



STAFF REPORT

TOWN COUNCIL MEETING OF SEPTEMBER 11, 2012

To: Honorable Mayor and Members of the Town Council

From: Jeff Mitchell, Town Attorney

Subject: Biennial Review of Conflict of Interest Code and Adoption of Amendments

Date: August 27, 2012

RECOMMENDATION:

Approve amendments to the Town's Conflict of Interest Code.

DISCUSSION:

The Political Reform Act requires every local government organization to review its conflict of interest code biennially to determine if it is accurate and up to date or if there are any amendments that need to be made. This determination is to be made in even numbered years and submitted to the Town Council as the reviewing body to be approved. If there are revisions to be made, staff is required to submit the amendments within 90 days of the determination for Council approval.

This report will serve to comply with the requirement. After review of the Town's Conflict of Interest Code, it is recommended that the Conflict of Interest Code be amended to make it consistent with the changes in the California Political Reform Act. The amendments proposed fall generally into two categories – changes to the Code itself, and changes to Exhibit A to the Code, which lists the positions required to file Statements of Economic Interest and the type of economic interest that must be disclosed.

1. Proposed changes to the Conflict of Interest Code itself reflect revisions needed to make the Town's Code consistent with the California Political Reform Act and to bring the Town's Code into compliance with the model Conflict of Interest Code prepared by the California Fair Political Practices Commission (FPPC). These changes fall generally into the category of "housekeeping" changes in the sense that they are being made to track with changes in the Political Reform Act and FPPC Regulations since the last time the Town's Code was revised.

2. Proposed changes to the list of Designated Positions and Disclosure Categories include a few more substantive changes, including:

a. Adding the position of Assistant Planner to the list of positions required to file a Statement of Economic Interest, on the grounds that the individual in this position “makes or participates in the making of decisions” and therefore should be required to file a Statement of Economic Interests with the Town.

b. Deleting “Park and Open Space Commission” from the list of Designated Positions, consistent with the Council’s recent decision to eliminate that Commission.

c. Adding a requirement that certain positions – Planning Director, Assistant Planner, and Public Works Director – disclose interests in real property because of the nature of the decisions the individuals holding these positions make or participate in making.

d. Revising Disclosure Category 1 to make disclosure requirements for Town Council, Town Manager, Town Attorney, Town Finance Officer, and Town Treasurer consistent with the requirements of the Political Reform Act, which in some cases may require broader disclosure of economic interests by individuals holding these positions than the current Disclosure Category describes.

e. Revising Disclosure Category 2 to make it clear that individuals holding the positions subject to this Disclosure Category must also disclose if a supplier of goods, materials or services to the Town is a source of income or gifts to the employee.

The next biennial review will be scheduled in accordance with the Political Reform Act in 2014.

CEQA :

The proposed determination of the Conflict of Interest Code is Categorically Exempt.

FINANCIAL IMPLICATIONS:

None.

TOWN OF LOOMIS

CONFLICT OF INTEREST CODE

The Political Reform Act,, Government Code Sections 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 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Exhibit "A" in which, officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the TOWN OF LOOMIS.

Pursuant to Section 4 (A) of the Standard Code, designated employees shall file statements of economic interests with the Town of Loomis. Statements for designated employees will be retained by the Town of Loomis.

Provisions of Conflict of Interest Code

(A) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a Conflict of Interest Code within the meaning of Government Code Section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code Section ~~87307~~87306 if the terms of this regulation are substituted for terms of a Conflict of Interest Code already in effect. A Code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 81000, et seq. The requirements of a Conflict of Interest Code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and to other state or local laws pertaining to conflicts of interest.

(B) The terms of a Conflict of Interest Code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions. The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission 2 California Code of _____ Regulations 18730 and any amendments to the Act or regulations are incorporated by reference into this Conflict of Interest Code.

(2) Section 2. Designated Employees. The persons holding positions listed in Exhibit A are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on ~~financial~~economic interests.

