

COUNCIL AGENDA – AUGUST 3, 2010

SUBJECT: CITY OF PORTERVILLE CONFLICT OF INTEREST CODE -
AMENDMENT NO. 8

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

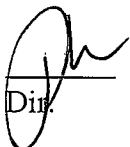
COMMENT: Government Code Section 87306.5 requires that local agencies biennially review their Conflict of Interest Codes and submit to their "Code Reviewing Body" either a report identifying any needed changes, or a statement that changes are not necessary. As the City of Porterville's Code Reviewing Body, the City Council accepted the City's Biennial Report for 2010 at its regular meeting of June 15, 2010. Said report concluded that an amendment to the City's Conflict of Interest Code was in fact required.

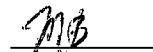
The recommended revisions pertain to changes in designated employees/departments to reflect reorganizations; the addition of positions to the list of designated employees; and other non-substantive changes for clarification purposes.

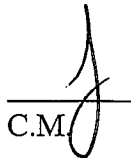
RECOMMENDATION: That the City Council adopt the draft resolution approving the amended City of Porterville Conflict of Interest Code.

ATTACHMENTS: 1. Draft Resolution of Adoption.
2. Amended Conflict of Interest Code

Item No. 19


Dir.


Approp./
Funded


C.M.

RESOLUTION NO. ____-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORTERVILLE ADOPTING A REVISED CONFLICT OF
INTEREST CODE FOR THE CITY OF PORTERVILLE

BE IT HEREBY RESOLVED by the City Council of the City of Porterville that the Conflict of Interest Code for the City of Porterville, attached hereto as Exhibit A, is hereby adopted, and the City Manager, as Administrative Supervisor, is hereby authorized to execute said document.

ADOPTED this ____ day of August, 2010.

Ronald L. Irish, Mayor

ATTEST:

John D. Lollis, City Clerk

Patrice Hildreth, Chief Deputy City Clerk

CONFLICT OF INTEREST CODE OF THE
"CONFLICTS AND DISCLOSURE MONITOR AGENCY" OF THE
CITY OF PORTERVILLE

SECTION 1. Establishment. The City Council of the City of Porterville has heretofore established a Conflicts and Disclosure Monitor Agency (hereinafter "Agency") having jurisdiction as set forth herein over all officers, officials, and employees of the City. The City Manager shall be the Administrative Supervisor of such Agency with authority to act for and on behalf of such Agency. Such Agency shall not affect the duties, responsibilities, or chain of command of any Department, Board, or Commission except to administer and enforce the requirements, rules, and regulations set forth herein. The City Council shall be deemed the "Code Reviewing Body" of said Agency pursuant to the provisions of Section 87300 et seq. of the Government Code.

SECTION 2. Purpose. The Conflicts and Disclosure Monitor Agency of the City of Porterville hereby adopts this document as its "Conflict of Interest Code" in accordance with the requirements of the Political Reform Act of 1974.

SECTION 3. Designated Positions. The positions listed on Exhibit "A" attached hereto are designated positions. Officers and employees holding those positions are designated employees and are deemed, for the purposes of this Code, to make, or participate in the making of, decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. An investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employees by virtue of his or her position.

SECTION 4. Disclosure Statements. Each such designated employee shall file disclosure statements disclosing reportable investments, business positions, interests in real property, and income, to the extent required by the Act, and on forms prescribed by the Fair Political Practices Commission and supplied by the City Clerk.

SECTION 5. Place and Time of Filing.

