



Office of the City Manager

CONSENT CALENDAR

October 29, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Mark Numainville, CMC, City Clerk

Subject: Revised Conflict of Interest Code

RECOMMENDATION

Adopt a Resolution adopting a revised Conflict of Interest Code for the City of Berkeley and rescinding Resolution No. 65,921–N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

The Political Reform Act requires all cities to adopt and promulgate a Conflict of Interest Code ("Code") which specifies designated positions subject to financial disclosure and provides for specific levels of financial disclosure. It also requires amendments to the Code within designated time periods to reflect changed circumstances, including the creation of new positions which must be designated and relevant changes in duties assigned to existing positions (Government Code Sections 87100, et seq.).

The City of Berkeley's first Conflict of Interest Code was adopted on October 1, 1982 by Resolution No. 51,425–N.S. and has been amended as necessary over time to reflect changes in regulations, departmental organizational structure, designated positions within departments, and commissions. A revised Code was last adopted by the City Council on October 30, 2012 by Resolution No. 65,921–N.S.

The Code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to these positions require the disclosure of all investments, business positions, interests in real property and sources of income, which may foreseeably be affected materially by the decisions made by those designated positions. The Code includes all other provisions required by Government Code Section 87302 and incorporates by reference FPPC Regulation 2 Cal. Admin. Code Section 18730.

Attachment 2 shows those portions of the Code which require revision. Text which is added has been underlined and text proposed for deletion contains strikeout.

These department appendices have been updated to reflect changes in department organization, including the addition of newly established classifications and the deletion of classifications which have been abolished. Updates to the department appendices include amended disclosure appendices for the Finance, Fire, Health, Housing and Community Services, Human Resources, and Planning and Development Departments.

New disclosure appendices for the Children, Youth and Recreation Commission and the Parks and Waterfront Commission have been added. Five commission appendices have been removed from the Code entirely – Commission on Early Childhood Education (dissolved 12/31/12), Downtown Berkeley Business Improvement District Advisory Board (dissolved 12/31/11), Elmwood Advisory Board (dissolved 7/16/13), Parks and Recreation Commission (dissolved 7/1/13), and Waterfront Commission (dissolved 7/1/13).

CONTACT PERSON

Mark Numainville, CMC, City Clerk, 981-6900

Attachments:

1: Resolution

Exhibit A: Conflict of Interest Code – Department Appendices

Exhibit B: Conflict of Interest Code – Commission Appendices

Exhibit C: Conflict of Interest Code – Consultant Appendix

Exhibit D: Conflict of Interest Code – Index

2: Conflict of Interest Code – Revisions highlighted with Strikeout and Underline

RESOLUTION NO. ##,###-N.S.

ADOPTING A REVISED CONFLICT OF INTEREST CODE FOR THE CITY OF  
BERKELEY AND RESCINDING RESOLUTION NO. 65,921-N.S.

WHEREAS, the Political Reform Act, Government Code Sections 81000, et seq., requires every state or local government agency to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, state law as specified in the Political Reform Act (the Act) requires the City Council as the code-reviewing body to direct the review of its conflict of interest code; and

WHEREAS, the Act further requires that such direction must occur by July 1 of each even numbered year; and

WHEREAS, the Act additionally requires the submission of a revised conflict of interest code for approval by the code-reviewing body or the notification of said body that no changes are necessary; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a standard model Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Political Reform Act; and

WHEREAS, the City of Berkeley may incorporate in its Conflict of Interest Code, by reference, regulation, 2 Cal. Adm. Code Section 18730; and

WHEREAS, on October 1, 1982, the City Council of the City of Berkeley adopted Resolution No. 51,425-N.S., Conflict of Interest Code, for the City of Berkeley; and

WHEREAS, the Code has been amended over time to incorporate changes in regulations, departmental organizational structure, changes in job classifications, and the addition and deletion of certain boards and commissions; and

WHEREAS, Resolution No. 65,921-N.S., adopted October 2012, City of Berkeley's Conflict of Interest Code, requires minor amendments to reflect the current organizational structure of departments, their designated positions and level of disclosure; and

WHEREAS, the Council has determined that the attached Conflict of Interest Code accurately sets forth the current organizational structure of departments, their designated positions, and the respective categories of financial interests which should be made reportable and those boards and commissions which should be designated and the respective categories of financial interests which should be made reportable by their members.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. That Resolution No. 65,921–N.S. is hereby rescinded.

