

Conflict of Interest Code Presentation for Local Agencies

Fair Political Practices Commission
Legal Division
866-275-3772
www.fppc.ca.gov
advice@fppc.ca.gov



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The visual aids used in FPPC workshops are guides which contain only highlights of selected provisions of the law. They do not carry the weight of the law.

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OVERVIEW

- What is a conflict of interest code?
- Types of Form 700 filers
- 3 components of a conflict of interest code
- How to identify necessary changes to your agency's conflict of interest code
- Approval process for multi-county agencies

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CONFLICT OF INTEREST CODES

Every government agency must adopt a conflict of interest code.

A conflict of interest code is the legal instrument requiring those individuals holding designated positions to disclose their financial interests to help avoid conflicts of interest.

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HOW IT WORKS

- Public official/employee holds a position that involves:
 - ❖ Making or participating in making governmental decisions.
- Position is designated in the code:
 - ❖ Disclosure is based on a position's level of decision making.
- Official/employee files Statements of Economic Interests (Form 700):
 - ❖ Serves as a reminder to official/employee of potential conflicts.
 - ❖ Public document.

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TYPES OF FORM 700 FILERS

Code Filers

A designated position in a conflict of interest code is often referred to as a “code filer” because the position files a Form 700 based on its designation in the conflict of interest code.

87200 Filer

Position specifically listed in Section 87200 or meets the criteria in Regulation 18700.3 as a public investment manager is an 87200 filer.

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WHO IS LISTED IN GOV. CODE SECTION 87200?

County Officials

- Board of Supervisors
- Chief Administrative Officer
- County Counsel
- District Attorney
- Planning Commissioners
- County Treasurer

City Officials

- Mayor/Council members
- Chief Administrative Officer
- City Manager
- City Attorney
- Planning Commissioners
- Treasurer

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87200 FILERS (Public Investment Managers)

Public officials and employees who manage public investments are also listed in Government Code Section 87200. Regulation 18700.3 contains the definition of a public investment manager.

Typically, this means your retirement board or investment board, but may include...

- ✓ Employees or consultants who establish policy or make decisions concerning the investment of public monies.
- ✓ Does not include individuals who work under the supervision of a financial manager.

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SAMPLE LANGUAGE 87200 FILERS (Public Investment Managers)

The following positions are not covered by the code because they must file under Government Code Section 87200 and, therefore, are listed for informational purposes only:

**Board Members
Alternate Board Members
Executive Director
Chief Financial Officer**

Individuals holding the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

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2016 BIENNIAL NOTICE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
October 2016						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

- Each local agency must review its conflict of interest code biennially.
- By July 1: Code reviewing body must notify all agencies.
- By October 3: All agencies must submit the notice to the code reviewing body.
- Before completing the notice, review the agency's organizational chart and current code, including the disclosure categories.

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2016 Multi-County Agency Biennial Notice

Name of Agency: Orange Fire Protection District

Mailing Address: PO Box 428, Orange City, CA 9555

Contact Person: Jeff Meyers Phone No. 555.555.5555

Email: jeffmeyers@ofpd.org Alternate Email: staff@ofpd.org

Counties Served: Solano, Yolo

No. of Employees: 10 No. of Form 700 Filers: 8

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

Please identify which statement accurately describes your agency's status.

- This agency has reviewed its conflict of interest code. The current code designates all positions which make or participate in making governmental decisions. The designated positions are assigned accurate disclosure categories that relate to the job duties of the respective positions. The code incorporates FPPC regulation 18730 so that all relevant Government Code Sections are referenced.
- This agency has reviewed its conflict of interest code and has determined that an amendment is necessary. An amendment may include the following:
 - New positions which involve the making or participating in the making of decisions which may foreseeably have a material impact on a financial interest.
 - Current designated positions need renaming or deletion.
 - Statutorily required provisions of the code need to be addressed.
 - Disclosure categories need revision.

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CODE REVIEWING BODY

City: City Council

County: Board of Supervisors
(including most school districts and public charter schools, water districts, fire districts, etc., if wholly within the county)

Multi-County: Fair Political Practices Commission

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Code Review Process

Compare existing conflict of interest code against current organizational structure.

- Have new positions or divisions been created? Abolished? Duties merged?
- Have duties of positions designated in the code changed to warrant adjusting their disclosure obligations?

