Ethics Training for the Planning Commission



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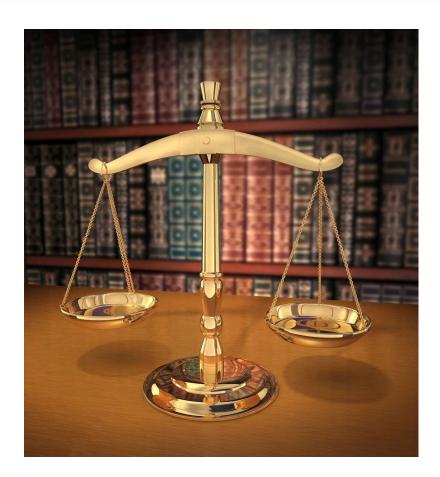
Jurisdiction of the Ethics Commission

The Ethics Commission has jurisdiction to enforce the City's governmental ethics laws, which include the:

- Ethics Ordinance
- Election Campaign Control Ordinance
- Lobbying Ordinance

This training covers the provisions of the Ethics Ordinance.

This training does not cover other provisions of the Municipal Code, Administrative Regulations, or Council Policies that also address the conduct of City Officials.





The Ethics Ordinance

The City's Ethics Ordinance is based primarily on state laws that govern all public officials in California.

- It applies to paid and volunteer officials who are involved in making City decisions.
- It is focused on financial disclosure and conflicts.
- It creates transparency and prevents the appearance of corruption.
- It does not regulate values or morality.

Under state law, Planning Commissioners are subject to the same disclosure obligations and conflict rules as elected officials.

These are significant laws: Failure to follow these rules can result in penalties of up to \$15,000 per violation.

These rules may not be intuitive, which is why our office conducts trainings and provides advice.





Roadmap of Today's Training

Today, we will discuss:

- Disclosure of Economic Interests
- Disqualification
- Financial Interest in a Contract
- Misuse of Position
- Political Influence and Contributions
- Gifts
- Future Employment
- How Our Office Can Help

What you should be thinking about in the context of these topics:

- What are your personal assets, activities, and gifts?
- What do you work on at the City?



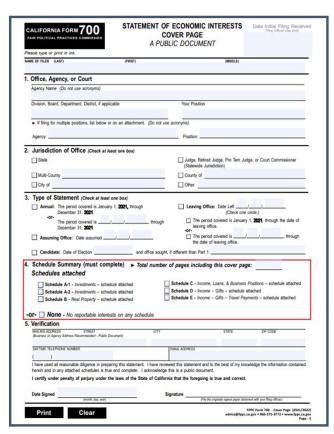


DISCLOSURE OF ECONOMIC INTERESTS



Disclosure of Economic Interests

- Disclosures are made on Fair Political Practices
 Commission Form 700 Statement of Economic Interests (SEI).
- Disclosure categories: stocks/ownership in business entities, real property, income, gifts over \$50, and travel payments.
- Filers must disclose interests for immediate family (spouse, registered domestic partner, dependent children).
- Timing:
 - You must file assuming/leaving office statement within 30 days of assuming/leaving office.
 - You must file annual statements by April 1 of each year.
- SEIs are e-filed with the City Clerk.
- See "Completing your Form 700" fact sheet on our website.





Disclosure Guidelines

Planning Commissioners are "high level" filers.

According to state law, you must disclose ownership interests and sources of income from any person or entity that is:

- · Located in the City of San Diego; or
- Doing business in the City of San Diego; or
- Planning to do business in the City of San Diego; or
- Has done business in the City of San Diego within the previous two years.

Investments in real property must be disclosed if the property is located in, or within two miles of, the City or property owned/used by the City.





