

Office of the City Manager

CONSENT CALENDAR
September 16, 2003

To: Honorable Mayor and
Members of the City Council
From: ~~Weldon~~ Rucker, City Manager
Subject: UPDATED CONFLICT OF INTEREST CODE

RECOMMENDATION

That Council adopt a Resolution approving a revised Conflict of Interest Code for the City of Berkeley and rescind Resolution No. 61,818-N.S. (2002 Conflict of Interest Code).

FISCAL IMPACTS OF RECOMMENDATION

None

BACKGROUND

The Political Reform Act, Ca. Government Code Sections 81000, et seq., 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 (Ca. 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 in November 2002 by Resolution No. 61,818-N.S.

Disclosure language for all appendices has been updated to include disclosure of gifts, loans and travel payments based on the Fair Political Practices Commission's recommendation and guidelines for model disclosure language.

Attachment 1 shows those portions of the Code which require revision. Text which is underlined has been added and text proposed for deletion contains strikeout. Attachment 2 presents the entire Code for adoption with all changes incorporated.

Exhibit A identifies designated positions within each department and establishes their respective levels of disclosure. The department appendices have been updated to reflect organizational changes which have occurred in the past year.

Exhibit B identifies those boards and commissions for which disclosure of financial interests is appropriate and establishes their respective levels of disclosure.

The following Commissions are not included in the proposed Code based on the City Attorney's opinion that they do not meet the State's criteria for disclosure at this time: Commission on the Status of Women, Youth Commission and the Public Housing and Section 8 Resident Advisory Boards (RAB). While the Fair Political Practices Commission has determined that members of the RAB are public officials under the Political Reform Act, it has been excluded from this update pending further evaluation by the City Attorney to determine if the RAB qualifies as a designated commission under criteria set forth by state regulation.

Exhibit C, the appendix for consultants, requires no further amendment.

Exhibit D serves as a reference table of all appendices which comprise this Code.

This code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to these positions accurately 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. The enclosed resolution also rescinds Resolution No. 61,818-N.S.

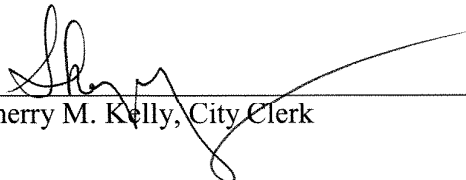
RATIONALE FOR RECOMMENDATION

The City by its own practice updates its Conflict of Interest Code annually rather than biennially to accommodate changes in organizational structure and job classifications. Biennial review of the City's Conflict of Interest Code is mandated by the California Political Reform Act. Council adoption of the proposed Conflict of Interest Code will sustain continued compliance with State law.

CONTACT PERSON

Sherry M. Kelly, City Clerk, 981-6905

Approved:



Sherry M. Kelly, City Clerk

RESOLUTION NO. -N.S.

ADOPTING A CONFLICT OF INTEREST CODE FOR THE CITY OF BERKELEY, AND RESCINDING RESOLUTION NO. 61,818-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 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 to incorporate parts of the original code which were inadvertently deleted in a prior resolution; and

WHEREAS, Resolution No. 61,818-N.S., adopted November, 2002, 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 current structure of the City's boards and commissions; and

WHEREAS, the Council has determined that Exhibits A, B, C, and D, attached herein, accurately set 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. Incorporation of State Regulations by Reference.

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.

Section 2. 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 as stated in Exhibits A, B, C, and D attached hereto and made a part hereof 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 taking the Oath of Office, or an Initial or Annual Statement within thirty days after the City Clerk has given specific written notice of non-filing, the members 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.

BE IT FURTHER RESOLVED, that Resolution No. 61,818-N.S. is hereby rescinded.