



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 5c (Consent/Action)

TO: Local Agency Formation Commission

PREPARED BY: Jennifer Gore, Legal Counsel

MEETING DATE: October 3, 2016

SUBJECT: Approval of Conflict of Interest Code Amendments

RECOMMENDATION

Staff recommends that the Commission approve the proposed revisions to LAFCO's Conflict of Interest Code ("COI Code"). In an effort to streamline the Commission's COI Code to avoid the need to amend the COI Code every two years to reflect updates to the Fair Political Practices Commission's ("FPPC") regulations and/or the Political Reform Act, staff is proposing that the COI Code be clarified to reflect that the FPPC's regulations are incorporated into the policy by reference, and that quoted language from the regulations be removed.

BACKGROUND

As a local public agency, LAFCO must have a COI Code that sets forth the obligations of staff and the Commissioners to disclose their financial interests. Because LAFCO's jurisdiction is limited to Napa County, the County is the "code reviewing body" for LAFCO, meaning that the County must approve the COI Code and any changes to it approved by the Commission.

Every two years, all public agencies must review their COI Codes and notify their code reviewing body of any changes needed to their adopted COI Code. LAFCO staff is proposing a number of revisions to the COI Code for the Commission's consideration. If the Commission approves the proposed revisions, staff will then provide the revised COI Code to the County for approval.

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Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Brendon Freeman
Executive Officer

SUMMARY

Because LAFCO has a very detailed policy that reiterates many of the provisions of the Political Reform Act and related regulations, the agency is typically required to extensively revise its COI Code every two years to reflect updates in the law. Staff has proposed a number of revisions to the policy to clarify that the COI Code incorporates, by reference, the Political Reform Act and the FPPC's regulations. By doing so, all updates made to the law will be automatically incorporated into the COI Code, without the need for staff to spend time and resources updating the text of the policy every two years and bringing it to the Commission for approval and authorization to submit it to the County for approval.

This approach is recommended by the FPPC, which provides sample "incorporation by reference" language on its website.

The recommended revisions are extensive. However, they are non-substantive in nature, as they clarify that the COI Code incorporates the FPPC's regulations, and remove various provisions and definitions that are duplicative of those regulations. No revisions are proposed to modify the list of designated filers (for Form 700s), or to change LAFCO's disclosure categories.

Given the non-substantive nature of the revisions, staff did not publish a notice of intent to amend the COI Code or initiate a public comment period on the revisions. However, staff has contacted the County's filing official to confirm that publication and public comment is not required. As of the time of writing this report, staff is still waiting for confirmation. An update on this issue will be provided at the meeting.

ATTACHMENTS

- 1) Redlined Draft of Conflict of Interest Code Showing Proposed Amendments
- 2) Resolution and Final Draft Conflict of Interest Code



LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

Policy on Conflict of Interest Code

(Adopted: January 9, 2003; Last Amended: ~~October 3, 2016~~ August 4, 2014)

~~1. Purpose.~~ 1. Purpose. The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations, Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act (the "Act"). Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference as if set forth fully herein.

~~Incorporation of Definitions and Standard Terms of Model Code.~~ The definitions contained in the Political Reform Act of 1974 (the "Act") and in the model code set forth in Section 18730 of Title 2 of the California Code of Regulations (the "model code"), and any amendments to the Act or regulations, are incorporated by reference into this Code.

2. List of Designated Employees. For the purposes of the Act and this Conflict of Interest Code, ~~the~~ Designated Employees of LAFCO shall be the persons holding those offices and performing the functions of the ~~and/or~~ positions set forth in Appendix "A," attached hereto and incorporated by reference herein. ~~It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on their economic interests.~~

3. List of Disclosure Categories. For purposes of the requirements of the Act and the provisions of this code, the disclosure categories for the Designated Employees of LAFCO shall be those set forth in Appendix "B," attached hereto and incorporated by reference herein. ~~These disclosure categories specify which kinds of economic interests are reportable.~~

4. Documents Comprising Conflict of Interest Code. For purposes of the Act, ~~the provisions of this Code, the terms of Section 18730 of Title 2 of the California Code of Regulations~~ the model code, and Appendices "A" and "B" shall together constitute the Conflict of Interest Code of LAFCO on and after the date of confirmation ~~of the Code~~ by the Napa County Board of Supervisors.