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Three Components of a Conflict of Interest Code

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THREE COMPONENTS OF A CODE

- 1 Terms of the code**
(Incorporation of Regulation 18730)
- 2 List of designated positions**
(The positions in your agency that are required to file a Form 700)
- 3 Disclosure categories**
(The specific interests to be reported on a Form 700)

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1 TERMS OF THE CODE

Incorporation Language



ORANGE COVE FIRE PROTECTION DISTRICT CONFLICT OF INTEREST CODE

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 Cal. Code of Regs. Sec. 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. 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 positions and establishing disclosure requirements, shall constitute the conflict of interest code of the **Orange Cove Fire Protection District (District)**.

Where to File



Individuals holding designated positions shall file their statements of economic interests with the **District**, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) Upon receipt of the statements for the Board and the Chief, the District shall make and retain copies and forward the originals to the **Fair Political Practices Commission**. All other statements will be retained by the **District**.

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LIST OF DESIGNATED POSITIONS

Every position in your agency that is involved in making or participating in making governmental decisions must be designated in your agency's code.

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WHAT DOES IT MEAN TO "MAKE" A DECISION?

Making a decision means:

- Voting on a matter
- Approving the budget
- Adopting policy
- Making purchasing decisions
- Entering into contracts

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WHAT DOES IT MEAN TO “PARTICIPATE” IN A DECISION?

“Participates” means:

- ❑ Negotiating the terms of a contract
- ❑ Writing the specifications of a bid
- ❑ Advising or making recommendations to the decision-maker or governing body without significant intervening substantive review

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DEVELOPING YOUR LIST OF “DESIGNATED POSITIONS”

- Maintain in the code your broad policy/decision makers
- Eliminate positions whose duties are clerical, secretarial, ministerial, or manual

Then

- Review the duty statements of everyone between these two levels. Look closely at how many levels of substantive review these positions have.

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DEVELOPING YOUR LIST OF “DESIGNATED POSITIONS”

KEEP

Broad policy decisions makers. For example, Directors and executive staff.

REVIEW DUTY STATEMENTS FOR

Positions that aren't broad policy decision makers or clerical, secretarial, ministerial, or manual. For example, Information Systems Analyst, Fleet Manager, Purchasing Agent, and Administrative Officer.

ELIMINATE

Positions whose duties are clerical, secretarial, ministerial, or manual. For example, secretary and tree trimmer.

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DESIGNATION BASED ON DUTIES

Based on the stated duties, which of the following positions should be in the agency's code?

[Director of Operations](#)

Prepares and administers the department budget. Works independently in the development of capital improvement projects.

YES

[Administrative Assistant](#)

Prepares accounting spreadsheets and meeting minutes, schedules meetings, posts information on website.

PROBABLY NOT

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NEW BOARDS & COMMISSIONS

Other than those which are solely advisory, when a board or commission is formed, the members must file under full disclosure until the positions are included in a conflict of interest code.

For board and commission members, including alternates, Form 700s are due no later than 30 days after assuming office.

Regulation 18700 and 18754
Government Code Section 87302.6

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POSITION LIST SAMPLE

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Board Members & Alternates.....	1
Chief Executive Officers.....	1
Principals.....	2
Director of Information Technology.....	2
Risk Manager.....	3
Transportation Commissioners.....	3
Purchasing Agent.....	4
Consultants/New Positions.....	*

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NEW POSITIONS-FORM 804

- Individuals serving in a new position created on or after January 1, 2010, must file under the broadest disclosure category in your agency's code.
- Agency may provide more limited disclosure by using Form 804.
- Add newly created positions to the conflict of interest code when it is amended.

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Regulation 18734

CONSULTANTS-FORM 805

- Use Form 805 to limit disclosure.
- Unsure of who is a consultant?
 - Contact your agency attorney.
 - Contact your code reviewing body.
 - Utilize FPPC advice services if you still cannot decide.

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Regulation 18700.3

SAMPLE CONSULTANT/NEW POSITION LANGUAGE

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation:

The [head of agency or his/her designee] 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 [head of agency or his/her designee'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. (Gov. Code Section 81008.)

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Disclosure Categories

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DISCLOSURE CATEGORIES

Disclosure categories describe the types of interests to be disclosed on a Form 700.

Designated positions can only be required to disclose interests that they may effect in the course of performing the position's duties.

City of Carmel-by-the-Sea v. Young
County of Nevada v. MacMillen

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Real Property Limitations

Does the designated position participate in decisions affecting real property?

If the answer is "no," do not require the disclosure of interests in real property.

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QUIZ

Which of the following positions should be required to report real property interests?

Claims Manager

Information Technology Director

Planning Director

Appraiser

Personnel Director

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Sample Vendor Category

Designated positions in this category must disclose investments, business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources of the type that provide services, supplies, materials, machinery or equipment *for the Agency*.

OR

for the designated position's department/division.