More Disclosure Guidelines

Your financial interests are grouped into schedules:

- Schedule A-1: Investments
 - o E.g., stocks and bonds
- Schedule A-2: Business Entities/Trusts
 - E.g., management positions
- Schedule B: Real Property
- Schedule C: Income
- Schedule D: Gifts
- Schedule E: Travel Payments

California Fair Political Practices Commission Frequently Asked Questions: Form 700 Disclosure

GeneralPage 1	IncomePage 2	InvestmentsPage
Real PropertyPage 4	EnforcementPage 5	Gifts/TravelPage
Tickets to Non-Profit and Political Fundraising Events		Page 9

The FAQs listed below are selected from questions often asked about the Statement of Economic Interests (Form 700). Because it is not possible to address all of the unique variables and circumstances related to disclosure, individuals are encouraged to contact the FPPC with specific facts. Most officials must also consult their agency's conflict of interest code to determine their disclosure level and their reportable interests. The Form 700 is a public document. Form 700s filed by State Legislators and Judges, members of the FPPC, County Supervisors, and City Council Members are available on the FPPC's website.

General Questions

- Q. Do officials have to complete all schedules of the Form 700?
 - A. Not necessarily. The majority of individuals who file the Form 700 must do so by following the rules set forth in their agency's conflict of interest code ("designated employees"). Before completing the Form 700, an official should be familiar with the disclosure category for their position. For example, since job duties differ from agency to agency and even unit to unit within the same agency, an analyst from agency, or unit of that agency, may not have the same reporting requirements as an analyst from another agency, or even another unit of the same agency. Designated employees should obtain a copy of their agency's conflict of interest code from the agency.

Officials listed in Government Code Section 87200 (e.g., boards of supervisors, city council members, planning commissioners, elected state officials, etc.) must report investments, business positions, and sources of income, including receipt of glifs, loans, and travel payments, from sources located in or doing business in their agency's jurisdiction. All interests in real property within the agency's jurisdiction must also be reported. For local officials, real property located within two miles of the boundaries of the jurisdiction or any real property that the agency has an interest in is deemed to be "within the jurisdiction."

- 2. Q. Is it necessary to read all of the information before completing the Form 700?
 - A. Each individual must verify the Form 700's content under penalty of perjury. Therefore, every effort must be made to understand what the form requires. When necessary, you may contact the FPPC for specific guidance. You may only obtain immunity from a potential enforcement action when you receive formal written advice.
- 3. Q. Where are the Form 700s filed?
- A. Most state and local officials file with their agency. In most instances, the agency is required to forward the originals for specified high-level officials to the FPPC. Only retired judges serving on assignment and legislative staff file the Form 700 directly with the FPPC.

Form 700 Frequently Asked Questions – 044 11 2022 advice@fppc.ca.gov • 866-275-3772 • www.fppc.ca.gov



More Disclosure Guidelines: Schedule A

- Reportable investments are ownership interests in companies which take two forms:
 - less than 10% ownership valued at \$2,000 or more (usually taking the form of stocks or bonds) (Schedule A1); and
 - 10% ownership or more (usually taking the form of a management position at a business entity) (Schedule A2).
- If you have a 10% or more ownership interest in a business, you must disclose each source of income to the business if your pro rata share of the income is \$10,000 or more.
- You are not required to disclose a loan from a bank made in the regular course of business on terms available to the public.





More Disclosure Guidelines: Schedule B

You do not need to report your personal residence (but you do need to consider it for potential conflicts) unless:

- You rent a bedroom in your San Diego residence or use the residence as a shortterm vacation rental.
 - If so, report the fair market value of the portion of the house used for rental purposes, the total amount of rent received, and the names of any renters (if they are a reportable source) who paid you \$10,000 or more.
- You claim a business deduction for a portion of your personal residence (e.g., a home office).
 - If so, report the fair market value of the portion claimed as a deduction.





Case Vignette – Economic Interests

You have a 25% partnership interest in an engineering firm. Last year, the firm received a total of \$200,000 in income, including the following income from these clients:

• Earth Movers: \$46,000

• ABC Construction: \$12,000

Carlsbad Builders: \$52,000

Do you have to disclose the income from each of the three clients?





