



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: October 6, 2020

Agenda Item 6eD

Approvals: _____

City Manager ES

Dept. Head _____

Attorney _____

Finance _____

Department: City Clerk
Prepared By: Joanne Baade, City Clerk *JAB*
Subject: CONFLICT OF INTEREST CODE BIENNIAL UPDATE
Fiscal Impact: None.

Summary: Pursuant to the Political Reform Act (the "Act"), the City Council, at its meeting of May 19, 2020, directed Staff to conduct a review of the City's Conflict of Interest Code ("Code") to determine if changes to the Code were necessary.

During the review process, Staff found that revisions to the City's Conflict of Interest Code are necessary and is proposing that the Code be amended.

Background: One of the purposes of the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) (the "Act") is to prevent conflicts of interest through disclosure and disqualification. To facilitate this goal, the Act requires all public agencies to adopt and maintain a Conflict of Interest Code containing the rules for disclosure of personal assets and the prohibition from making or participating in making governmental decisions that may affect any personal assets. The Conflict of Interest Code must specifically designate all agency positions that make or participate in the making of decisions and assign specific types of personal assets to be disclosed that may be affected by the exercise of powers and duties of that position.

Moreover, the Act requires that agencies review and update their Codes as necessary when directed by the code-reviewing body every even-numbered year or when modification is necessitated by changed circumstances.

As the City's code-reviewing body, the City Council directed, at its meeting of May 19, 2020, that Staff review the City's Conflict of Interest Code to determine if updates were necessary. Staff has concluded its review and has determined that amendments to the Code are necessary to add new positions that must be designated, include provisions of electronic filing by certain filers with the Fair Political Practices Commission, and clarify disclosure requirements of interests in real property.

Attached is a redline version of the proposed amended Conflict of Interest Code showing the proposed revisions.

Staff Recommendation:

That Council adopt a Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.

Attachments:

- 1) Legislative (redline) version of amended Conflict of Interest Code
- 2) Proposed Resolution with Conflict of Interest Code attached

Notification:

- 1) A Notice of Intention to Amend the Conflict of Interest Code was posted on the City Hall Bulletin Boards at 100 Avenida Presidio and 910 Calle Negocio on September 22, 2020.
- 2) Employees whose positions are affected by changes in the amended Conflict of Interest Code were emailed copies of the "Notice of Intention to Amend the Conflict of Interest Code," together with the redline version of the proposed amended Code, on September 22, 2020.

LAW OFFICES OF
BEST BEST & KRIEGER LLP

LEGISLATIVE VERSION
(SHOWS CHANGES MADE)

CONFLICT OF INTEREST CODE
OF THE
CITY OF SAN CLEMENTE

CONFLICT OF INTEREST CODE OF THE CITY OF SAN CLEMENTE

~~(Adopted September 4, 2018)~~ Amended October 6, 2020

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, Regulation 18730 and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the **City of San Clemente (the "City")**.

The Mayor, Members of the City Council and Planning Commission, the City Manager, the City Attorney and the City Treasurer, may electronically file their annual statements of economic interests directly with the Fair Political Practices Commission. All other officials and designated positions required to submit a statement of economic interests shall file their statements with the **City Clerk** as the District's City's Filing Officer. ~~The City Clerk shall make and retain a copy of all statements filed by the Mayor, Members of the City Council and Planning Commission, the City Manager, the City Attorney and the City Treasurer and forward the originals of such statements to the Fair Political Practices Commission.~~ The **City Clerk** shall retain the original statements filed by all othersuch officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

All officials and designated positions required to submit a statement of economic interests shall receive ethics training every two years as required pursuant to Government Code section 53235 (AB 1234). The City's Filing Officer shall annually provide all filers with information on training available to meet the requirements of Section 53235, and maintain required records indicating the dates that filers satisfied the training requirements and the entity that provided the training. These records shall be retained for five years after the date of training and are public records subject to disclosure under the California Public Records Act. (Gov. Code § 53235.2.)

APPENDIX
CONFLICT OF INTEREST CODE
OF THE
CITY OF SAN CLEMENTE

~~(Adopted September 4, 2018)~~ Amended October 6, 2020

PART "A"

The Mayor, Members of the City Council and the Planning Commission, the City Manager, the City Attorney, the City Treasurer, and All Other City Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3, are NOT subject to the City's Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the positions listed below are Other City Officials who manage public investments¹. These positions are listed here for informational purposes only.