(3) Section 3. Disclosure Categories. This Code does not establish any disclosure obligation for those designated employees who are also specified in ~~2-California Government Code of Regulations 18730~~Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of the Town of Loomis is the same as or is wholly included within the jurisdiction in which those persons must report their ~~financial~~economic interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, ~~2-California Code of Regulations 18730~~Section 87200, et. seq.¹

Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of ~~financial~~economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those ~~financial~~economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Exhibit A. It has been determined that the ~~financial~~economic interests set forth in a designated employee's disclosure categories are the kinds of ~~financial~~economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing. Designated employees required to file statements of economic interests pursuant to this Conflict of Interest Code shall file statements of economic interests with the Town Clerk, who shall comply with the filing requirements set forth in Government Code Section 87500. The Council of the Town of Loomis shall instruct all designated employees required to file statements of economic interests pursuant to this Conflict of Interest Code to file in accordance with one of the following procedures:

~~(a) All designated employees shall file statements of economic interests with the Town of Loomis. Upon receipt of the statements of economic interests of the head of the agency and members of boards or commissions not under a department of state or local government, the Town of Loomis shall make and retain a copy of each and forward the originals of these statements to the code reviewing body, which shall be the filing officer with respect to these statements. Such statements shall be forwarded to the code reviewing body within five days after the filing deadline or five days after receipt in the case of statements filed late.~~

~~(b) All designated employees shall file statements of economic interests with the Town of Loomis, which shall make and retain a copy and forward the originals to the code reviewing body, which shall be the filing officer.~~

~~(c) All designated employees shall file statements of economic interests with the code reviewing body.~~

¹ Designated employees who are required to file statements of economic interests under any other agency's Conflict of Interest Code, or under Article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.

(5) Section 5. Statements of Economic Interests Time of Filing.

(a) Initial Statements. All designated employees employed by the Town of Loomis on the effective date of this Code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within thirty days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within thirty days after the effective date of the amendment.

(b) Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file statements within thirty days after assuming the designated positions.

(c) All designated employees shall file statements no later than April 1.

(d) Leaving Office Statements. All persons who leave designated positions shall file statements within thirty days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office. Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office state, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(a) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

1. File a written resignation with the appointing power; and

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

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(a) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code.

(b) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office.

(c) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later.

(d) Contents of Leaving Office Statements. Leaving office statements 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.

(7) Section 7. Manner of Reporting. Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the Town of Loomis, and shall contain the following information:

(a) Investments and Real Property Disclosure. When an investment or an interest in real property² is required to be reported,³ the statement 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;
4. A statement whether the fair market value of the investment or interest in real property exceeds ~~one two~~ thousand dollars (\$~~2~~,000), exceeds ten thousand dollars (\$10,000), ~~or exceeds one hundred thousand dollars (\$100,000),~~ or exceeds one million dollars (\$1,000,000).

(b) Personal Income Disclosure. When personal income is required to be reported,⁴ the statement shall contain:

² For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

³ Investments and interest in real property which have a fair market value of less than \$12,000 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 ten per cent or greater.

⁴ 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.

1. The name and address of each source of income aggregating ~~two~~ five hundred ~~fifty~~ dollars (~~\$250~~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), ~~or 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.

(c) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁵ the statement shall contain:

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

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 Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or

⁵ 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 ten per cent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filers.

wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(a) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, 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. This section shall not apply to any part-time member of the governing board or any public institution of higher education, unless the member is also an elected office.

Subdivisions (a), (b), and (c) of 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 Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$420.

(a) No member of a state board or commission, and no designated employee of a state or local government, shall accept gifts with a total value of more than \$420 in a calendar year from any single source, 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. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivision (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(a) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(b) Omitted.

(c) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(d) Omitted.

(e) This section shall apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(a) Except as set forth in subdivision (b), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(b) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing before January 1, 1998.

(c) Nothing in this section shall exempt any person from any other provision of title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(a) Except as set forth in subdivision (b), 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:

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:

(i) The date the loan was made.

(ii) The date the last payment of \$100 or more was made on the loan.

(iii) The date upon which the debtor has made payments on the loan aggregating less than \$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 this title.

3. A loan that would otherwise be a gift as set forth under subdivision (a), but on which the creditor has taken reasonable action to collect the balance due.

4. A Loan that would otherwise be a gift as set forth under subdivision (a), 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 for not taking collection action was based on reasonable business consideration.

