(b)(2) and Regulation 18232, a public official may make, participate in making, or use his or her official position to influence or attempt to influence, a government decision where all of the following conditions are satisfied:

(1) The decision is on his or her appointment as an officer of the body of which he or she is a member (e.g., mayor or deputy mayor), or to a committee, board, or commission of a public agency, a special district, a joint powers agency or authority, a joint powers insurance agency or authority, or a metropolitan planning organization.

(2) The appointment is one required to be made by the body of which the official is a member pursuant to either state law, local law, or a joint powers agreement.

(3) The body making the appointment referred to in paragraph (1) adopts and posts on its website, on a form provided by the Commission, a list that sets forth each appointed position for which compensation is paid, the salary or stipend for each appointed position, the name of the public official who has been appointed to the position and the name of the public official, if any, who has been appointed as an alternate, and the term of the position.

COMMENT: Cross-references: For the definition of "immediate family," see Government Code section 82029.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

1. New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
2. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
3. Editorial correction of History 1 (Register 2000, No. 25).

11 A(1)-7

4. Amendment of section heading and section filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
5. Amendment of subsection (a) filed 1-16-2002; operative 2-15-2002 (Register 2002, No. 3).
6. Amendment of subsection (b) filed 6-21-2005; operative 7-21-2005 (Register 2005, No. 25).
7. Amendment of subsection (a) filed 12-18-2006; operative 1-17-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).
8. New subsections (c)-(c)(3) filed 4-23-2012; operative 5-23-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No. 17).

11 A(1)-8