Case Vignette – Economic Interests

You decide to invest in the tech industry, specifically you think Microsoft is a safe bet to continue its growth. So, you buy six shares for \$2,300 at the beginning of the year. However, by the end of the year, the total value fell to \$1,500.

Since the City contracts with Microsoft, do you have to report these shares of your annual SEI?

What if you were not personally involved in picking your investment portfolio and used a fund manager instead?

What if the shares were held in your IRA account?





Case Vignette – Economic Interests

You are the sole owner of a rental property in the City. Rocket Mortgage has a mortgage on your property, but the investment is starting to turn a profit, and it brought in \$42,000 in income last year from a tenant.

Are you required to disclose your ownership of the property?

How about the mortgage?

The income from the tenant?

What if your family trust owns the property?





DISQUALIFICATION



Overview of Disqualification

- You may not influence a government decision if there
 is a realistic possibility that the decision will have a
 financial impact on you (including your immediate
 family) or one of your personal financial interests.
- Influencing a decision includes providing information, analysis, or studies to another City Official.
- The "public generally" exception may allow you to participate in decisions even if the decision involves your personal financial interests contact the Ethics Commission for details.
- If you have a conflict concerning an item on the meeting docket: you must disclose the nature of the conflict, then leave the room while the item is discussed and voted on.





Disqualification – Specific Interests

You are not permitted to participate in decisions that might affect your financial interests or those of your immediate family including:

- investments in business entities (including ownership);
- management positions in for-profit businesses, even if unpaid (e.g., board of directors);
- investments or leaseholds in real property;
- sources of income of \$500 or more within the past 12 months (including income received through a business entity if you own 10% or more);
- the donor of any gifts if the aggregate value equals \$630 or more within the past 12 months; and
- your personal expenses, income, assets, or liabilities.





Disqualification – Prohibited Activity

You are prohibited from influencing a Planning Commission matter if there is a realistic possibility that the decision will have a financial effect on any source of income, including your client's, of \$500 or more during the past 12 months.

Influencing a Commission matter includes:

- voting on your client's matter;
- discussing your client's matter with other Commissioners before, during, or after a meeting;
- making an appearance before the Commission on behalf of your client (including making a presentation and answering questions about your client's matter);
- preparing documents that are submitted to the Commission on behalf of your client; or
- assisting others who submit documents or appear before the Commission for your client.





Disqualification – Prohibited Contacts

<u>Prohibited</u> contacts with staff and other entities:

- You may not contact City staff on behalf of a client if the client's project could come before the Commission.
- If a client's project will be processed by another City board or commission before it is considered by the Planning Commission, you may not discuss the project with the other board or its staff.
- If a client's project is being considered by a community planning group, you may not discuss the project with the group or its staff if the project has the potential to come before the Commission.





Disqualification – Permissible Contacts

Permissible contacts with staff and other entities:

- Any other member of your firm may contact City staff or make presentations to other City boards on behalf of clients whose projects could come before the Commission (provided you do not assist in any way).
- You may contact City staff or make presentations to other boards on behalf of a client if the client's project will never come before the Planning Commission (as long as you do not suggest you are acting on behalf of the Commission).
- Once the Planning Commission makes a final decision, you may contact City staff on behalf of the client as long as there is no possibility of the project coming back to the Commission.

Note: A limited exemption may apply for submitting technical documents or representing your personal interests. Contact Ethics Commission staff for additional information.





Which of the following activities may you lawfully engage in on behalf of a client who has a matter pending before the Commission?

- Editing a report that will be distributed to the Commission without your signature or any mention of your name.
- Answering questions from other Commissioners outside of Commission meetings.
- Giving the client some helpful hints on the client's talking points for a Commission meeting.
- Preparing architectural plans that will be submitted with the client's report.



Is another member of your firm prohibited from engaging in any of these activities?



