



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

Date: September 21, 2016

PETER KEANE
VICE-CHAIRPERSON

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director

BEVERLY HAYON
COMMISSIONER

Re: **Agenda Item No. 8 - Discussion and Possible Action on Proposed 2016 Biennial Conflict of Interest Code Update for Ethics Commission**

DAINA CHIU
COMMISSIONER

Summary

This memo provides information to assist the Ethics Commission in reviewing and adopting an update to its Conflict of Interest Code list of designated filers and disclosure categories

QUENTIN L. KOPP
COMMISSIONER

Action Requested

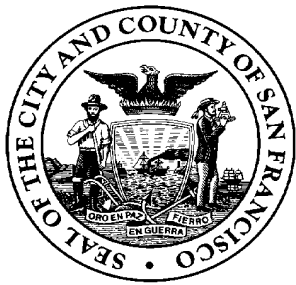
That the Commission consider and take action on the proposal at its next Regular Meeting on September 26, 2016

LEEANN PELHAM
EXECUTIVE DIRECTOR

The California Political Reform Act requires the Conflict of Interest ("COI") Codes of every public agency to be reviewed and updated every other year. Conflict of Interest Codes identify positions designed to file regular public financial disclosure forms, or Form 700s, because they make or participate in making or influencing governmental decisions.

For all departments in San Francisco, the list of designated positions appears in Chapter 1 of Article III of the San Francisco Campaign and Governmental Conduct Code sections 3.1-100 – 3.1-510. Those sections also show the disclosure categories departments have assigned to their designated positions.

To promote enhanced public transparency about the Ethics Commission's operations and activities and enable the Commission's action on the proposed revisions, this item has been placed on the Commission's next regular meeting agenda. For this year's biennial review process, Commission staff recommends adoption of the changes detailed in the attached memorandum (Memo to All Staff, Attachments 2 and 3).



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

August 26, 2016

PETER KEANE
VICE-CHAIRPERSON

To: All Ethics Commission Staff

BEVERLY HAYON
COMMISSIONER

From: LeeAnn Pelham, Executive Director

DAINA CHIU
COMMISSIONER

Re: **2016 Biennial Conflict of Interest Code Review - Proposed Update of Ethics Commission Designated Filers and Disclosure Categories**

VACANT
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

State law requires the Conflict of Interest ("COI") Codes of every public agency to be reviewed and updated every other year. As you know, COI codes identify positions designed to file regular public financial disclosure forms, or Form 700s, because they make or participate in making or influencing governmental decisions. For all departments in San Francisco, the list of designated positions appears in Chapter 1 of Article III of the San Francisco Campaign and Governmental Conduct Code sections 3.1-100 – 3.1-510. Those sections also show the disclosure categories departments have assigned to their designated positions.

Each department is responsible for keeping their list of positions and disclosure categories current. Changes to a COI Code may be needed when agencies restructure, or when positions that make decisions, or participate in making or influencing decisions change. The biennial COI Code review requirement helps ensure agencies periodically review their list of designated filers to ensure it is current, and to ensure the disclosures required by those filers are appropriately tailored to the nature and scope of work they perform.

As the Code Reviewing Body for the City and County of San Francisco, the Board of Supervisors is charged with approving any Conflict of Interest Code changes after receiving input from each department. Last month, the Clerk of the Board notified all departments of their obligation to conduct their biennial review. As part of our process, and to promote enhanced public transparency about the Ethics Commission's operations and activities, our proposed revisions will be placed on the Ethics Commission's agenda for its September 26, 2016, meeting to enable the Commission's action on these updates.

For background, this memo provides a general refresher on agency conflict of interest codes and financial disclosure requirements. Attachment 1 shows our current designated positions and disclosure categories. Attachment 2 lists proposed additions, deletions, and changes. Attachment 3 shows the proposed revised list of designated positions and disclosure categories.

I am circulating this memo to all staff to highlight these proposed changes and to provide a 30-day period for your individual input and questions prior to the Commission's action. We'll also have the opportunity to review and discuss it at our August all-staff meeting, which was rescheduled to August 31.

