

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Susan Sneddon, City Clerk
DATE: March 17, 2009
SUBJECT: Consideration of a Resolution rescinding Resolution No. 2008-087 and updating the City of Calistoga’s Conflict of Interest Code.

APPROVAL FOR FORWARDING:


James C. McCann, City Manager

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ISSUE: Consideration of a Resolution rescinding Resolution No. 2008-087 and updating the City of Calistoga’s Conflict of Interest Code.

RECOMMENDATION: Adopt Resolution.

BACKGROUND: The Political Reform Act (Act) requires that every local government agency regularly review its conflict-of-interest code and update it as necessary to reflect changes in each agency and in the state law. The Act further requires that “no public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.”¹ The Act requires every public official to disclose those economic interests that could foreseeably be affected by the exercise of his or her duties.² In addition, any member, officer, employee or consultant of the City should be designated in the Code if the person makes, or participates in making governmental decisions. Following is a list of actions which relate to “making governmental decisions”:

- Voting on a matter
- Approving the budget
- Making purchasing decisions
- Entering into contract

¹ Calif Gov Code § 87100
² Calif Gov Code 87200 - 87313

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25 Following is a list actions which relate to “participating in governmental
26 decisions”:

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- 28 ▪ Negotiating the terms of a contract
- 29 ▪ Writing or approving the specifications of bid documents
- 30 ▪ Advising or making recommendations to the decision-maker or
31 governing body

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33 The City Council has maintained a Conflict of Interest Code for more then thirty
34 years, our current Code is reflected in Resolution No. 2008-087 (Attachment 1).
35 Since 2008 there have been various positions that have been added or deleted
36 from the organization, as well as some revised titles for existing positions.
37 Consequently, Resolution 2008-087 requires amendment.

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39 The proposed revised Conflict of Interest Code will contain the following:

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- 41 1. A list of designated positions that make/participate in making
42 governmental decisions. Appendix B in the attached draft Resolution
43 (Attachment 1) lists the “Designated Positions Disclosure Category” which
44 is sorted alphabetically for easy and quick reference.
- 45 2. Disclosure categories specifying the financial interests that designated
46 positions must disclose.

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48 The attached draft Resolution is presented for the City Council’s consideration,
49 with changes noted (Attachment 1).

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51 Positions to be added to the 2009 Conflict of Interest Code

52 Staff recommends that the following positions be added to the list of “Designated
53 Positions” in the City’s Conflict of Interest Code:

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- 55 • Aquatics and Recreation Manager
- 56 • Community Resources Commission
- 57 • Bicycle Advisory Committee.
- 58 • Calistoga Pool Advisory Committee

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60 Staff recommends that the Community Resources Committee (CRC), the Bicycle
61 Advisory Committee (BAC) and Calistoga Pool Advisory Committee (CPAC)
62 should be listed under the "Designated Positions". The purpose of the
63 Designated Positions list is to specify those positions filled by individuals that
64 make or participate in making governmental decisions that could affect their
65 personal economic interests. The CRC, BAC and CPAC are charged with making
66 recommendations to City Council and/or Planning Commission. Such
67 recommendations are made with the intent to influence certain decisions. The

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68 Fair Political Practices Commission characterizes such actions as part of
69 participating in making governmental decisions³.

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71 Positions to be removed from the 2009 Conflict of Interest Code

72 Staff recommends that the following vacant positions be removed from the list of
73 "Designated Positions" because there are no immediate plans to fill these
74 positions:

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- 76 • Assistant Planner
- 77 • Associate Civil Engineer
- 78 • Building Inspector
- 79 • Deputy City Clerk/Administrative Analyst
- 80 • Director of Community Resources
- 81 • Emergency Program Coordinator/Administrative Analyst
- 82 • Police Lieutenant

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84 Appendix B in the attached draft Resolution lists the "Designated Positions
85 Disclosure Category".

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87 Consultants and Form 700 Submission Requirement

88 The City's Conflict of Interest Code provides that all City Consultants are
89 "Designated Persons," who are required to submit a Form 700 to the City Clerk.
90 The City Manager, however, may determine that a particular consultant is hired
91 to perform a range of duties that is limited in scope and is therefore not required
92 to submit a Form 700.

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94 **FISCAL IMPACT:** None

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96 **ATTACHMENTS:**

- 97 1. Draft Resolution
- 98 2. California Government Code §87302

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³ FPPC, Title 2, Div 6, Calif Code of Regs § 18702.2(a)(2).