5. Effective Date of Code. This Conflict of Interest Code shall become effective when ~~confirmed approved~~ by the Napa County Board of Supervisors acting as the code reviewing body for LAFCO.

6. Documents to be filed with the Board of Supervisors. ~~As the LAFCO Executive Officer is the "Filing Officer" as referred to in~~ under this Code, ~~the LAFCO Secretary~~ ~~The LAFCO Executive Officer~~ shall file three certified copies of the Conflict of Interest Code, as approved/amended by the LAFCO Commission, with the Napa County Board of Supervisors as the

~~code reviewing body for LAFCO, along with a brief description of the duties and terms of all consultants working for the LAFCO who have been determined by the LAFCO Executive Officer as of the effective date of the Conflict of Interest Code to be exempt from the Designated Employee “contract consultant” category, and the reasons for such exemption. The LAFCO Executive Officer shall prepare and maintain an updated list whenever such exempt positions are added or dropped.~~

~~7. Time of Filing Statements of Economic Interests. All persons who are required by this Conflict of Interest Code to file Statements of Economic Interests (“Statements” or “Form 700s”), shall file assuming office, leaving office, and annual Statements as required by Section 18730 of Title 2 of California Code of Regulations~~

~~7.——~~

~~A. Statement of Economic Interests refers to that document developed by the Fair Political Practices Commission and more commonly known and referred to as “Form 700”.~~

~~B. Initial Statements Amendments to Code. All employees already occupying a position when the position is newly designated as a result of an amendment to this Code shall file their initial statements of economic interests within 30 days after the effective date of such an amendment to this Code.~~

~~C. Assuming Office Statements Employees Not Previously Occupying a Designated Position. Employees when first assuming a designated position shall file their initial statement of economic interests within 30 days after assuming the position.~~

~~D. Annual Statements. All designated employees shall file their annual statements of economic interests no later than April 1st of each year.~~

~~E. Leaving Office Statements. Leaving office statements of economic interests shall be filed within thirty (30) days of any of the events described below occurring:~~

- ~~1. Leaving a designated position (subject to the exception in Section 8 below).~~
- ~~2. Occupying a position which ceases to be a designated position due to a reclassification or other similar personnel action.~~
- ~~3. Occupying a position that due to an amendment to this Code is no longer classified as a designated position.~~

~~8. Statements of Economic Interests: Persons Who Resign From Office Prior To Making or Influencing Decisions or Receiving Compensation.~~

~~A. Persons who resign within 12 months of their initial appointment, or within 30 days of the date they are notified by the Filing Officer of the requirement to file an assuming office statement of economic interests, are not deemed to have assumed office or left office, provided they did not make or participate in the making of, or use their position to influence any decision and did not~~

~~receive or become entitled to receive any form of payment as a result of their appointment. Such persons are not required to file either an assuming or leaving office statement of economic interests.~~

~~B. Persons who resign a position within 30 days of the date they are notified by the Filing Officer of the requirement to file an assuming office statement of economic interests shall do both of the following:~~

~~1. File a written resignation with LAFCO; and~~

~~2. File a written statement with the Filing Officer declaring under penalty of perjury that, during the period between appointment and resignation, they did not make, participate in the making, or use their position to influence any decision of the agency or board or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.~~

~~9. Statement of Economic Interests; Contents of and Period Covered.~~

~~A. Contents of Initial Statements. Initial statements of economic interests shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code and income received during the 12 months prior to the effective date of the Code.~~

~~B. Contents of Assuming Office Statements. Assuming office statements of economic interests shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office, and income received during the 12 months prior to the date of assuming office or the date of being appointed.~~

~~C. Contents of Annual Statements. Annual statements of economic interests shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year. Notwithstanding the previous sentence, the period covered by a designated employee's first annual statement of economic interests shall begin on the date of assuming office.~~

~~D. Contents of Leaving Office Statements. Leaving office statements of economic interests shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.~~

10. Place of Filing. Designated employees shall file their Statements of Economic Interests with the LAFCO ~~Secretary~~Executive Officer, who shall retain the original Statements in the LAFCO business office.