Background:

Conflicts of Interests and Financial Disclosure

As the City Attorney's *Good Government Guide* discusses, California's principal state law governing conflicts of interest for government officials throughout the state is contained in the Political Reform Act, or "PRA." The PRA prohibits public officials from making, participating in making, or seeking to influence governmental decisions in which they have a financial interest.

A public official is defined as a "member, officer, employee, or consultant" of a local government agency, and includes any member of a board or commission with decision making authority. If the individual is not a public official, then the Political Reform Act does not apply.

Under the PRA, an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect –different from the effect on the public generally – on the public official's economic interests. When a public official has a conflict of interest under the Political Reform Act, the official must abstain from participating in the decision-making process, including any discussions or meetings leading up to the final decision.¹

Financial Disclosure Under the Political Reform Act

To promote accountability in government decision-making, the PRA requires public officials with significant decision making authority to publicly disclose their financial interests. In general, public officials must disclose the types of economic interests that could potentially lead to a conflict of interest under the PRA. These "statements of economic interests" are commonly referred to as "SEIs" or "Form 700s." These filings serve two key purposes – to help officials detect and avoid possible conflicts of interests; and to inform the public about an official's personal financial interests that could cause a potential conflict of interest.

The breadth of a public official's financial disclosure requirements depends upon the nature of the position held by a particular public official. Depending upon their job duties and scope of their responsibilities, public officials who are required to file Form 700s must disclose for the applicable reporting period some or all of their interests in real property located in San Francisco, investments, business positions, and income (including gifts and loans) received. Because officials are also considered to have an economic interest in the interests of their spouse, registered domestic partner, and dependent children, officials must also report those interests in addition to their own.

¹ The State's Fair Political Practices Commission (FPPC) has developed a multi-step framework for assessing whether an officer or employee has a conflict of interest under the PRA. As part of that analysis, various factors established are closely examined. These include whether the decision "directly" or "indirectly" involves the official's economic interest; how foreseeable it is the decision would have a "material financial effect;" and whether the effect of the decision for the official's interest would be distinguishable from the effect on the public generally. Because this analysis can be complex, officials should always seek guidance to determine whether they have a conflict and if so, what actions they should take or avoid taking. For more a more in-depth discussion, see the City Attorney's *Good Government Guide* at <http://www.sfcityattorney.org/good-government/good-government-guide/>.

What Makes Someone a Designated Filer?

Making, Participating in Making, and Influencing Decisions

All public officials (including elected officials, candidates for elective office, appointed officials, and employees) who make or participate in making governmental decisions that could affect their personal financial interests are required to file financial disclosure forms. (See Cal. Govt. Code §§ 87200, 87302).

The PRA prohibits a public official from making, participating in making, or seeking to influence a government decision in which the official has a financial interest. The PRA specifically defines these activities as follows:

- ✓ **Making a decision.** A public official makes a decision when the official:
 - votes; or
 - obligates the agency to a course of action; or
 - appoints a person to a position; or
 - enters into a contract for the agency.

Note: Deciding not to act, unless based on disqualification under the PRA, also constitutes making a decision.

- ✓ **Participating in making a decision.** Participating in making a decision includes negotiating, providing advice by way of research, investigation, or preparation of reports or analyses for the decision-maker, if these functions are performed without significant intervening substantive review.

Note: Participating in making a decision does not include: taking ministerial or clerical actions; appearing before an agency to represent the official's personal interests; or participating in actions regarding the public official's own compensation for services or the terms or conditions of the official's employment or contract.

- ✓ **Influencing a decision.** Influencing a decision includes: contacting, appearing before, or otherwise attempting to influence any member, officer, employee or consultant of the official's agency or an agency appointed by or subject to the budgetary control of the official's agency.

Note: Even where a public official appears before another agency that is not subject to the control of the official's agency, the official still would be considered to be influencing a decision if the official is acting on behalf of or as a representative of the public official's agency in contacts with the other agency. Only where the official is acting solely in a personal capacity in such a situation could the official avoid being deemed to be influencing a decision. Acting as a representative of the official's agency includes, for example, delivering correspondence using official stationery.

