

STAFF REPORT

SUBJECT: Review and Approve Revisions to the District's Conflict of Interest Code

Board of Directors of Coastside Fire Protection District:

Summary:

It is recommended that the Fire Board adopt the attached resolution approving the revised Conflict of Interest Code.

Background and Discussion:

The Political Reform Act of 1974, approved by the voters, requires State and local government agencies to adopt a Conflict of Interest Code ("Conflict Code"). The Coastside Fire Protection District has adopted a Conflict Code. State law also requires the District to periodically update its Conflict Code by adopting by reference the terms of 2 California Code of Regulations §18730, as may, from time to time, be amended by the Fair Political Practices Commission ("FPPC").

The Conflict Code must list each employee and/or Board position within the District that makes or participates in the making of governmental decisions. Individuals employed in these positions are called "designated employees." In addition, certain consultants to public agencies must also file disclosure forms because they make or participate in making governmental decisions on behalf of the District.

The Conflict Code reviewing body for the District is the Fire Board. Periodically, the Conflict Code reviewing body, by resolution, must update the list of designated employees and/or Board positions shown in the Appendix and make any other changes needed to comply with State law. This year, three amendments are recommended.

First, language has been amended to reflect that the Fire Chief is responsible to file the income disclosure forms with the San Mateo County Clerk. (Conflict Code pg. 1)

Second, the language for consultants has been revised to address both consultants and any new positions created before the next review of the Conflict Code. With this amendment, the Board will have the authority to determine the appropriate disclosure category for the consultant or new position based on the consultant's assignment or job description for the new position. The determination must be made in writing and retained as a public record of the District. (Conflict Code pg. 2)

Third, the Conflict Code has been amended to incorporate by reference California Code of Regulations Section 18730 which sets the gift limits for public officials and employees, rather than call out the current gift limitation. This will allow for the Conflict Code to be administratively updated each year as the State issues the new gift limitations. (Conflict Code pg. 4)

All necessary updates have been made and are shown in ~~strikeout~~ and **bold** in the attached Resolution as required by the Fair Political Practices Commission.

Conclusion

Staff recommends that the Fire Board review and adopt the attached amendments to the District's Conflict Code. The attached Notice of Intention to Adopt or Amend a Conflict of Interest Code should then be distributed to each Designated Position shown in the Appendix. Once the 45-day comment period has expired, if no comments were received, the Conflict Code will be forwarded to the County Board of Supervisors for final approval.

Attachments:

- 1) Resolution No. 2018-36 – Amending a Conflict of Interest Code
- 2) Notice of Intention to Amend a Conflict of Interest Code

Respectfully submitted,

JEAN B. SAVAREE
District Legal Counsel

ATTACHMENT 1

RESOLUTION NO. 2018-36

AMENDING A CONFLICT OF INTEREST CODE

COASTSIDE FIRE PROTECTION DISTRICT

WHEREAS, pursuant to previously adopted Resolutions, Point Montara and Half Moon Bay Fire Protection Districts, the predecessors in interest to Coastside Fire Protection District, and the Coastside Fire Protection District itself adopted Conflict of Interest Codes as required by the Political Reform Act of 1974; and

WHEREAS, California Government Code Section 87306.5 requires that the District review its Conflict of Interest Code every even-numbered year and revise it if necessary; and

WHEREAS, the Conflict of Interest Code has been reviewed and the changes shown in **bold** are proposed; and

WHEREAS, the Board of Directors has determined that the proposed changes are appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Coastside Fire Protection District that the attached Conflict of Interest Code is hereby amended, in the form presented to the Board of Directors; and

BE IT FURTHER RESOLVED that if no comments are received pursuant to the 45-day written comment period, there will be no additional public hearing on the proposed code; and

BE IT FURTHER RESOLVED that the Fire Chief of the District is directed to transmit a copy of the Amended Conflict of Interest Code (“Code”) to the Board of Supervisors of the County of San Mateo for its review and approval; and

BE IT FURTHER RESOLVED that the effective date of the amended Code shall be upon its approval by the Board of Supervisors and, unless and until the Code is so approved, that the Code previously adopted by the Coastside Fire Protection District shall continue in full effect.

Regularly passed and adopted by the Board of Directors of the Coastside Fire Protection District, State of California, on September 26, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President, Board of Directors
Coastside Fire Protection District

ATTEST:

Secretary of the District

CONFLICT OF INTEREST CODE
COASTSIDE FIRE PROTECTION DISTRICT

The purposes of this Code are to provide for the disclosure of investments, real property, income and business positions of designated District officials and employees that may be materially affected by their official actions and to provide for the disqualification of designated officials and employees from participation in District decisions in which they may have a financial interest.

The Political Reform Act of 1974 (Government Code Sections 81000 et seq.) requires state and local governmental agencies to adopt and promulgate conflict of interest codes. Coastside Fire Protection District adopted a Conflict of Interest Code as required by the Political Reform Act of 1974.