Investment Advisory Committee

Investment Consultant

¹ Individuals holding one of 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 § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Assistant City Manager – Finance and Administrative Services Director	1, 2
Assistant Utilities Manager	5
Associate Civil Engineer	2, 3, 5, 6
Building Inspector (ALL)	2, 3, 6
<u>Building Official</u>	<u>2, 3, 5, 6</u>
Business Services Officer	2, 4
Chief of Police Services	5
City Clerk	5
City Fire Chief	5
City Planner	2, 3, 5, 6
Code Compliance Manager	2, 5, 6
Community Development Director	1, 2
Deputy Administrative Services Director	1, 2
Deputy Community Development Director	2, 3, 5, 6
<u>Deputy Public Works Director</u>	<u>2, 3, 5, 6</u>

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Environmental Programs Supervisor	5
Financial Services Officer	4
Golf Course Manager	5
Human Resources Manager	4
Information Technology Manager	5
Legislative Administrator	5, 8
Maintenance Manager	5
Maintenance Operations Supervisor	5
Marine Safety Chief	5, 6
Principal Civil Engineer	1, 2
Principal Civil Engineer/Asset Manager	1, 2
Principal Planner	2, 3, 5, 6
Public Works Director/City Engineer	1, 2
Recreation Manager	5, 7
Risk Management/Human Resources Officer	5, 8
Senior Civil Engineer	1, 2
Management Analyst, II	2, 3, 5
Senior Plan Check Engineer	2, 3, 6
Senior Planner	2, 3, 6
Systems Applications Analyst	5
Transportation Engineering Manager	1, 2

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Utilities Director	5
Utilities Maintenance Supervisor	5
Utilities Manager	5
Utilities Operations Supervisor (ALL)	5

MEMBERS OF BOARDS,
COMMITTEES & COMMISSIONS

Beaches, Parks and Recreation Commission	2, 3, 5
Coastal Advisory Committee	9
Golf Course Committee	5
Human Affairs Committee	5

Consultants and New Positions*

*Individuals serving as a consultant as defined in FPPC Reg 18700.3 or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The City Manager may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.). The City Manager'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 Sec. 81008.)

PART "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned.² "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of the District.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of the City, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the City.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the City.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position's department, unit or division.

Category 6: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, subject to the regulatory, permit, or licensing authority of the designated employee's department, unit or division.

² This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

Category 7: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, or income from a nonprofit organization, if the source is of the type to receive grants or other monies from or through the City or its subdivisions.

Category 8: All investments and business positions in business entities, and sources of income, including gifts, loans, and travel payments, if such entities or sources have filed claims against the City in the past two years, or have a claim pending before the City.

Category 9: All interests in real property, and all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in, or own real property within the geographical area of, and within two miles of, the designated position's assigned advisory area.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA, APPROVING AND
ADOPTING AN AMENDED CONFLICT OF INTEREST
CODE PURSUANT TO THE POLITICAL REFORM ACT OF
1974**

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000, et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the City of San Clemente (the "City"), and which requires all public agencies to adopt and promulgate a conflict of interest code; and

WHEREAS, the City Council adopted a Conflict of Interest Code (the "Code"), which was amended on September 4, 2018, in compliance with the Act; and

WHEREAS, subsequent changed circumstances within the City have made it advisable and necessary, pursuant to Sections 87306 and 87307 of the Act, to amend and update the City's Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the City being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the City Council of, the proposed amended Code was provided to each affected designated employee and was publicly posted for review; and

WHEREAS, a public meeting was held upon the proposed amended Code at a regular meeting of the City Council on October 6, 2020, at which all present were given an opportunity to be heard on the proposed amended Code.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Clemente that:

1. The City Council does hereby approve and adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the City Clerk and available to the public for inspection and copying during regular business hours.

2. The said amended Conflict of Interest Code shall become effective immediately upon its adoption and approval.

3. All previous conflict of interest codes of the City of San Clemente shall be rescinded upon the effective date of said amended Code as approved by the City Council.

PASSED, ADOPTED AND APPROVED at a regular meeting of the City Council of the City of San Clemente on this 6th day of October, 2020.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor Pro Tem of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 6th day of October, 2020.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

LAW OFFICES OF
BEST BEST & KRIEGER LLP

CONFLICT OF INTEREST CODE
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LAW OFFICES OF
BEST BEST & KRIEGER LLP

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Management Analyst, II	2, 3, 5
Senior Plan Check Engineer	2, 3, 6
Senior Planner	2, 3, 6
Systems Applications Analyst	5
Transportation Engineering Manager	1, 2

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