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Authority/Services Category

Designated positions in this category must disclose investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources of the type that provide health care products and services. Such sources include dental, mental, and ambulance services and medical products, including prescriptions and well being programs.

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Regulatory Category

Designated positions in this category must report investments, business positions in business entities, and income, including receipt of gifts, loans and travel payments, from sources subject to the Agency's regulatory, permit or licensing authority.

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IT Category

Designated positions in this category must report investments, business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources that provide information technology and telecommunications goods, products or services, including but not limited to, computer hardware or software companies, computer consultant services, training, data processing firms, and media services.

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Other Categories

1. Does the Agency issue grants?
2. Does the Agency license entities?
3. Does the Agency have enforcement authority?
4. Does the Agency have an auditing function?
5. Does the agency process claims?

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Gift and Honoraria Ban

The gift limit and honoraria ban are tied to sources of income required to be disclosed on statements of economic interests.

Please note that effective January 1, 2015, the gift limit is \$460 and will be adjusted again on January 1, 2017.

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Quiz

A person's duties include approving licensing programs for health care providers. Which of the following disclosure categories best suits this type of position:

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Quiz

All interests in real property in the State of California, as well as investments, business positions and sources of income, including receipt of gifts, loans, and travel payments.

OR

All investments, business positions and income, including receipt of gifts, loans, and travel payments, from sources that are subject to the regulatory, permit or licensing authority of, or have an application for a license or permit pending before the agency.

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PITFALLS TO AVOID

- Do not give full disclosure to positions with limited decision-making authority.
- Do not cite Form 700 schedules as your “disclosure categories.”
- Do not include provisions that go beyond the scope of the Political Reform Act.
- Do not include the gift limit or due dates.

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THE NEXT STEP

- You have amended your code to include all positions that should be designated in the code, and,
- You have assigned clear and concise disclosure categories.

Now...

Contact your “code reviewing body” for further instructions.

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DUTIES OF CODE REVIEWING BODY

- Review proposed code or amendments to ensure legal compliance (Gov. Code Section 87302)
- May not approve a code that exceeds requirements of the Political Reform Act
- Conflict of interest code is not effective until approved by the code reviewing body

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PROVIDING NOTICE

Review and preparation of codes by local government agencies must be carried out under procedures that guarantee to officers, employees, members, and consultants of the agency, and to residents of the jurisdiction, **adequate notice** and a **fair opportunity** to present their views.

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Approval Process for Multi-County Agencies

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NON-SUBSTANTIVE AMENDMENTS

These amendments do not require public notice and are limited to the following:

- Title changes
- Deleting positions that have been abolished
- Minor changes such as correcting typographical errors or adding clarifying language

However, if you discover you need to add positions or change disclosure categories, your amendment will be substantive.

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STARTING THE AMENDMENT

Submit the Required Documents to FPPC

- Proposed conflict of interest code in Word in a strikeout/underline format
- Current organizational chart
- Written description of changes
- Job descriptions/duty statements will be requested on an as-needed basis
- Brief justification when an official is designated to report all financial interests
- CEO Declaration (may be turned in before or after the notice period has concluded)

Send these documents via email to advice@fppc.ca.gov.

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MULTI-COUNTY AGENCIES

Prepare the amendment in ~~strikeout~~ and underscore format

A. ~~Outreach Services~~ Community Services

- ~~1. Community Services Director.....2~~
2. Community Services Manager.....3
2. Community Services Assistant Manager.....3
3. Cultural Services Manager.....4
4. Senior Recreation Supervisor.....4

Comments:

- ~~Outreach Services~~ became Community Services.
- The Community Services Assistant Manager was reclassified to Community Services Manager.

Or include explanations in a separate letter.

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FPPC REVIEW

- Once a draft conflict of interest code and the required documents are received, the FPPC will conduct an initial review.
- FPPC staff will follow up with you on any questions or concerns regarding the draft conflict of interest code, and may request additional documentation.
- This consultation process may result in changes to the draft conflict of interest code. Once the FPPC and the agency agree on the draft conflict of interest code, it is ready for public notice.

