



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Conduct biennial review of Conflict of Interest Code and adopt amendments for the Code for 2008

RECOMMENDED MOTION:

Conduct biennial review of Conflict of Interest Code and adopt resolution approving the amendments for the Code for 2008

SUMMARY

Every two years, Council is required to review the Conflict of Interest Code and determine whether the existing Code requires any changes.

On September 2, Council received recommendations from staff on amending the Code. The recommended changes reflected elimination of positions that are no longer in existence, or positions which had title changes. No new positions were added. Additionally, no changes were made to the boards and commissions which had been listed in previous years.

At this meeting, Council raised concerns as to what positions/boards qualify under the "Designated Employee Positions" and further requested clarification on the disclosure categories.

BACKGROUND

The City Manager and City Attorney performed an intense review of the Code in 2006. Council approved those recommended modifications to the Code.

When reviewing the Conflict of Interest Code, three basic components must be met:

- Language that contains the basic provisions required in Government Code Section 87302
- A list of designated positions whose duties include making or participating in making governmental decisions

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- Disclosure categories specifying financial interests (investments, interests in real property, income, and business positions) that filers in designated positions must disclose

With regard to the first component, the City has met these requirements. Attached you will find the specific wording of Government Code Section 87302.

The second component requires listing positions that make or participate in making decisions. Typically, positions that involve voting on matters, negotiating contracts, or making recommendations on purchases without substantive review must be included in the Code. Here, Council questioned why several positions were not included in the designated list; it was explained that those positions are automatic filers and are found in the wording of Government Code Section 87200. In order to avoid this confusion, staff has footnoted those positions in the in the designated list.

Additionally, Council raised concern with regard to the designation of boards and commission in the Code. FPPC recommends that the minutes of these boards/commissions be reviewed to determine if they are "***Solely advisory, or do they have decision-making authority?***"

Finally, Council felt that the disclosure categories were not clear. Staff has suggested changing the wording for the disclosure categories which may avoid some of the confusion previously encountered (see Exhibit B, item E). Should Council approve the new wording, the Disclosure Categories column in Exhibit A will need to be corrected to reflect the change.

ISSUES

As previously noted, the City of Sausalito is required by the Political Reform Act to review its Conflict of Interest Code during every even-numbered year and, through adoption of a resolution, make any required changes to ensure that our code is in compliance with the requirements of that Act. The changes should be submitted to the FPPC by October 1.

Staff has clarified wording with regard to the specification of the state required filers and the clarification of the disclosure categories. However, regarding those positions and/or boards and commissions listed on the Designated Filer List, staff will leave the final decision as to who is on or off the list to Council.

STAFF RECOMMENDATIONS

- 1) Council review the above listed definitions and make appropriate changes to the Conflict of Interest Code for the Designated Filer List
- 2) Council review the new wording for the disclosure categories.

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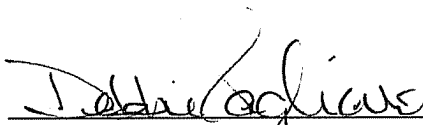
- 3) Finally, Council adoption of a resolution amending the City's Conflict of Interest Code for 2008.

ATTACHMENTS


- 1) Government Code Sections 87302 and 87200-01
- 2) Draft Resolution adopting Conflict of Interest Code

PREPARED BY:

Reviewed by:

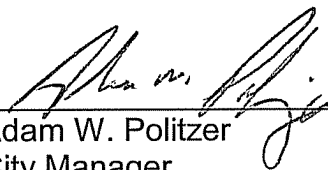


Debbie Pagliaro
Assistant to the City Manager



Mary Wagner
City Attorney

SUBMITTED BY:



Adam W. Politzer
City Manager

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California Government Code Section 87302

87302. Each Conflict of Interest Code shall contain the following provisions:

(a) Specific enumeration of the positions within the agency, other than those specified in Section 87200, which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. An investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position.

(b) Requirements that each designated employee, other than those specified in Section 87200, file statements at times and under circumstances described in this section, disclosing reportable investments, business positions, interests in real property and income. The information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by Sections 87206 and 87207. The first statement filed under a Conflict of Interest Code by a designated employee shall disclose any reportable investments, business positions, interests in real property, and income. An initial statement shall be filed by each designated employee within 30 days after the effective date of the Conflict of Interest Code, disclosing investments, business positions, and interests in real property held on the effective date of the Conflict of Interest Code and income received during the 12 months before the effective date of the Conflict of Interest Code. Thereafter, each new designated employee shall file a statement within 30 days after assuming office, or if subject to State Senate confirmation, 30 days after being appointed or nominated, disclosing investments, business positions, and interests in real property held on, and income received during the 12 months before, the date of assuming office or the date of being appointed or nominated, respectively. Each designated employee shall file an annual statement, at the time specified in the Conflict of Interest Code, disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year. Every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

(c) Specific provisions setting forth any circumstances under which designated employees or categories of designated employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of any decision. Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be affected materially by the decision. No designated employee shall be required to disqualify himself or herself with respect to any matter which could not legally be acted upon or decided without his

or her participation.