Section 2. That the City of Berkeley Conflict of Interest Code is hereby adopted, as attached, and includes the following:

(a) With the additions noted below, the terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and made a part of the Conflict of Interest Code of the City of Berkeley except that: (1) the term "investment" shall apply to financial interests in non-profit organizations as well as business entities; (2) the term "interest in real property" includes interests in berths at the Berkeley Marina regardless of when they expire; (3) the terms "non-profit organization" and "business entity" are limited to the jurisdiction in the same manner as the term "investment," i.e., they apply only if the non-profit organization, the business entity, or any parent, subsidiary or otherwise related entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business in the jurisdiction at any time during the two years prior to the time any statement or other action is required under this Code.

(b) Designated Positions with Reporting Requirements.

Elected officials, legislative assistants, members of boards and commissions appointed by the City Council, consultants and City employees holding designated positions shall be considered designated positions subject to reporting requirements under the Conflict of Interest Code, and shall disclose financial interests as set forth in the appendices listing individual disclosure categories.

Section 3. Filing of Statements

Persons holding designated positions shall file Statements of Economic Interests with the City of Berkeley on Fair Political Practices Commission forms, in conformance with the individual disclosure categories and State guidelines, when requested by the City Clerk. The City Clerk will retain custody of the statements and make the statements available for public inspection and reproduction.

Section 4. Late Filings and Failure to File Statements

Any violation of any provision of this Code is subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code Sections 81000 et seq. The following additional regulations shall apply to City of Berkeley (a) employees, (b) legislative assistants, (c) members of boards and commissions appointed by the City Council, and (d) consultants:

a. City Employees:

If a City employee fails to file an Initial, Assuming Office or Annual Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, he or she shall be suspended without pay until such time as the required disclosure form has been filed. The employee's supervisor shall comply with the provisions of the appropriate Memorandum of Understanding or City of Berkeley Personnel Rules and Regulations in imposing such suspension, in addition, the City Clerk shall impose late filing fees in accordance with Government Code Section 91013 and 91013.5. Prior to resuming active employment with the City of Berkeley, all outstanding statements must be filed and any outstanding fine, payable under Government Code Section 91013, shall be paid. No person shall resume active employment with the City of Berkeley if there are outstanding statements or fines.

b. Legislative Assistants

If a legislative assistant fails to file an Initial, Assuming or Annual Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, the legislative assistant shall be terminated until such time as the required disclosure form has been filed, in addition, the City Clerk shall impose late filing fees in accordance with Government Code Sections 91013 and 91013.5. Prior to being reappointed by a Councilmember, all outstanding statements must be filed and any outstanding fine, payable under Government Code Section 91013, shall be paid. No person shall resume employment as a legislative assistant if there are outstanding statements or fines.

c. Members of Boards and Commissions:

If a member of any non-elected board or commission specified in the Code fails to file an Assuming Office Statement of Economic Interests within thirty days after their date of appointment, the commissioner's term shall expire. Similarly, if an Initial or Annual Statement of Economic Interests is not filed within thirty days after the City Clerk has given specific written notice of non-filing, the member's term on the commission shall expire. The City Clerk shall notify the commissioner that his/her term has expired and the appointing councilmember that a vacancy exists on the commission, in addition, the City Clerk shall impose late filing fees in accordance with Government Code Sections 91013 and 91013.5.

If the commissioner has not taken the Oath of Office and not attended any meetings, the commissioner is deemed not to have accepted the appointment and is not subject to filing obligations.

Prior to being reappointed to any commission, all outstanding filings for all commission appointments must be filed and any outstanding fines, payable under Government Code Section 91013, shall be paid. No person shall be appointed to any commission if there are outstanding statements or fines; and no person shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file statements.

d. Consultants:

If a consultant, as defined in 2 Cal. Code Regs. Section 18701, fails to file any Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, he or she shall be advised by the City's project manager that no further payments shall be made by the City of Berkeley under the contract until such statement has been received by the City Clerk. The City Clerk shall also impose late filing fees in accordance with Government Code Sections 91013 and 91013.5.

Section 5. Interest and Positions in Non-Profit Organizations - Disclosure and Disqualification

Whenever a disclosure category requires disclosure of specific financial interests or positions in business entities, disclosure of the equivalent financial interests or positions in non-profit organizations is required. Disqualification shall be required as to a disclosed interest or position in a non-profit organization whenever disqualification would have been required as a result of an equivalent financial interest or position in a business entity.

Section 6. Revisions to the City's Conflict of Interest Code

The City Clerk will review the City's Conflict of Interest Code on an annual basis and if changes are required will submit a revised code for Council approval, or if no changes are necessary so notify the City Council, by the applicable deadline specified in the Political Reform Act.