The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Section 18730), which contains the terms of a standard conflict of interest code that can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform 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. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories shall constitute the Conflict of Interest Code of the Coastside Fire Protection District.

Designated officials and employees shall file statements of economic interests with the **Fire Chief, filing official of Coastside Fire Protection** District. Upon receipt of the statements, the ~~District~~ **Fire Chief** shall make and retain copies and forward the originals of these statements to the ~~San Mateo County Board of Supervisors, in care of the San Mateo County Clerk~~ **as filing officer**.

APPENDIX

DESIGNATED OFFICIALS AND EMPLOYEES

<u>Designated Positions</u>	<u>Disclosure Category</u>
Board of Directors	1, 2, 3, 4
Consultants/ <u>New Positions</u> *	1, 2, 3, 4

~~* The Board shall review the duties and authority of all consultants retained by the District. Those consultants who, within the meaning of 2 Cal. Code of Regulations 18701(a)(2), are required to file statements of economic interests, shall do so. During each calendar year, the District shall maintain a list of such consultants for public inspection in the same manner and location as this Conflict of Interest Code.~~ **may determine in writing that a particular consultant or new position, 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 or new position’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Board’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. (Government Code Section 81008.)**

Nothing herein excuses any consultant from any other provision of this Conflict of Interest Code, specifically those dealing with disqualification.

DISCLOSURE CATEGORIES

Category 1. All-Inclusive Reportable Investments

A designated employee in this category shall disclose all reportable investments (worth more than \$2,000):

- (a) Owned by the designated employee, his or her spouse or dependent child;
- (b) Owned by an agent on behalf of the designated employee;
- (c) Owned by any business entity controlled by the designated employee (i.e., any business entity in which the designated employee, his or her agents, spouse and dependent children hold more than a 50% ownership interest);
- (d) Owned by a trust in which the designated employee has a substantial interest (i.e., a trust in which the designated employee, his or her spouse and dependent children have a present or future interest worth more than \$2,000);

- (e) Representing the pro rata share (worth more than \$2,000) of the designated employee, his or her spouse and dependent children, of investments of any business entity or trust in which the designated employee, his or her spouse and dependent children own, directly, indirectly or beneficially, a 10% interest or greater.

“Investment” means any financial interest in or security issued by a Coastside Fire Protection District-related business entity, including, but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest.

A business entity is “Coastside Fire Protection District-related” if and only if the business entity or any parent, subsidiary or otherwise related business entity: i) has an interest in real property within the jurisdiction, ii) does business in the Coastside Fire Protection District, or iii) did business or plans to do business in the Coastside Fire Protection District at any time during the period commencing two years prior to and ending one year after the time the designated employee is required by this Code to file his or her next Statement of Economic Interests or to disqualify himself or herself with respect to a Coastside Fire Protection District decision. (The term “parent, subsidiary, or otherwise related business entity” shall be construed as specifically defined by the Commission.)

No asset is deemed an “investment” unless its fair market value exceeds \$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, or any bond or other debt instrument issued by any government or government agency.

Category 2. All-Inclusive Reportable Interests in Real Property

A designated employee in this category shall disclose all interests (worth more than \$2,000) in real property located within the jurisdiction if the interests are:

- (a) Held or owned by the designated employee, his or her spouse and dependent child; or
- (b) The pro rata share (worth more than \$2,000) of interests in real property of any business entity or trust in which the designated employee or spouse owns, directly or indirectly or beneficially, a 10% interest or greater.

“Interest in real property” includes any leasehold, beneficial or ownership interest, or any option to acquire such an interest, in real property, but does not include the principal residence of the filer.

Real property shall be deemed to be “located within the jurisdiction” if the property or any part of it is located within or not more than two miles outside the boundaries of the Coastside Fire Protection District or within two miles of any land owned or used by the Coastside Fire Protection District.

Category 3. All-Inclusive Reportable Income

A designated employee in this category shall disclose all income of the designated employee for any Coastside Fire Protection District-related source **pursuant to the aggregate amount and gift limit outlined in 2 California Code of Regulations Section 18730**, ~~which as of the date on which this code was adopted, aggregates \$500 or more or \$440 or more in the case of gifts during~~ the reporting period.

- (a) “Income” means, except as provided in subsection b), income of any nature from any Coastside Fire Protection District-related source, including but not limited to any salary, wage, advance, payment, honorarium, award, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the general public without regard to official status, rebate, 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 income of a spouse from a Coastside Fire Protection District-related source. Income of an individual also includes a pro rata share of any income of any Coastside Fire Protection District-

related business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

A source, business entity or trust is “Coastside Fire Protection District-related” if and only if he, she or it: (H) resides in the boundaries of the Coastside Fire Protection District, (ii) has an interest in real property within the boundaries of the Coastside Fire Protection District, (iii) does business in the Coastside Fire Protection District at any time during the period commencing two years prior to and ending one year after his or her next Statement of Economic Interests or to disqualify himself or herself with respect to a Coastside Fire Protection District decision.