~~11. Manner of Reporting.~~

~~Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the Filing Officer, and shall contain the following information:~~

~~A. Investments and Real Property Disclosure. When an investment or an interest in real property is required to be reported the statement of economic interests shall contain the~~

following:

- ~~1. A statement of the nature of the investment or interest;~~
- ~~2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;~~
- ~~3. The address or other precise location of the real property;¹~~
- ~~4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).²~~

~~B. Personal Income Disclosure. When personal income is required to be reported,³ the statement of economic interests shall contain:~~

- ~~1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;~~
- ~~2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);~~
- ~~3. A description of the consideration, if any, for which the income was received;~~
- ~~4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;~~
- ~~5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.~~

~~C. Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁴ the statement of economic interests shall contain:~~

- ~~1. The name, address, and a general description of the business activity of the business entity;~~

¹ ~~For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.~~

² ~~Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro-rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.~~

³ ~~A designated employee's income includes his or her 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 agency.~~

⁴ ~~Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest.~~

~~2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).~~

~~D. Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.~~

~~E. Acquisition or Disposal During a Reporting Period. In the case of an annual or leaving office statement of economic interests, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement of economic interests, the statement of economic interests shall contain the date of acquisition or disposal.~~

~~12. Prohibition on Receipt of Honoraria.~~

~~No designated employee shall accept any honorarium from any source if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.⁵ Subdivisions (a), (b), and (c) of Government Code section 89501 shall apply to the prohibitions in this section. This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.⁶~~

~~13. Prohibition on Receipt of Gifts in Excess of the Allowed Statutory Amount.~~

~~No designated employee shall accept gifts with a total value of more than the amount established by 2 Cal. Code Regs. Section 18703.4 in a calendar year from any single source (\$440 in 2014), if the designated employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.⁷~~

~~14. Prohibition Regarding Certain Personal Loans.~~

~~A. Except as set forth in subsection B below, a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:~~

~~⁵ § 89501. See Addendum.~~

~~⁶ § 89506. See Addendum.~~

~~⁷ § 89503. See Addendum.~~

~~1. If the loan has a defined date or dates for repayment when the statute of limitations for filing an action for default has expired.~~

~~2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:~~

~~a. The date the loan was made.~~

~~b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.~~

~~e. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.~~

~~B. This section shall not apply to the following types of loans:~~

~~1. A loan made to the campaign committee of an elected officer or a candidate for elective office.~~

~~2. A loan that would otherwise not be a gift as defined in the Political Reform Act of 1974 and implementing regulations of the Fair Political Practices Commission.~~

~~3. A loan that subsection A of this section would require to be treated as a gift but on which the creditor has taken reasonable action to collect the balance due.~~

~~4. A loan that subsection A of this section would require to be treated as a gift but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision to not commence a collection action was based on reasonable business considerations.~~

~~5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.~~

~~C. Nothing in this section shall exempt any person from any other provisions of the Political Reform Act of 1974 and the implementing regulations of the Fair Political Practices Commission.~~

~~15. Disqualification.~~

~~No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the designated employee or a member of his or her immediate family or on:~~

~~A. Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;~~

~~B. Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;~~

~~C. Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by, or promised to, the designated employee within 12 months prior to the time when the decision is made;~~

~~D. Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or~~

~~E. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating more than that amount established by 2 Cal. Code Regs. section 18703.4 (\$440 in 2014) provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.~~

~~16. Legally Required Participation.~~

~~No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.~~

~~17. Disclosure of Disqualifying Interest.~~

~~When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by a disclosure of the disqualifying interest.~~

~~18. Assistance of the Commission and Counsel.~~

~~Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Commission pursuant to Government Code section 83114 and 2 Cal. Code of Regs. Sections 18329 and 18329.5 or from LAFCO counsel, provided that nothing in this section requires LAFCO counsel to issue any formal or informal opinion.~~

~~19. Public Inspection of Conflict of Interest Code and Statements. A copy of the Conflict of Interest Code and all filed Statements shall be maintained in the office of ~~the~~ LAFCO Executive Officer and be available for public inspection and copying during regular business hours. ~~Copies shall be provided in accordance with LAFCO policy on fees for the production of public records.~~~~

20. LAFCO Review of Adopted Code.

A. No later than October 1 of each even-numbered year, LAFCO shall submit to the Napa County Board of Supervisors, as the code reviewing body for LAFCO, a written statement signed by the LAFCO Executive Officer, or his designee, that either:

1. LAFCO has reviewed the Conflict of Interest Code, that the Conflict of Interest Code designates accurately all positions which make or participate in the making of governmental decisions for LAFCO, that the disclosure assigned those 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, and that the Conflict of Interest Code contains the provisions required by Government Code section 87302; or

2. LAFCO has reviewed the Conflict of Interest Code and has determined that amendment is necessary to designate all positions which make or participate in the making of governmental decisions for LAFCO, or to update the disclosure categories assigned to require the disclosure of all investments, business positions, interests in real property and sources of income which may be affected materially by the designated positions, or to include other provisions required by Government Code section 87302. If the statement contains this report, LAFCO shall submit the amendment to the Napa County Board of Supervisors within 90 days of the report.