You are a Planning Commissioner and are also a partner in an architectural firm. One of the firm's clients has a project scheduled for a Process 3 hearing. You are aware that you are not to permitted make a presentation on behalf of your client at the hearing; however, because you have the most knowledge concerning the project, you offer to review the presentation prepared by your associate.

Is this lawful under the Ethics Ordinance?





Mr. Smith is seeking a conditional use permit for a property he recently purchased. Your spouse's law firm received \$50,000 in income from Mr. Smith during the past year for work unrelated to the property and does not plan to do any additional work for Mr. Smith in the future. Your spouse is one of ten equity partners in the law firm but did not participate in the previous work for Mr. Smith.

Does the Ethics Ordinance permit you to participate in the decision concerning Mr. Smith's permit?





After thoroughly reviewing an environmental impact report, you are presenting your findings to a City board regarding the proposed development of the latest high rise luxury apartment complex overlooking the bay. You own a condo several blocks away from the proposed project site. Since you do not believe that this proposed development will impact you any differently from other San Diego residents, you go forward with the presentation.

Does the Ethics Ordinance require your recusal if you own your condo?

What if you rent the condo from your landlord?





Disqualification – Interests in Real Property

OWNERSHIP

- A City Official may not participate in a municipal decision if it will have a material financial effect on property <u>owned</u> by the City Official.
 - 0-500 feet from the property: The financial effect is presumed to be material.
 - 500-1,000 feet from the property: The determination of the financial effect will depend on the impact of the decision on: (1) the development potential; (2) the income producing potential; (3) the highest and best use; (4) the character; and (5) the market value of the property.
 - 1,000 feet or more from the property: The financial effect is presumed not to be material.

RENTAL

• A City Official may not participate in a municipal decision if the decision will impact property <u>leased</u> by the City Official by changing: (1) the lease termination date; (2) the property's rental value; (3) legally allowable use; or (4) the use and enjoyment of the property.





FINANCIAL INTEREST IN A CONTRACT



Financial Interest in a Contract

Conflicts of interest involving City contracts have additional restrictions:

- You may not participate in a contract in which you have a financial interest.
- If you participate in creating or approving a City contract, you may not obtain a financial interest in the contract in the future.
- If a member of a legislative body (such as the Planning Commission) has a conflict of interest involving a contract, <u>disqualification is not sufficient</u>; the remainder of the legislative body may not vote on the contract.
- This law is designed to ensure that City contracting is conducted in the best interest of the public.





Financial Interest in a Contract - Continued

- You are involved in making a contract if you are involved in any stage of contract preparation.
- The fact that a contract might be fair or advantageous to the City is not relevant.
- This prohibition extends beyond the time you are employed by the City.

There are exceptions for less significant financial interests. Contact the Ethics Commission for advice.





Contracts – Government Benefits

- A City Official involved in setting rates (e.g., water/sewer services, general employment benefits) that will affect the official is not violating the Ethics Ordinance if the financial impact on the official is the same as it is on a significant segment of the public or a significant segment of City employees.
- On the other hand, a City Official may not participate in the making of a contract that will create a government salary or provide benefits that are unique to the City Official (or a member of his/her immediate family) or a limited group of City employees (i.e., a single department).





Case Vignette – Financial Interest in a Contract

The Planning Commission recommends that the City Council hire an environmental expert to advise the City on specific issues associated with amendments to the City's General Plan. The City Council decides to accept the recommendation and hire an expert.

One of the members of the Planning Commission decides to offer his expert services on a "pro bono" basis since he is qualified and familiar with the Planning Commission's concerns.

Is the described action lawful under the Ethics Ordinance?





MISUSE OF POSITION



Misuse of Position

- City Officials may not use their positions to induce someone to provide them with something of value.
- City Officials may not support or oppose any candidate for elective office using City facilities, equipment, supplies, or resources.
- This law does not prohibit City Officials from using their personal time to support a candidate.
- City Officials may not disclose confidential information acquired during work for the City.