RESOLUTION NO. 2009-8-087 _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, RESCINDING ITS PREVIOUS CONFLICT OF INTEREST CODE AND ADOPTING A CONFLICT OF INTEREST CODE FOR THE CITY OF CALISTOGA TO ADD THE POSITION TITLES OF AQUATICS AND RECREATION MANAGER, COMMUNITY RESOURCES COMMISSION, THE CALISTOGA BICYCLE ADVISORY COMMITTEE, AND THE CALISTOGA POOL ADVISORY COMMITTEE AND TO REMOVE INACTIVE POSITIONS SENIOR PLANNER, DIRECTOR OF COMMUNITY RESOURCES, BUILDING OFFICIAL, FIRE-BUILDING CODE BOARD OF APPEALS

WHEREAS, pursuant to California Government Code commencing with Section 87300, the City Council is required to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, pursuant to Government Code Section 87302, the Conflict of Interest Code shall provide for specific enumeration of the positions within the City, other than those specified in Government Code Section 87200, which involve the making or participation in the making of decisions which may foreseeable have material effect on any financial interest and for each such enumerated position, the specific types of investments, business position interests in real property and sources of income which must be reported; and

WHEREAS, the Fair Political Practices Commission (“FPPC”) has adopted a regulation (Fair Political Practices Commission, Title 2, Div 6, -California- Code of Regulations- Section 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 FPPC to conform to amendments in the Political Reform Act; and

WHEREAS, the City of Calistoga has previously incorporated by reference the FPPC’s standard conflict of interest code in the City’s Conflict of Interest Code; and

WHEREAS, incorporation by reference of the terms of the aforementioned regulation and amendments thereto in the Conflict of Interest Code of the City of Calistoga will save the Calistoga City Council time and money by minimizing the actions required of that body to keep its code in conformity with the Political Reform Act; and

WHEREAS, the Political Reform Act requires review of the Conflict of Interest Code every two (2) years to determine whether it is accurate or whether it should be amended; and

WHEREAS, the Aquatics and Recreation Manager, Community Resources Commission, the Calistoga Bicycle Advisory Committee, and the Calistoga Pool Advisory Committee Senior Planner, Director of Community Resources, Building Official, Fire-Building Code Board of Appeals position titles members are not presently listed in the City of Calistoga Conflict of Interest Code, therefore an amendment reflecting the additions and position title revision to the Designation Positions (Appendix A) shall be submitted to the code reviewing body; and

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WHEREAS, the City desires to update its current Conflict of Interest Code to revise the list of designated employees and disclosure categories.

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1 Resolution No. ~~2006-059-2008-087~~ adopted ~~July 5, 2006~~ October 7, 2008 is hereby rescinded.

Section 2. The terms of 2 California Code of Regulations, Section 18730 and any and all amendments to it adopted by the Fair Political Practices Commission, as well as the attached Appendices A & B in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference. This Resolution, together with Appendices A & B which include the position of Senior Civil Engineer, Assistant Planner, and Police Lieutenant shall constitute the Conflict of Interest Code of the City of Calistoga.

Section 3. Designated employees shall file Statements of Economic Interests (Form 700) with the City Clerk, to whom the City Council hereby designates the authority to carry out the duties of the Filing Officer.

Section 4. The effective date of this Code shall be the date this Code is originally approved and adopted by the City Council.

Section 5. Statements of Economic Interest shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the City of Calistoga.

PASSED, APPROVED, AND ADOPTED this ~~7th day of October 2008~~ 17th day of March 2009, by the following vote of the Calistoga City Council.

AYES: ~~_____ Vice Mayor Dunsford, Councilmembers Slusser, Garcia, Kraus
_____ and Mayor Gingles~~

NOES: ~~_____ None~~

ABSTAIN/ABSENT: ~~_____ None~~

JACK GINGLES, Mayor

ATTEST:

SUSAN SNEDDON, City Clerk

APPENDIX A

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DESIGNATED POSITIONS

**Disclosure
Categories**

Administrative Analyst	3, 4, 5, 6
Administrative Services Coordinator	5, 6
Assistant Planner	3, 4, 5, 6
Associate Civil Engineer	1, 2
Associate Planner	3, 4, 5, 6
Bicycle Advisory Committee	1, 2
Building-Fire Code Board of Appeals	1, 2
Building Inspector	3, 4, 5, 6
Building Official	3, 4, 5, 6
Calistoga Pool Advisory Committee	1, 2
City Clerk	1, 2
City Engineer /Public Works Director/ <u>City Engineer</u>	1, 2
Community Resources Commission	1, 2
Consultants*	1, 2
Deputy City Clerk/Administrative Analyst	1, 2
Director of Community Resources	1, 2
Director of Planning/Building	1, 2
Emergency Program Coordinator/Admin Analyst	3, 4, 5, 6
Fire Chief	1, 2
Maintenance Superintendent	3, 4, 5, 6
Plant Superintendent	3, 4, 5, 6
Police Chief	1, 2
Police Lieutenant	1, 2
Recreation Superintendent	5, 6
Senior Civil Engineer	1, 2
Senior Planner	3, 4, 5, 6
Senior Account Clerk	5, 6

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GOVERNMENT SECTION 87200 FILERS

The following positions are not covered by this Conflict of Interest Code because they file under Government Code Section 87200** and, therefore, are listed for informational purposes only:

1. City Council
2. ~~Planning Commission~~City Manager
3. ~~City Manager~~Planning Commission
4. ~~City Treasurer~~
5. City Attorney
6. Administrative Services Director/~~City Treasurer~~

Individuals holding one of these positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has categorized incorrectly. The Fair Political Practices Commission makes the final determination as to whether or not a position is covered by Government Code Section 87200.