B. Changed circumstances which require amendment of the Conflict of Interest Code shall include, but not be limited to:

1. The creation of positions which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

2. The reclassification, renaming, or deletion of previously designated positions;

3. The addition, deletion, or modification of statutorily-required provisions of this Conflict of Interest Code; or

4. The addition, deletion, or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable unless such changes have been automatically incorporated into this Conflict of Interest Code as the result of inclusion of the changes into the model code by the Fair Political Practices Commission.

~~21. Violations.~~

~~This code has the force and effect law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91014. In addition a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 or section 87450 has occurred may be set aside as void pursuant to Government Code Section 91003.~~

~~22. Conflict Between Local Code and California Code of Regulations.~~

~~If there are inconsistencies or conflicts between this Code and the state regulations found at 2-California Code of Regulations section 18730, the state regulations will prevail and be the controlling authority unless this Code imposes a requirement for conflict avoidance that is more stringent than the state regulations.~~

ADDENDUM

~~§ 89501. Honorarium. (a) For purposes of this chapter, "honorarium" means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.~~

~~(b) The term "honorarium" does not include:~~

~~(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The commission shall adopt regulations to implement this subdivision.~~

~~(2) Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the State Controller for donation to the General Fund, or in the case of a public official for local government agency, delivered to his or her agency for donation to an equivalent fund, without being claimed as a deduction from income for tax purposes.~~

~~(c) Section 89506 shall apply to all payments, advances, or reimbursements for travel and related lodging and subsistence.~~

~~§ 89503. Acceptance of gifts by officers or employees. (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).~~

~~(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election, after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.~~

~~(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.~~

~~(c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.~~

~~(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part time member of the governing board of any public institution of higher education unless that position is an elective office.~~

~~(e) This section shall not prohibit or limit the following:~~

~~(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Section 89506.~~

~~(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.~~

~~(f) Beginning on January 1, 1993, the commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).~~

~~(g) The limitations in this section are in addition to the limitations on gifts in Section 86203.~~

~~**§ 89506. Limitations on payments for travel; Gifts of travel.** (a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:~~

~~(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.~~

~~(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.~~

~~(b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503.~~

~~(c) Subdivision (a) applies only to travel that is reported on the recipient's statement of economic interests.~~

~~(d) For purposes of this section, a gift of travel does not include any of the following:~~

~~(1) Travel that is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or that is a contribution.~~

~~(2) Travel that is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, an individual specified in Section 87200, or a designated employee.~~

~~(3) Travel that is reasonably necessary in connection with a bona fide business, trade, or profession and that satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.~~

~~(4) Travel that is excluded from the definition of a gift by any other provision of this title.~~

~~(e) This section does not apply to payments, advances, or reimbursements for travel and related lodging and subsistence permitted or limited by Section 170.9 of the Code of Civil Procedure.~~

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APPENDIX “A”

LIST OF DESIGNATED EMPLOYEES

Because of the nature of the powers and duties conferred on the Local Agency Formation Commission of Napa County under the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et. seq.), the policies adopted by the LAFCO Commission, and the terms of support services and consultant agreements approved by the LAFCO Commission, the following positions within LAFCO may involve the making or participation in the making of decisions of LAFCO which may foreseeably have a material effect on financial interests of the holders of the positions. The positions are listed because their scope of authority or work involve either making final decisions for LAFCO which have financial consequences or developing and/or exercising such a level of expertise and ongoing relationship with those who make such decisions that the decision-makers can reasonably be expected to routinely trust and rely upon their advice.