Types of Economic Interests Subject to Public Disclosure

There are certain types of economic interests that state law identifies as possible sources of conflicts for public officials. These types of interests are subject to public disclosure depending on the official's authority and scope of duties. Disclosure requirements are designed to reflect the types of interests that could be affected by the filer's duties and therefore should be tailored accordingly. In general, the types of reportable interests defined under state law include:

Investments.

An "investment" is a financial interest in any business entity (including a consulting business or other independent contracting business) that is located in, doing business in, planning to do business in, or that has done business during the previous two years in your agency's jurisdiction in which you, your spouse or registered domestic partner, or your dependent children had a direct, indirect, or beneficial interest totaling \$2,000 or more at any time during the reporting period.

Key Points

An entity does business in the jurisdiction if it has contacts on a regular or substantial basis with a person who maintains a physical presence in the City and County of San Francisco. Contacts include manufacturing, distributing, selling, purchasing or providing goods or services.

A public official who claims that a business is not doing business in the jurisdiction bears the burden of demonstrating this fact.

Real Property.

Real property located in your agency's jurisdiction in which you, your spouse or registered domestic partner, or your dependent children had a direct, indirect, or beneficial interest totaling \$2,000 or more any time during the reporting period.

Key Points

An indirect investment means an investment owned by your spouse, dependent child, or agent, or by a business entity or trust in which you (or your spouse, registered domestic partner, dependent child, or agent) owns a 10% or greater interest.

Source of income or gifts.

Gross income of \$500 or more you received during the reporting period, other than loans from a commercial lending institution. Income also includes income to your spouse or registered domestic partner if your community property share was \$500 or more during the reporting period.

A gift is anything of value for which you have not provided equal or greater consideration to the donor.

Key Points

A source of income must be reported only if the source is located in, doing business in, planning to do business in, or has done business during the previous two years in your agency's jurisdiction.

Depending on your disclosure category, reportable sources of income may be further limited by your agency's conflict of interest code.

Travel payments are income if you provided services that were equal to or greater in value than the payments received. You must disclose income totaling \$500 or more from a single source during the period covered by the statement

Business positions.

You must report any business entity doing business in the jurisdiction in which you are a director, officer, partner, trustee, or employee or holds any position of management. Your job title with each reportable business entity must be disclosed even if you received no income during the reporting period.

Proposed 2016 Amendments

The list of positions and disclosure categories currently designated by the Ethics Commission for the existing Conflict of Interest Code is shown in Attachment 1. All designated positions are assigned to Disclosure Category 1. The Commission’s list of filers and disclosure categories appears to have last been amended in 2010.

For reference, the Ethics Commission’s adopted FY17 and FY18 operational budget provides for the position authorities shown below in Chart 1, with several positions newly authorized and funded. These positions are shown in Attachment 2 as “Positions Added.” In addition, with a new organizational structure implemented beginning in FY17, a number of positions previously listed on the Ethics Commission’s Code have new working titles. These are shown in that attachment as “Positions Changed.” Lastly, one position shown on the current list of designated filers has not existed for several years, and so it appears on Attachment 2 under “Positions Deleted.”

Due to the nature of the Commission’s work and structure, Ethics Commission staff routinely participate in making decisions that have the potential to affect a wide range of interests. These activities can range from providing advice by way of research, investigation, or preparation of reports or analyses for the decision-maker, as well as negotiating outcomes without significant intervening substantive review. All positions currently listed, therefore, retain a Category 1 designation. All newly added positions also are designated as Category 1 filers, except the Information Systems Business analyst. Due to the more limited scope and focus of that position’s IT work, the Information Systems Business Analyst (1053) is designated as a Category 2 filer.

Chart 1 – Ethics Commission Staff Positions Effective July 1, 2016



Attachment 1
Current List of Positions and Disclosure Categories
Designated in Existing SF Ethics Commission COI Code

Campaign and Governmental Conduct Code
SEC. 3.1-230. ETHICS COMMISSION.