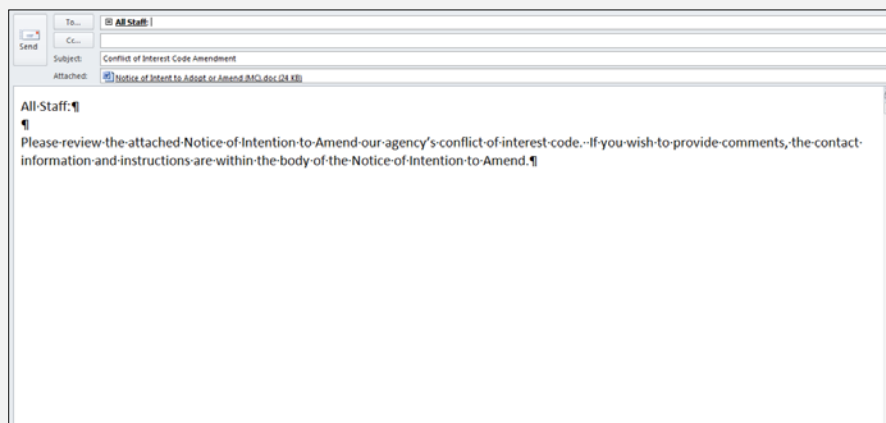
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NOTICE

- ❑ Agencies must provide a public comment period of at least 45 days. All employees must be notified and provided 45 days to comment. Notification may be completed via e-mail or internet.
- ❑ Agencies provide FPPC with public comments, if any.
- ❑ The FPPC also conducts a 45-day public notice period with the Office of Administrative Law.
- ❑ If suggestions during the public comment period result in changes or modifications to the draft code, no further public notice is required as long as the code is substantially similar to the originally noticed code.

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SAMPLE NOTICE TO EMPLOYEES



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Form 700 Filings

Type of Position	When To File Next Form 700
Positions with revised disclosure categories	Next Annual
Newly created positions, Form 804 and assuming office Form 700 on file	Next Annual
Newly added positions	File assuming office Form 700 within 30 days of effective date of code
Deleted positions due to changed duties	File leaving office Form 700 within 30 days of effective date of code
Positions listed in code that were determined to have never participated in government decisions	The agency may remove the position from the list of Form 700 filings and is not required to obtain a leaving office Form 700

Resources for Multi-County Agencies

- ❖ How to Amend Multi-County Agency's Conflict of Interest Code Factsheet
- ❖ Internal Multi-County Amendment Checklist
- ❖ Sample Disclosure Categories

Multi-County Agencies-Adopting & Amending Conflict of Interest Codes

Multi-County Agencies-Adopting & Amending Conflict of Interest Codes

A multi-county agency's conflict of interest code must reflect the current structure of the organization and properly identify officials and employees who should be filing Statements of Economic Interests (SEIs). One of the FPPIC's primary goals is to streamline the process for adopting and amending conflict of interest codes so it is more efficient for the agency and the FPPIC.

The information below provides an overview of the process. For a more detailed description of the process, please refer to the FPPIC's guide [How to Amend a Multi-County Agency's Conflict of Interest Code](#).

Biennial Review of Conflict of Interest Codes

Over time, the structure of an agency will change because employees' (subes shift) positions are reassigned or eliminated, and the organizational structure is modified. When an agency makes these types of changes, the conflict of interest code must be amended accordingly. To ensure the codes remain current and accurate, a multi-county agency must review its code biennially during even-numbered years. The FPPIC will send a Multi-County Agency Biennial Notice as a reminder of this obligation.

The Six-Step Process to Amend a Multi-County Agency's Conflict of Interest Code

If a multi-county agency determines it must amend its code, there are six steps to complete: 1) collect all necessary information, including the current code; 2) review and update the code to reflect the current agency structure; 3) collect the updated code and other required documents to the FPPIC for review; 4) consult with the FPPIC and amend the code as necessary; 5) conduct a 45-day public notice and comment period, and file submit the amended code to the FPPIC for final approval. For detailed information on each step in the process, please refer to the FPPIC's [Multi-County Agency Conflict of Interest Code Amendment Checklist](#).

Resources for Multi-County Agencies

- [How to Amend Multi-County Agency's Conflict of Interest Code](#)
- [Internal Multi-County Agency's Conflict of Interest Code Amendment Checklist](#)
- [Samples of Exemptions of Changes](#)
- [Sample Disclosure Categories for Multi-County Agencies](#)
- [Multi-County Agency Biennial Notice](#)

Additional Training and Outreach

The FPPIC also offers workshops and webinars on conflict of interest codes for state or local government employees who are tasked with creating or amending their agency's code. The training explains how to adopt or amend a code. Topics include review of the current code, analysis of disclosure categories, how to designate positions, and how to assign categories to those positions. [Click here for additional training information.](#)

If you have further questions, [Ask the FPPIC for Advice](#).

Statutory Authority

Government Code sections 87202, 87302 & 87303, 87306, 87307, 87308, 87309, 87310, 87311, and 87314. Regulations 107501 and 107502.



Thank You

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