For purposes of filing Statements of Economic Interests as required by this Conflict of Interest Code, the “Designated Employees” of LAFCO shall be those persons who actually occupy or carry out the functions of the following positions, whether as elected or appointed officers, compensated employees, or contracted consultants:

DESIGNATED EMPLOYEE POSITIONS

Members of the LAFCO Commission (including any persons serving as **Alternate Commission Members** ~~in the absence of a regular Commissioner~~)

LAFCO Executive Officer

LAFCO Legal Counsel

Auditor-Controller (Napa County Auditor-Controller, serving ex-officio)

Contract Consultants for LAFCO - Contract consultants shall be included in the list of Designated Employees and shall disclose their material financial interests in regard to all of the adopted disclosure categories, subject to the following limitation:

The LAFCO Executive Officer may determine in writing that a particular contract consultant, although a “designated position”, is hired to perform a range of duties that is limited in scope and thus is not required to comply or fully comply with all of the disclosure requirements described in Appendix “B”. This written determination shall include a description of the contract consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. This determination is a public record and shall be retained for public inspection and be available for inspection and copying in the same location and manner as LAFCO’s copy of the Conflict of Interest Code.

APPENDIX “B”

DISCLOSURE CATEGORIES

The decisions which the Designated Employees may make, or participate in making, for LAFCO may involve exercising or directly influencing the exercise of powers conferred on LAFCO by the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et. seq.).

The decisions by the Designated Employees in the course of their work for LAFCO may have the potential to materially impact any or all of those types of financial interests listed in all the Disclosure Schedules of the Statement of Economic Interests Form 700 adopted by the Fair Political Practices Commission.

For this reason, all of the Designated Employees under this Conflict of Interest Code, other than contract consultants who are exempted from disclosure on a case-by-case basis pursuant to Appendix “A,” shall disclose the following financial interests: sources of income, interests in real property, investments and business positions in business entities:

- (i) All income including gifts, loans and travel payments as defined in Government Code Section 82030; and
- (ii) All investments as defined in Government Code Section 82034; and
- (iii) All interests in real property as defined in Government Code Section 82033; and
- (iv) All business positions as defined in 2 California Code of Regulations Section 18730(b)(7)(D) in business entities that may foreseeably be affected materially by the decisions made by LAFCO or any Designated Employee of LAFCO.

“Income” (Government Code Section 82030)

~~(a) “Income” means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. “Income,” other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.~~

~~(b) “Income” also does not include:~~

~~—(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).~~

~~—(2) Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue~~

Code.

- ~~—(3) Any devise or inheritance.~~
- ~~—(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.~~
- ~~—(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.~~
- ~~—(6) Redemption of a mutual fund.~~
- ~~—(7) Alimony or child support payments.~~
- ~~—(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status.~~
- ~~—(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent in law, brother in law, sister in law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.~~
- ~~—(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status.~~
- ~~—(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).~~
- ~~—(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.~~

~~“**Investment**” (Government Code Section 82034)~~

~~“Investment” means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business 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 within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$ 2,000). The term “investment” does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of~~

investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater. The term “parent, subsidiary or otherwise related business entity” shall be specifically defined by regulations of the commission.

~~“Interest in real property” (Government Code Section 82033)~~

~~“Interest in real property” includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$ 2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater.~~

~~“Business Position Disclosure” (2 California Code of Regulations Section 18730(b)(7)(D))~~

~~When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee’s position with the business entity.~~

CERTIFICATIONS

I hereby certify that I am the Secretary and custodian of records of the Local Agency Formation Commission and that the attached Resolution is a true and correct copy of the original approved by the LAFCO Commission and on file in the LAFCO office.

~~Kathy Mabry~~Brendon Freeman,
LAFCO ~~Secretary~~ Executive Officer

By _____

I hereby certify that the Conflict of Interest Code for the Local Agency Formation Commission of Napa County was approved and confirmed by the Napa County Board of Supervisors, as the code reviewing body for LAFCO by action of the Board of Supervisors on _____, 20__, and recorded in the certified minutes of the Board of Supervisors for that date.