(d) For any position enumerated pursuant to subdivision (a), an individual who resigns the position within 12 months following initial appointment or within 30 days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation, the individual does not make, participate in 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. Within 30 days of the date of a notice mailed by the filing officer, the individual shall do both of the following:

(1) File a written resignation with the appointing power.

(2) File a written statement with the filing officer on a form prescribed by the commission and signed under the penalty of perjury stating that the individual, during the period between appointment and resignation, 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.

87302.3. (a) Every candidate for an elective office that is designated in a conflict of interest **code** shall file a statement disclosing his or her investments, business positions, interests in real property, and income received during the immediately preceding 12 months, as enumerated in the disclosure requirements for that position. The statement shall be filed with the election official with whom the candidate's declaration of candidacy or other nomination documents to appear on the ballot are required to be filed and shall be filed no later than the final filing date for the declaration or nomination documents.

(b) This section does not apply to either of the following:

(1) A candidate for an elective office designated in a conflict of interest **code** who has filed an initial, assuming office, or annual statement pursuant to that conflict of interest **code** within 60 days before the deadline specified in subdivision (a).

(2) A candidate for an elective office who has filed a statement for the office pursuant to Section **87302.6** within 60 days before the deadline specified in subdivision (a).

87302.6. Notwithstanding Section **87302**, a member of a board or commission of a newly created agency shall file a statement at the same time and in the same manner as those individuals required to file pursuant to Section **87200**. A member shall file his or her statement pursuant to Section **87302** once the agency adopts an approved conflict-of-interest **code**.

California Government Code Section 87200-01

87200. This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

87201. Every candidate for an office specified in Section 87200 other than a justice of an appellate court or the Supreme Court shall file no later than the final filing date of a declaration of candidacy, a statement disclosing his or her investments, his or her interests in real property, and any income received during the immediately preceding 12 months.

This statement shall not be required if the candidate has filed, within 60 days prior to the filing of his or her declaration of candidacy, a statement for the same jurisdiction pursuant to Section 87202 or 87203.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
AMENDING THE CITY'S CONFLICT OF INTEREST CODE

WHEREAS, pursuant to Resolution No. 2940, the City Council of the City of Sausalito adopted the Model Conflict of Interest Code found at Section 18730 of the Regulations of the Fair Political Practices Commission, codified in Title 1 of the California Code of Regulations as the Conflict of Interest Code for the City of Sausalito; and

WHEREAS, the Conflict of Interest Code for the City of Sausalito was most recently amended and readopted pursuant by Resolution No. 4843 on July 11, 2006 (the "City's Conflict of Interest Code"); and

WHEREAS, under the Political Reform Act, Government Code Section 81000, *et seq.*, (the "Political Reform Act") the City Council as the "code reviewing body" for the City is required to review the City's Conflict of Interest Code and to make any required amendments by October 1 of every even-numbered year; and

WHEREAS, the City Council of the City of Sausalito desires to amend the City's Conflict of Interest Code in order to adopt the revisions to the List of Designated Employees set forth on the attached Exhibit "A".

NOW THEREFORE, the City Council of the City of Sausalito does hereby resolve as follows:

Section 1. Amendment to Conflict of Interest Code. The List of Designated Employees set forth as Appendix A to the Conflict of Interest Code of the City of Sausalito is hereby amended as set forth on Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2. Full Force and Effect. Except as set forth herein, all other provisions of the Conflict of Interest Code of the City of Sausalito shall remain in full force and effect.

Section 3. Severability. If the title, or any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid or unconstitutional such decision shall not affect the validity of the remaining portions of this Ordinance and its title and each section, subsection, clause and phrase hereof irrespective of the fact that the title or any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the ___th day of _____, 2008, by the following vote:

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AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

DEPUTY CITY CLERK

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EXHIBIT "A"

Appendix A

<u>Designated Employee Positions Under Government Code Section 87300</u>	<u>Disclosure Categories</u>
Members of the Arts Commission	2
Members of the Board of Library Trustees	2, 4
Members of the Historic Landmarks Board	2, 4, 6
Members of the Parks & Recreation Commission	2, 3, 4, 5, 6
Members of the Tree Committee	2, 4
Members of the Underground Committee	2, 4
Finance Systems Technician	1, 2, 5, 6
Accounting Technician	5, 6
Assistant to the City Manager	1, 2, 5, 6
Assistant Planner	2, 3, 4, 5
Associate Planner	2, 3, 4, 5
Building Inspector	2, 3, 4, 6
City Engineer	1, 2, 3, 4, 5, 6
Civil Engineer II	3, 4, 5, 6
City Librarian	1, 2, 5, 6
Community Development Director	1, 2, 5, 6
<u>Deputy Planning Director</u>	1, 2, 5, 6
Fire Captain	1, 2, 5, 6
Fire Chief	1, 2, 5, 6
Parking and Transportation Manager	1, 2, 5, 6
Administrative Services Manager	1, 2, 5, 6
Police Captain	1, 2, 5, 6
Police Chief	1, 2, 5, 6
<u>Police Lieutenant</u>	1, 2, 5, 6
Public Works Director	1, 2, 3, 4, 5, 6
Recreation Director	1, 2, 5, 6
Technology Manager	1, 2, 5, 6