* The City Manager may determine in writing that a particular consultant, although a “designated employee,” 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 described in this Code. 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 City 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.

** Government Code Section 87200 is applicable to “members of planning commissions, . . . mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities and other public officials who manage public investments”

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APPENDIX B

DISCLOSURE CATEGORIES

The “designated employee” disclosing investments and sources of income need only disclose investments in businesses and sources of income which do business in the City of Calistoga (City), plan to do business in the City or have done business in the City within the past two years. In addition to other activities, a business entity is doing business within the City if it owns real property within the City.

When a “designated employee” is disclosing interests in real property, the employee need only disclose the interest in real property which is located in whole or part within or not more than two miles outside the boundaries of the City or within two miles of any land owned or used by the City.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in Appendix A.

Category 1: All investments and sources of income.

Category 2: All interests in real property.

Category 3. All investments, interests in real property, and sources of income subject to the regulatory, permit, or licensing authority of the department.

Category 4: Investments in business entities and business positions and sources of income which engage in land development, construction, or the acquisition or sale of real property.

Category 5: Investments in business entities and business positions and sources of income of the type which, within the past two years, have contracted with the City of Calistoga to provide services, supplies, materials, machinery, or equipment.

Category 6: Investments in business entities and business positions and sources of income of the type which, within the past two years, have contracted with the designated employee's department to provide services, supplies, materials, machinery, or equipment.

CALIFORNIA GOVERNMENT CODE - SECTION 87302

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2 87302. Each Conflict of Interest Code shall contain the following
3 provisions:

4 (a) Specific enumeration of the positions within the agency, other than those specified in Section 87200,
5 which involve the making or participation in the making of decisions which may foreseeably have a
6 material effect on any financial interest and for each such enumerated position, the specific types of
7 investments, business positions, interests in real property, and sources of income which are reportable.
8 An investment, business position, interest in real property, or source of income shall be made reportable
9 by the Conflict of Interest Code if the business entity in which the investment or business position is held,
10 the interest in real property, or the income or source of income may foreseeably be affected materially by
11 any decision made or participated in by the designated employee by virtue of his or her position.

12 (b) Requirements that each designated employee, other than those specified in Section 87200, file
13 statements at times and under circumstances described in this section, disclosing reportable investments,
14 business positions, interests in real property and income. The information disclosed with respect to
15 reportable investments, interests in real property, and income shall be the same as the information
16 required by Sections 87206 and 87207. The first statement filed under a Conflict of Interest Code by a
17 designated employee shall disclose any reportable investments, business positions, interests in real
18 property, and income. An initial statement shall be filed by each designated employee within 30 days after
19 the effective date of the Conflict of Interest Code, disclosing investments, business positions, and interests
20 in real property held on the effective date of the Conflict of Interest Code and income received during the
21 12 months before the effective date of the Conflict of Interest Code. Thereafter, each new designated
22 employee shall file a statement within 30 days after assuming office, or if subject to State Senate
23 confirmation, 30 days after being appointed or nominated, disclosing investments, business positions, and
24 interests in real property held on, and income received during the 12 months before, the date of assuming
25 office or the date of being appointed or nominated, respectively. Each designated employee shall file an
26 annual statement, at the time specified in the Conflict of Interest Code, disclosing reportable investments,
27 business positions, interest in real property and income held or received at any time during the previous
28 calendar year or since the date the designated employee took office if during the calendar year. Every
29 designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing
30 reportable investments, business positions, interests in real property, and income held or received at any
31 time during the period between the closing date of the last statement required to be filed and the date of
32 leaving office.

33 (c) Specific provisions setting forth any circumstances under which designated employees or categories
34 of designated employees must disqualify themselves from making, participating in the making, or using
35 their official position to influence the making of any decision. Disqualification shall be required by the
36 Conflict of Interest Code when the designated employee has a financial interest as defined in Section
37 87103, which it is reasonably foreseeable may be affected materially by the decision. No designated
38 employee shall be required to disqualify himself or herself with respect to any matter which could not
39 legally be acted upon or decided without his or her participation.

40 (d) For any position enumerated pursuant to subdivision (a), an individual who resigns the position within
41 12 months following initial appointment or within 30 days of the date of a notice mailed by the filing officer
42 of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided
43 that during the period between appointment and resignation, the individual does not make, participate in
44 making, or use the position to influence any decision of the agency or receive, or become entitled to
45 receive, any form of payment by virtue of being appointed to the position. Within 30 days of the date of a
46 notice mailed by the filing officer, the individual shall do both of the following: (1) File a written
47 resignation with the appointing power.

48 (2) File a written statement with the filing officer on a form prescribed by the commission and signed under
49 the penalty of perjury stating that the individual, during the period between appointment and resignation,
50 did not make, participate in the making, or use the position to influence any decision of the agency or
51 receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.