Clerk of the Napa County Board of Supervisors

By _____

RESOLUTION NO. ____

**RESOLUTION OF THE
LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY
AMENDING ITS CONFLICT OF INTEREST CODE**

WHEREAS, the Political Reform Act of 1974 (Government Code Sections 81000, et seq., hereinafter the “PRA”) requires the Local Agency Formation Commission of Napa County (hereinafter LAFCO) to adopt a Conflict of Interest Code; and

WHEREAS, the Fair Political Practices Commission (hereinafter referred to as “FPPC”) has adopted a regulation (Section 18730 of Title 2 of the California Code of Regulations) containing a standard conflict of interest code which may be incorporated by reference into the code of a local agency; and

WHEREAS, LAFCO is required to review and amend its Conflict of Interest Code biennially to determine if amendments are needed; and

WHEREAS, although no substantive changes to the Conflict of Interest Code are necessary, as there are no changes to the list of designated filers or their disclosure responsibilities required, LAFCO’s Counsel does recommend that the Code be amended to clarify that the FPPC’s standardized code is incorporated by reference, and to eliminate various definitions in the current code that are duplicative of language in the FPPC’s regulations and the PRA; and

WHEREAS, LAFCO staff has provided notice of the proposed non-substantive revisions to its adopted Conflict of Interest Code to Napa County, as the code reviewing body for LAFCO; and

WHEREAS, at a regular meeting of LAFCO, held on October 3, 2016, oral and/or written comments on the proposed revisions to the Conflict of Interest Code were received from affected persons and or the general public, and these comments and the proposed revisions were considered by LAFCO;

NOW, THEREFORE, BE IT RESOLVED by LAFCO that the Conflict of Interest Code shall be amended and adopted in the manner set forth in Exhibit “A,” effective upon confirmation by the Napa County Board of Supervisors acting as the code reviewing body for LAFCO.

The foregoing resolution was duly and regularly adopted by the Commission at a regular meeting held on October 3, 2016, by the following vote:

AYES: Commissioners _____

NOES: Commissioners _____

ABSTAIN: Commissioners _____

ABSENT: Commissioners _____

By: _____
Diane Dillon, Chair of LAFCO

ATTEST:

By: _____
Brendon Freeman
Executive Officer

Recorded by: _____
Kathy Mabry
Commission Secretary

Exhibit A



LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

Conflict of Interest Code

(Adopted: January 9, 2003; Last Amended: October 3, 2016)

1. **Purpose.** The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations, Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act (the "Act"). Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference as if set forth fully herein.

2. **List of Designated Employees.** For the purposes of the Act and this Conflict of Interest Code, the Designated Employees of LAFCO shall be the persons holding those offices and performing the functions of the positions set forth in Appendix "A," attached hereto and incorporated by reference herein.

3. **List of Disclosure Categories.** For purposes of the requirements of the Act and the provisions of this code, the disclosure categories for the Designated Employees of LAFCO shall be those set forth in Appendix "B," attached hereto and incorporated by reference herein.

4. **Documents Comprising Conflict of Interest Code.** For purposes of the Act, the terms of Section 18730 of Title 2 of the California Code of Regulations and Appendices "A" and "B" shall together constitute the Conflict of Interest Code of LAFCO on and after the date of confirmation by the Napa County Board of Supervisors.

5. **Effective Date of Code.** This Conflict of Interest Code shall become effective when confirmed by the Napa County Board of Supervisors acting as the code reviewing body for LAFCO.

6. **Documents to be filed with the Board of Supervisors.** As the "Filing Officer" under this Code, the LAFCO Secretary shall file three certified copies of the Conflict of Interest Code, as approved/amended by the LAFCO Commission, with the Napa County Board of Supervisors as the code reviewing body for LAFCO.

7. **Time of Filing Statements of Economic Interests.** All persons who are required by this Conflict of Interest Code to file Statements of Economic Interests ("Statements" or "Form 700s"), shall file assuming office, leaving office, and annual Statements as required by Section 18730 of Title 2 of California Code of Regulations

8. Place of Filing. Designated employees shall file their Statements of Economic Interests with the LAFCO Secretary, who shall retain the original Statements in the LAFCO business office.

9. Public Inspection of Conflict of Interest Code and Statements. A copy of the Conflict of Interest Code and all filed Statements shall be maintained in the office of LAFCO and be available for public inspection and copying during regular business hours.

10. LAFCO Review of Adopted Code.

A. No later than October 1 of each even-numbered year, LAFCO shall submit to the Napa County Board of Supervisors, as the code reviewing body for LAFCO, a written statement signed by the LAFCO Executive Officer, or his designee, that either:

1. LAFCO has reviewed the Conflict of Interest Code, that the Conflict of Interest Code designates accurately all positions which make or participate in the making of governmental decisions for LAFCO, that the disclosure assigned those 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, and that the Conflict of Interest Code contains the provisions required by Government Code section 87302; or

2. LAFCO has reviewed the Conflict of Interest Code and has determined that amendment is necessary to designate all positions which make or participate in the making of governmental decisions for LAFCO, or to update the disclosure categories assigned to require the disclosure of all investments, business positions, interests in real property and sources of income which may be affected materially by the designated positions, or to include other provisions required by Government Code section 87302. If the statement contains this report, LAFCO shall submit the amendment to the Napa County Board of Supervisors within 90 days of the report.