(b) “Income” does not include:

(1) Campaign contributions required to be reported under Chapter 4 of the Act;

(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;

(3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;

(4) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(5) Gifts from an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph;

(6) Gifts of hospitality involving food, beverages, or lodging provided to the designated employee, if such hospitality has been reciprocated within the filing period. “Reciprocity” as used in this subsection includes the providing by the designated employee to the host of any consideration, including entertainment or household gift of a reasonable similar benefit or value;

(7) Any devise or inheritance;

(8) 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;

(9) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government; and

(10) Loans by a commercial lending institution in the regular course of business.

- (c) “Honorarium” means a payment for speaking at any event, participating in a panel or seminar or engaging in any similar activity. For purposes of this subsection, free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and reimbursement or advance for actual intra-state travel and for necessary accommodations provided directly in connection with the event are not payment and need not be reported by the designated employee.

An honorarium must be reported as a gift unless it is clear from all of the surrounding circumstances that the services provided represented equal or greater value than the payment received. ~~It is~~ **If it** is clear ~~from~~ **from** the surrounding circumstances that the services provided were of equal or greater value than the payment received, the honorarium is income, not a gift. When the designated employee claims that the honorarium is not a gift, he shall have the burden of proving that the consideration is of equal or greater value unless the designated employee is a defendant in a criminal action.

A prize or an award shall be disclosed as a gift unless the prize or award is received on the basis of a bona fide competition not related to the designated employee’s official status. Prizes or awards which are not disclosed as gifts shall be disclosed as income.

Category 4. Less-Inclusive Reportable Investments

A designated employee in this category shall disclose those, and only those, Category 1 reportable investments which pertain to a business entity, a business activity of which is that of:

- (a) Providing within the last two (2) years, or foreseeable in the future, services, supplies, materials, machinery or equipment to the Coastside Fire Protection District.
- (b) Conducting a business in the boundaries of the Coastside Fire Protection District which requires a business license therefor pursuant to ordinances of the Coastside Fire Protection District.
- (c) Sale, purchase, exchange, lease or rental, or financing, for its own account or as broker, of real property or the development, syndication or subdivision of real property or construction thereon of buildings or structures.

Category 5. Less-Inclusive Reportable Interests in Real Property

A designated employee in this category shall disclose those, and only those, Category 2 reportable interests in real property where the property or any part of it is located within or not more than 500 feet outside the boundaries of the Coastside Fire Protection District.

Category 6. Less-Inclusive Types of Reportable Income

A designated employee in this category shall disclose those, and only those types of Category 3 reportable income which are derived from a source, an activity of which is that of:

- (a) Providing within the last two (2) years, or foreseeable in the future, services, supplies, materials, machinery or equipment to the Coastside Fire Protection District.
- (b) Conducting a business in the boundaries of the Coastside Fire Protection District which requires a business license therefor pursuant to ordinances of the Coastside Fire Protection District.
- (c) Sale, purchase, exchange, lease or rental, or financing, for its own account or as broker, of real property or the development, syndication, or subdivision, of real property or construction thereon of buildings or structures.

ATTACHMENT 2

COASTSIDE FIRE PROTECTION DISTRICT

NOTICE OF INTENTION TO AMEND A CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the Coastside Fire Protection District intends to amend a conflict-of-interest code pursuant to Government Code Section 87300 and 87306. Pursuant to Government Code Section 87302, the code will designate employees and/or Board positions who must disclose certain investments, income, interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

A written comment period has been established commencing on September 27, 2018 and terminating on November 12, 2018. Any interested person may present written comments concerning the proposed code no later than November 12, 2018 to the Coastside Fire Protection District, 1191 Main Street, Half Moon Bay, CA 94019. No public hearing on this matter will be held unless any interested person or his or her representative requests no later than 15 days prior to the close of the written comment period, a public hearing.

This year, three amendments are recommended.

First, language has been amended to reflect that the Fire Chief is responsible to file the income disclosure forms with the San Mateo County Clerk.

Second, the language for consultants has been revised to address both consultants and any new positions created before the next review of the Conflict Code. With this amendment, the Board will have the authority to determine the appropriate disclosure category for the consultant or new position based on the consultant's assignment or job description for the new position. The determination must be made in writing and retained as a public record of the District.

Third, the Conflict Code has been amended to incorporate by reference California Code of Regulations Section 18730 which sets the gift limits for public officials and employees, rather than call out the current gift limitation. This will allow for the Conflict Code to be administratively updated each year as the State issues the new gift limitations.

All necessary updates have been made and are shown in ~~strikeout~~ and **bold** in the attached Resolution as required by the Fair Political Practices Commission.

Copies of the proposed code and all of the information upon which it is based may be obtained from the Coastside Fire Protection District. Any inquiries concerning the proposed code should be directed to the Fire Chief Ian Larkin, (831) 335-6700; ian.larkin@fire.ca.gov.

NOTE: This notice should be filed with the Office of the Assessor-County Clerk-Recorder and served individually on agency employees and officers affected by this code 45 days prior to agency action.