

# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU  
CHAIRPERSON

September 17, 2018

QUENTIN L. KOPP  
VICE-CHAIRPERSON

To: Members of the Ethics Commission

PAUL RENNE  
COMMISSIONER

From: LeeAnn Pelham, Executive Director

YVONNE LEE  
COMMISSIONER

Re: **Agenda Item No. 5 – Proposed 2018 Biennial Conflict of Interests Code Update for Ethics Commission**

NOREEN AMBROSE  
COMMISSIONER

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**Summary**

This memo provides information to assist the Ethics Commission in reviewing and adopting updates to its 2018 Conflict of Interests Code list of designated filers and disclosure categories.

LEEANN PELHAM  
EXECUTIVE DIRECTOR

**Action Requested**

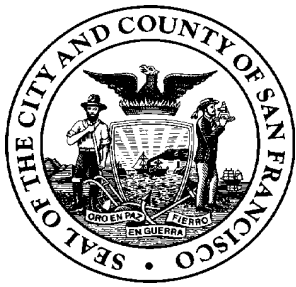
That the Commission consider and approve the proposed update at its next Regular Meeting on September 21, 2018.

The California Political Reform Act requires the Conflict of Interests (“COI”) Codes of every public agency to be reviewed and updated every other year. Conflict of Interests 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 as designated positions.

For transparency about the Ethics Commission’s operations and activities and to enable the Commission to act on proposed 2018 updates, 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 proposed changes as detailed in the attached *Memorandum to Ethics Commission Staff* dated August 22, 2018.



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU  
CHAIRPERSON

August 22, 2018

QUENTIN L. KOPP  
VICE-CHAIRPERSON

To: Ethics Commission Staff

PAUL RENNE  
COMMISSIONER

From: LeeAnn Pelham, Executive Director

YVONNE LEE  
COMMISSIONER

Re: **2018 Biennial Conflict of Interest Code Review - Proposed Update of Ethics Commission Designated Filers and Disclosure Categories**

NOREEN AMBROSE  
COMMISSIONER

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.

LEEANN PELHAM  
EXECUTIVE DIRECTOR

Each department is responsible for keeping its 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. The Clerk of the Board has notified all departments of their obligation to conduct their biennial review. As part of our process, and to support 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 21, 2018, 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 identifies proposed additions, deletions, and changes. Attachment 3 shows the revised list of designated positions and disclosure categories as proposed to be revised by this year's biennial COI review.

I am circulating this memo to all staff to highlight these proposed changes and to provide a period for your individual input and questions prior to the Commission's action next month. Thank you in advance for reviewing the attached materials, and please feel free to let me know if you have any questions or comments.

**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.<sup>1</sup>

**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.

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<sup>1</sup> 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 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 that may result in disqualification: a **business entity** in which the official has an investment of \$2,000 or more in which he or she is a director, officer, partner, trustee, employee, or manager; **real property** in which the official has an interest of \$2,000 or more including leaseholds; **income** received or promised aggregating to \$500 or more in the previous 12 months, including the official's community property interest in the income of his or her spouse or registered domestic partner; **gifts** aggregating \$470 or more in the previous 12 months; and **personal finances**, including income, assets, or liabilities, as well as those of his or her immediate family. 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. More information from the FPPC on conflicts of interests and how to avoid them can be found [here](#).

## Proposed 2018 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. This list of filers and disclosure categories resulted from the Commission’s last amendment in 2016 to update the list to reflect organizational changes and new working titles for some of the designated staff positions.

For reference, the Ethics Commission FY19 budget provides for the position authorities shown below in Chart 1.

Attachment 2 identifies positions proposed to be added, deleted, or revised in the 2018 COI biennial review process.

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. Positions generally, therefore, are identified with a Category 1 disclosure designation. Due to the more limited scope and focus of their IT work, the Information Systems Business Analyst and IS Business Analyst- Senior positions are both designated as Category 2 filers. The Ethics Commission’s resulting proposed list of designated COI positions and disclosure categories appears in Attachment 3.

**Chart 1 – Ethics Commission Staff Positions Effective July 1, 2018**



**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 Director	1
Assistant Deputy Director	1
Consultant/New Positions	*
Senior Fellow	1
<b>Education and Compliance Division</b>	
Education & Compliance Officer	1
<b>Policy Division</b>	
Policy Analyst	1
Senior Policy Analyst	1
<b>Operation and Audits Division</b>	
Auditor	1
<b>Enforcement and Legal Affairs Division</b>	
Investigative Analyst	1
Investigator/Legal Analyst	1
<b>Electronic Disclosure &amp; Data Analysis Division</b>	
Electronic Disclosure & Data Analysis Manager	1
Information Systems Business Analyst	2

(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; Ord. [251-16](#), File No. 161158, App. 12/22/2016, Eff. 1/21/2017)

\* 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 on 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.

**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 - 2018 Biennial Conflict of Interest Code Review**  
**SF Ethics Commission**

**Positions Added**

<b>Title</b>	<b>Division</b>	<b>Reason</b>
Chief Programs Officer	Engagement and Compliance	New position authority since last Code update. Reports to Executive Director and leads Engagement and Compliance Division.
Director of Enforcement & Legal Affairs	Enforcement & Legal Affairs	Position restructured to lead Enforcement & Legal Affairs Division. Reports to Executive Director.
Principal Program Manager	Audits	New position since last Code update. Reports to Deputy Director and Chief Programs Officer; responsible for project scoping and program management.
Principal Program Manager	Engagement and Compliance	New position authority since last Code update. Reports to Executive Director; responsible for project scoping and program management.
Senior Program Administrator	Engagement and Compliance	New position authority since last Code update. Reports to Deputy Director and Chief Programs Officer; responsible for project scoping and program management.
Information Systems Business Analyst – Senior	Electronic Disclosure & Data Analysis	New position authority since last Code update. Reports to Director of Technology Services; is responsible for detailed scoping of technology projects and project management.

**Positions Deleted**

<b>Title</b>	<b>Reason</b>
Assistant Deputy Director	Position no longer exists.
Senior Fellow	Position no longer exists.

**Positions Changed**

<b>Prior Listing</b>	<b>New Listing</b>	<b>Reason</b>
Education and Compliance Officer	Engagement and Compliance Officer	Change in working title since last Code update.
Electronic Disclosure & Data Analysis Manager	Director of Technology Services	Change in working title since last Code update.
Investigator/Legal Analyst	Senior Investigative Analyst	Change in working title since last Code update.

**Resulting List of Designated Positions and Disclosure Categories Proposed for SF Ethics  
as Proposed to be Revised by 2018 Biennial COI Code Review Process**

<b>Designated Position</b>	<b>Disclosure Category</b>
Commission Member	1
Executive Director	1
Deputy Director	1
Consultant / New Positions	*
<b><u>Engagement and Compliance Division</u></b>	
Chief Programs Officer	1
Principal Program Manager	1
Senior Program Administrator	1
Engagement & Compliance Officer	1
<b><u>Policy Division</u></b>	
Senior Policy Analyst	1
Policy Analyst	1
<b><u>Audits Division</u></b>	
Principal Program Manager	1
Auditor	1
<b><u>Enforcement and Legal Affairs Division</u></b>	
Director of Enforcement & Legal Affairs	1
Senior Investigative Analyst	1
Investigative Analyst	1
<b><u>Electronic Disclosure &amp; Data Analysis Division</u></b>	
Director of Technology Services	1
Information System Business Analyst - Senior	2
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.)