- A. All designated employees required to file disclosure statements shall file same with the City Clerk, as Secretary to the Code Reviewing Body.
- B. A designated employee required to submit a disclosure statement shall file their initial statement within thirty (30) days after the effective date of this Code disclosing reportable investments, business positions, and interests in real property held on the effective date of the Conflict of Interest Code and income received during the 12-months before the effective date of the Conflict of Interest Code.
- C. Individuals hereafter appointed to designated positions shall file his or her initial statement within thirty (30) days after assuming office disclosing reportable investments, business positions, and interests in real property held on, and income received during the twelve (12) months before, the date of assuming office.
- D. After the initial filing, each person holding a designated position, shall, on or before the first day of March of each calendar year, file an annual disclosure statement disclosing reportable investments, business positions, interests in real property and income held or received at any time during the previous calendar year, or since the date the designated employee took office if during the calendar year. Such annual statements shall cover the period of the preceding calendar year.
- E. Every designated employee who leaves office shall file, within thirty (30) days of leaving office, a statement disclosing reportable investments, business positions, interests in real property and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.
- F. Any designated employee who resigns their position within twelve (12) months following initial appointment or within thirty (30) days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation, the individual does not make, participate in making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by

virtue of being appointed to the position. Within thirty (30) days of the date of a notice mailed by the filing officer, the individual shall do both of the following:

1. File a written resignation with the appointing power.
2. File a written statement with the filing officer on a form prescribed by the Commission and signed under the penalty of perjury stating that the individual during the period between appointment and resignation, 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, any form of payment by virtue of being appointed to the position.

- G. A designated employee required to file a statement of economic interest with any other public agency whose disclosure requirements are comparable hereto, may comply with the provisions of this Code by filing a duplicate copy of the statement filed with such other agency, in lieu of an entirely separate statement.

SECTION 6. Contents of Disclosure Statements. Disclosure statements shall be submitted on forms supplied by the City Clerk, and shall contain the following information:

A. Disclosure of Investment or Interest in Real Property.

1. When an investment or an interest in real property is required to be disclosed the statement shall contain:
 - a. A statement of the nature of the investment or interest;
 - b. 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;
 - c. The address or other precise location of the real property;
 - d. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000) but does not exceed ten thousand dollars (\$10,000), whether it exceeds ten thousand dollars (\$10,000) but does not exceed one hundred thousand dollars (\$100,000), whether it exceeds one hundred thousand dollars (\$100,000) but does not exceed one million dollars (\$1,000,000), or whether it exceeds one million dollars (\$1,000,000);

- e. In the case of a statement filed under Government Code Sections 87203 or 87204, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.
- f. For purposes of disclosure, interest in real property does not include the principal residence of the filer or any other property which the filer utilizes exclusively as a personal residence of the filer.

B. Disclosure of Income.

1. When income is required to be reported the statement shall contain, except as provided in Government Code Section 87207(b):
 - a. The name and address of each source of income aggregating five hundred (\$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;
 - b. 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 at least five hundred (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but not greater than ten thousand dollars (\$10,000), whether it was in excess of ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000);
 - c. A description of the consideration, if any, for which the income was received;
 - d. In the case of a gift, the amount and the date on which the gift was received;
 - e. In the case of a loan, the annual interest rate and the security, if any, given for the loan, and the term of the loan.
2. When the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported, the statement shall contain:
 - a. The name, address, and a general description of the business activity of the business entity;

- b. 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) during a calendar year.
3. When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.
4. 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, or as to which he or she is a paid consultant, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity. If the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or has done business, or plans to do business in the jurisdiction at any time during the two years prior to the date of the statement, it is required to be filed.
5. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired to disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal;

SECTION 7. Prohibition on Receipt of Honoraria. No member of the City Council or candidate for the office of City Council shall accept any honorarium. No designated employee shall accept any honorarium from any source if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. Subdivisions (b) of Government Code Section 89502 shall apply to the prohibitions in this section. This section shall not limit or prohibit payments,

advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code Section 89506.

SECTION 8. Prohibition on Receipt of Gifts in Accordance with Government Code Section 89503. No member of the City Council, candidate for the office of City Council, or designated employee shall accept any gifts with a total value of more than two hundred fifty dollars (\$250) in a calendar year from any single source, as adjusted annually pursuant to Section 89503(f).