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

(c) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification. No designated employee shall make, participate in making, or in any way attempt to use his or her official positions to influence the making of any governmental decision which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the designated employee has a direct or indirect investment worth more than ~~one~~two thousand dollars (\$~~1~~2,000);

(b) Any real property in which the designated employee has a direct or indirect interest worth more than ~~one~~two thousand dollars (\$~~1~~2,000);

(c) Any source of income, 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 ~~two~~five hundred ~~five~~ dollars (\$~~250~~500) or more in value provided to, received by or promised to the designated employee within twelve months prior to the time when the decision is made; ~~or~~

(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 or, a gift or gifts aggregating \$420 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. 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.

(910) Section 9. Manner of Disqualification, 10. 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 ~~financial~~disqualifying interest in it, the determination not to act must be accompanied by disclosure of the ~~financial~~disqualifying interest. In the case of a voting body, this determination and disclosure shall be made a part of the agency's official record; in the case of a designated employee who is the head of an agency, this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other designated employees, this determination and disclosure shall be made in writing to the designated employee's supervisor.

(1011) Section 1011. 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 Practices Commission pursuant to Government Code Section 83114 and 2 California Code of Regulations Sections 18329 and 18329.5 or from the Town Attorney, provided that nothing in this section requires the Town Attorney to issue any formal or informal opinion.

(1112) Section 1112. Violations. This Code has the force and effect of 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 has occurred may be set aside as void pursuant to Government Code Section 91003.

TOWN OF LOOMIS
CONFLICT OF INTEREST CODE

EXHIBIT A

Designated Positions

The following are designated positions within the Town of Loomis which involve or may involve the making or participating in the making of decisions which may foreseeably have a material effect on any ~~financial~~ economic interest and the specific types of investments, and business positions in business entities and income from sources which manufacture, sell or provide, supplies, materials, books, machinery, services or equipment of the type utilized by the agency, interest in real property, and sources of income which are reportable.

Each listed designated position must disclose on appropriate FPPC forms filed with the Town Clerk the disclosure information required by his or her Assigned Disclosure Category.

List of Designated Positions

Assigned Disclosure Categories

| | |
|---|--------------|
| <i>Town Council</i> | 1 |
| <i>Town Attorney</i> | 1 |
| Town Clerk | 2 |
| Town Engineer | 2 |
| <i>Town Finance Officer</i> | 1 |
| <i>Town Manager</i> | 1 |
| Town Planning Director | 2, 3 |
| Town Assistant Planner | 2, 3 |
| Town Public Works Director | 2, 3 |
| <i>Town Treasurer</i> | 1 |
| <i>Planning Commissioners</i> | 1 |
| Design Review Committee | 2 |
| Park and Open Space Commission | 2 |
| Town Consultants | * |

Disclosure Categories

Category 1

~~A designated employee in this category must report all investments, and business positions in business entities and income from sources which manufacture, sell or provide, supplies, materials, books, machinery, services or equipment of the type utilized by the Town, interests in~~

~~real property, personal income, business entity income, and business positions in business which he or she is a director, officer, partner, trustee, employer or holds any position of management.~~

All officials and employees in this category shall disclose their economic interests as required pursuant to Government Code Sections 87200, et seq.

Category 2

An employee in this category could possibly have a conflict due to an interest in a supplier of goods, materials or services to the Town. ~~Investments~~Income and gifts from, and investments and business positions in, any business entity supplying such goods and services to the affected employees department or to the Town within the previous one year period are to be disclosed, if the value of such goods or services provided to the Town, or the value of funds deposited by the Town in or with such business entity, exceeds the sum of \$5,000.00 during the previous twelve (12) month period.

Category 3

A designated employee in this category must report all investments in real property in or within five (5) miles of the Town's corporate limits or investments and business positions in business entities owning any such property; contracts currently outstanding or completed within the last twelve (12) months for any governmental agency within and including Placer County; and any contracts with any person or entity currently outstanding or completed within the last twelve (12) months concerning land use within the Town or within five miles of the Town's boundaries.

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The ~~(chief executive officer)~~ Town Manager may determine in writing that a particular consultant, although a 'designated position', is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The ~~(chief executive officer's)~~ Town Manager'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.

A consultant shall be required to make the disclosure required by this Code prior to the award by the Town of any contract with such consultant.

Amended 12/89

Amended 3/92

Amended 12/98

Amended 9/02

Amended 8/12/08

Amended 9/14/12