<i>Designated Positions</i>	<i>Disclosure Categories</i>
Commission Member	1
Executive Director	1
Deputy Executive Director	1
Assistant Deputy Executive Director	1
Chief Enforcement Officer	1
Investigator/Legal Analyst	1
Campaign/Public Finance Auditor	1

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Ord. 58-01, File No. 001951, App. 4/13/2001; Ord. 73-03, File No. 022027, App. 4/25/2003; Ord. 99-05, File No. 041570, App. 5/25/2005; Ord. 80-07, File No. 070122, App. 4/19/2007; Ord. 320-10, File No. 101272, App. 12/23/2010)

Campaign and Governmental Conduct Code
SEC. 3.1-107. DISCLOSURE CATEGORY 1.

Unless otherwise specified, for each department or agency, Disclosure Category 1 shall read:
"Disclosure 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."

Attachment 2
Changes Proposed - 2016 Biennial Conflict of Interest Code Review
SF Ethics Commission

Positions Added

Title	Division	Reason
Education & Compliance Officer (1844)	Education and Compliance	Reports to Executive Director; responsible for day to day administration and oversight of campaign finance, ethics, and lobbying programs
Investigative Analyst (1822)	Enforcement & Legal Affairs	Reports to Deputy Director; responsible for conducting analysis, research and investigations, developing recommendations, preparing reports without significant intervening substantive review
Senior Policy Analyst (1823)	Policy	Reports to Executive Director; responsible for providing advice, conducting research, developing recommendations, and preparing reports without significant intervening substantive review
Policy Analyst (1822)	Policy	Reports to Senior Policy Analyst; responsible for providing advice, conducting research, developing recommendations, preparing reports without significant intervening substantive review
Electronic Disclosure & Data Analysis Manager (1053)	Electronic Disclosure & Data Analysis	Reports to Executive Director; has broad responsibility for technology procurement, and day to day management and oversight of all information systems with agency-wide reach
Information Systems Business Analyst (1052)	Electronic Disclosure & Data Analysis	Reports to Division manager; responsible for detailed scoping of technology projects and day to day project management of IS operations
Senior Fellow		Reports to Executive Director; has high-level responsibility to develop and implement new compliance tools and technologies agency wide

Positions Deleted

Title	Reason
Chief Enforcement Officer	Duties of position have been responsibility of Deputy Director; separate position no longer exists.

Positions Changed

Prior Listing	New Listing	Reason
Deputy Executive Director	Deputy Director (0951)	Change in working title effective FY17.
Assistant Deputy Executive Director	Assistant Deputy Director (1824)	Change in working title effective FY17.
Campaign/Public Finance Auditor	Auditor (1822) / Operations & Audits Division	Change in working title effective FY17.

Attachment 3
Proposed List of Designated Positions and Disclosure Categories
For SF Ethics Commission COI Code

Designated Position	Disclosure Category
Commission Member	1
Executive Director	1
Deputy Director	1
Assistant Deputy Director	1
Consultant / New Positions	*
Senior Fellow	1
<u>Education and Compliance Division</u>	
Education & Compliance Officer	1
<u>Policy Division</u>	
Senior Policy Analyst	1
Policy Analyst	1
<u>Operations and Audits Division</u>	
Auditor	1
<u>Enforcement and Legal Affairs Division</u>	
Investigator/Legal Analyst	1
Investigative Analyst	1
<u>Electronic Disclosure & Data Analysis Division</u>	
Electronic Disclosure & Data Analysis Manager	1
Information Systems Business Analyst	2

Disclosure Category 1

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.

Disclosure Category 2

Any investment in, business position with, or income (including gifts) from any source that:

1. Provides the type of information technology services, goods, or equipment used by the Ethics Commission, including but not limited to, computer hardware or software companies, computer consultant services, training, data processing firms, and media services; or
2. Provided or sought to provide such services, goods, or equipment to the Ethics Commission during the reporting period.

* Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: 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 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 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. (Gov. Code Section 81008.)