SECTION 9. Disqualification. No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the employee or a member of his or her immediate family or on:

- A. Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;
- B. Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;
- C. Any source of income, other than gifts or loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within twelve (12) months prior to the time when the decision is made;
- D. Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or
- E. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value (as adjusted annually by State law) provided to, received by, or promised to the designated employee within twelve (12) months prior to the time when the decision is made.

- F. 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.

- G. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a designated employee, by an agent on behalf of a designated employee, or by a business entity or trust in which the employee, the employee's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.
 - 1. Notwithstanding subdivision (c) of Government Code Section 87103, a retail customer of a business entity engaged in retail sales of goods or services to the public generally is not a source of income to a designated employee who owns a 10-percent or greater interest in the entity if the retail customers of the business entity constitute a significant segment of the public generally, and the amount of income received by the business entity from the customer is not distinguishable from the amount of income received from its other retail customers.

SECTION 10. Manner of Disqualification. When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act must be accompanied by disclosure of the disqualifying interest. 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. This notice shall be forwarded to the Administrative Supervisor, who shall record the employee's disqualification. Upon receipt of such statement, the Administrative Supervisor shall immediately arrange for the matter to be reassigned to another employee.

SECTION 11. Interpretation. In the event of any ambiguity in these rules as to interpretation, construction, or applicability, the Administrative Supervisor shall, by written instrument, clarify such ambiguity. 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, or from the City Attorney, provided that nothing in this section requires the attorney for the City to issue any formal or informal opinion.

SECTION 12. Violation. Violation of any provision of this Code, including: (1) willful failure to file, or timely file, any requisite Disclosure Statement, (2) willful failure to disclose any financial or other interest required to be disclosed in such Disclosure Statement, or (3) filer's willful failure to disqualify himself or herself as required herein, shall be grounds for discipline or removal from office, pursuant to Government Code Section 91003.5. Upon ascertaining any such violation, the Administrative Supervisor shall report the same to the appointing official for appropriate proceedings. Such violation shall not, however, invalidate or otherwise affect any decision or action to which such violations might relate. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Act, Government Code Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code Section 91003.

SECTION 13. Effective Date. The City of Porterville Conflict of Interest Code, and any amendments to said Code, shall become effective immediately upon passage and approval by the City Council.

Adopted this _____ day of _____, 2010.

CONFLICTS AND DISCLOSURE MONITOR AGENCY

By _____

John D. Lollis, Administrative Supervisor

DESIGNATED EMPLOYEES*
EXHIBIT "A"

- A. ADMINISTRATION:
 - 1. Deputy City Manager

- B. DEPARTMENT DIRECTORS:
 - 1. Administrative Services Manager
 - 2. Community Development Director
 - 3. Fire Chief
 - 4. Parks and Leisure Services Director
 - 5. Police Chief
 - 6. Public Works Director

- C. DEPARTMENTAL EMPLOYEES AS FOLLOWS:
 - 1. Community Development Department:
 - a. City Planner
 - b. Development Associate
 - c. Project Manager

 - 2. Administrative Services Department
 - a. Purchasing Agent
 - b. Management Information Systems Manager

 - 3. Fire Department:
 - a. Battalion Chief/Fire Marshall
 - b. Battalion Chief of Operations
 - c. Deputy Fire Marshall

 - 4. Public Works Department
 - a. Chief Building Official
 - b. Deputy Public Works Director/City Engineer
 - c. Deputy Public Works Director/Field Services Manager
 - d. Assistant City Engineer

- D. CONSULTANTS: Consultants shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitations:

The Administrative Supervisor 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 described 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 Administrative Supervisor'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.

* This designation does not include the following City officials or employees required to report their financial interests pursuant to Article 2 of Chapter 7 of the Act, Government Code Sections 87200, et seq.:

- a. City Council Members
- b. City Manager
- c. City Attorney
- d. Finance Director