Employees required to file pursuant to CGC§ 87200:

City Manager	Full Disclosure
City Council	Full Disclosure
Planning Commissioners	Full Disclosure
City Attorney	Full Disclosure
Administrative Services Director/Treasure (Finance Director)	Full Disclosure

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Designated Consultant Positions: Disclosure Categories to be determined by the City Manager

The City Manager shall review the duties of all consultants at the time of entering into any agreement with them and, if applicable, shall require the consultant to make appropriate disclosures in accordance with those required of the staff member categories listed in Exhibit A. A Consultant is an individual who, pursuant to a contract with the City, (1) serves in a staff capacity and in that capacity participates in making a governmental decision or performs the same or substantially the same duties for the City that a staff member would perform, or (2) the makes governmental decisions whether to approve a rate, rule or regulation; adopt, or enforce a law; issue, deny, suspend or revoke a permit, license, application, certificate, approval, order, or similar authorization or entitlement; authorize the City to enter into, modify or renew a contract provided it is the type of contract which requires agency approval; grant City approval to a contract which requires City approval and in which the City is a party or to the specifications for such a contract; grant City approval to a plan, design, report, or study, or similar item; or adopt, or grant City approval of policies, standards, or guidelines for the City or any subdivision thereof. (2 Cal. Code Regs. §18701(a)(2).)

Note:

~~The persons holding the following positions must comply with the separate disclosure requirements of Government Code Section 87200: City Manager/City Clerk, Mayor, City Councilmembers, Planning Commissioners, City Attorney, Finance Director Administrative Services Director/Treasurer.~~

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APPENDIX B DISCLOSURE CATEGORIES

A. Persons holding positions listed in Appendix A are required to file the initial, annual, and leaving office statements of financial interest required by this Code for the types of financial interests indicated in the Disclosure Category column adjacent to the Designated Position column in Appendix A. It has been determined that the positions listed in the Designated Position column make or participate in the making of decisions which foreseeably may have a material financial effect on the types of financial interests required to be reported. (See Gov. Code §87302; 2 Cal. Code of Regs. §18730(b)(2).)

B. Where the Disclosure Category requires disclosure of interests in real property, the designated employee need only disclose real property which is located in whole or in part anywhere within and extending to within two miles outside the Sausalito City limits. (See Gov. Code §82033, 82035.)

C. Where the Disclosure Category requires disclosure of investments or sources of income, the designated employee need only disclosure investments in business entities and sources of income which do business in Sausalito, plan to do business in Sausalito, or have done business in Sausalito within the past two years. In addition to other activity, a business entity is doing business within Sausalito if it owns property in Sausalito. (See Gov. Code §82030, 82034.) Where disclosure requires "sources of income", income includes the official's 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. (See Gov. Code §82030; 2 Cal. Code of Regs. §18730(b)(7)(B) fn. 5.)

D. Where the Disclosure Category requires the disclosure of business positions, the designated employee need only disclosure positions of director, officer, partner, trustee, employee or any position of management in organizations or enterprises operated for profit. (See 2 Cal. Code of Regs. §18730(b)(7)(D).)

E. The Disclosure Categories are:

Category 1: ~~Investments and sources of income~~

Category 2: ~~Interests in real property~~

Category 3: ~~Investments, interests in real property and sources of income subject to the regulatory, permit or licensing authority of the department~~

Category 4: ~~Investments in business entities and sources of income which engage in land development, construction, or the acquisition or sale of real property~~

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~~Category 5: Investments in business entities and sources of income of the type which, within the past two years, have contracted with the City of Sausalito to provide services, supplies, materials, machinery or equipment. (See Gov. Code §1090.)~~

~~Category 6: Business positions~~

Full Disclosure: All interests in real property, as well as investments, business positions and sources of income, including gifts, loans and travel payments.

Full Disclosure (excluding interests in real property): All investments, business positions and sources of income, including gifts, loans and travel payments.

Interests in Real Property: All interests in real property.

F. Please note that no city employee, consultant or official may make or participate in the making of any decision that might affect a financial interest whether or not that person is listed as a designated employee or whether the interest has been listed or not. (See 2 Cal. Code of Regs. §87302(c).)

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