B. Changed circumstances which require amendment of the Conflict of Interest Code shall include, but not be limited to:

1. The creation of positions which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

2. The reclassification, renaming, or deletion of previously designated positions;

3. The addition, deletion, or modification of statutorily-required provisions of this Conflict of Interest Code; or

4. The addition, deletion, or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable unless such changes have been automatically incorporated into this Conflict of Interest Code as the result of inclusion of the changes into the model code by the Fair Political Practices Commission.

APPENDIX “A”

LIST OF DESIGNATED EMPLOYEES

Because of the nature of the powers and duties conferred on the Local Agency Formation Commission of Napa County under the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et. seq.), the policies adopted by the LAFCO Commission, and the terms of support services and consultant agreements approved by the LAFCO Commission, the following positions within LAFCO may involve the making or participation in the making of decisions of LAFCO which may foreseeably have a material effect on financial interests of the holders of the positions. The positions are listed because their scope of authority or work involve either making final decisions for LAFCO which have financial consequences or developing and/or exercising such a level of expertise and ongoing relationship with those who make such decisions that the decision-makers can reasonably be expected to routinely trust and rely upon their advice.

For purposes of filing Statements of Economic Interests as required by this Conflict of Interest Code, the “Designated Employees” of LAFCO shall be those persons who actually occupy or carry out the functions of the following positions, whether as elected or appointed officers, compensated employees, or contracted consultants:

DESIGNATED EMPLOYEE POSITIONS

Members of the LAFCO Commission (including any persons serving as **Alternate Commission Members**)

LAFCO Executive Officer

LAFCO Legal Counsel

Auditor-Controller (Napa County Auditor-Controller, serving ex-officio)

Contract Consultants for LAFCO - Contract consultants shall be included in the list of Designated Employees and shall disclose their material financial interests in regard to all of the adopted disclosure categories, subject to the following limitation:

The LAFCO Executive Officer may determine in writing that a particular contract consultant, although a “designated position”, is hired to perform a range of duties that is limited in scope and thus is not required to comply or fully comply with all of the disclosure requirements described in Appendix “B”. This written determination shall include a description of the contract consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. This determination is a public record and shall be retained for public inspection and be available for inspection and copying in the same location and manner as LAFCO’s copy of the Conflict of Interest Code.

APPENDIX “B”

DISCLOSURE CATEGORIES

The decisions which the Designated Employees may make, or participate in making, for LAFCO may involve exercising or directly influencing the exercise of powers conferred on LAFCO by the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et. seq.).

The decisions by the Designated Employees in the course of their work for LAFCO may have the potential to materially impact any or all of those types of financial interests listed in all the Disclosure Schedules of the Statement of Economic Interests Form 700 adopted by the Fair Political Practices Commission.

For this reason, all of the Designated Employees under this Conflict of Interest Code, other than contract consultants who are exempted from disclosure on a case-by-case basis pursuant to Appendix “A,” shall disclose the following financial interests:

- (i) All income including gifts, loans and travel payments as defined in Government Code Section 82030; and
- (ii) All investments as defined in Government Code Section 82034; and
- (iii) All interests in real property as defined in Government Code Section 82033; and
- (iv) All business positions as defined in 2 California Code of Regulations Section 18730(b)(7)(D) in business entities that may foreseeably be affected materially by the decisions made by LAFCO or any Designated Employee of LAFCO.

CERTIFICATIONS

I hereby certify that I am the Secretary and custodian of records of the Local Agency Formation Commission and that the attached Resolution is a true and correct copy of the original approved by the LAFCO Commission and on file in the LAFCO office.

Kathy Mabry,
LAFCO Secretary

By _____

I hereby certify that the Conflict of Interest Code for the Local Agency Formation Commission of Napa County was approved and confirmed by the Napa County Board of Supervisors, as the code reviewing body for LAFCO by action of the Board of Supervisors on _____, 20__, and recorded in the certified minutes of the Board of Supervisors for that date.

Clerk of the Napa County Board of Supervisors

By _____