Case Vignette – Misuse of Position

A political committee formed to support a ballot measure in an upcoming City election asks the Fire Chief if he would agree to support the ballot measure. The committee also offers to pay him \$5,000 for writing a statement, in his role as Fire Chief, to be used in the committee's campaign literature.

Because the ballot measure will provide increased funding to the City and to the Fire-Rescue Department, the Fire Chief believes he can agree to the request.

Has the Fire Chief violated the Ethics Ordinance?





Case Vignette – Misuse of Position

A Planning Commissioner contacts the office of her City Councilmember. She talks to a Council staffer and tells the staffer that, as a volunteer Commissioner, she has been spending a lot of time lately at lengthy and contentious Commission meetings. She then asks the staffer to tell the Councilmember that she would like her residential street prioritized for the undergrounding of overhead utilities in the upcoming year.

Has the Commissioner violated the Ethics Ordinance?





POLITICAL INFLUENCE AND CONTRIBUTIONS



Political Influence and Contributions

- City Officials may not use their influence to appoint someone to a paid or unpaid City position in return for personal or political services.
- City Officials and candidates may not knowingly solicit campaign contributions from City employees.
 - This prohibition applies to employees of the City and City agencies (Civic San Diego, Convention Center Corporation, Housing Commission).
 - Inadvertent solicitation of City employees is permitted if the solicitation is directed to a large segment of the public and there is no reason to believe that a City employee is receiving the solicitation.





Case Vignette – Political Influence and Contributions

Your childhood friend decided to run for City Council and seeks your support in her candidacy. You agree to help and canvas the neighborhood over the weekend knocking on doors and speaking with constituents. To your surprise, a coworker in DSD opens the door, and you ask this person to contribute to your friend.

Have you violated the Ethics Ordinance?





GIFTS



Gifts Generally

- There are three concepts to keep in mind with gifts:
 - <u>Disclosure on SEI</u>: Gifts from a reportable source with an aggregate value of \$50 or more must be disclosed on your SEI. For Planning Commissioners, everyone is a reportable source.
 - Gift Limits: Gifts are limited to a value of \$630 from any one reportable source within a calendar year.
 - <u>Disqualification</u>: Gifts valued at \$630 or more received over a 12-month period will trigger your disqualification in decisions impacting the source of the gifts.
- Exception: gifts do not include rebates or discounts offered to the general public (e.g., AAA discount) or all City employees (e.g., Verizon discount).





Gifts - Continued

- A gift is reportable even if you discard it (unless it is a ticket to a one-time event) or give it to someone else.
- A gift is <u>not</u> reportable if, within 30 days, it is returned unused, paid for, or delivered to a 501(c)(3) charity or a governmental agency.
- Some gifts have unique rules, such as wedding gifts, which are reportable but not subject to the annual limit.
- There are many exceptions to the gift rules, including gifts from family, free or discounted admission to local seminars, hospitality in a friend's home, and gifts received in a bona fide dating relationship.





Gifts – Personal Relationships

- Reciprocal Exchanges. If a City Official is in an ongoing social relationship in which both parties alternate paying for each others' lunches, movie tickets, greens fees, etc., there is no reportable gift if the City Official has substantially paid for what he or she received over the course of the reporting period.
- Long Term Friendships. Items received from a long-term personal friend are not gifts if the friend has not engaged in any type of City business involving the City Official during the past 12 months and it is not foreseeable that the friend will engage in City business involving the City Official within the next 12 months.

NOTE: these exceptions do not apply to gifts from lobbyists!





Gifts – Exceptions

- <u>Ceremonial Role</u>. "Ceremonial role" means throwing out the first pitch, cutting ribbons, and presenting keys to the City. The ceremonial role exemption applies only to admission; tangible items, such as food and beverages, are gifts. (File Form 802 with City Clerk for ticketed events.)
- <u>Staffing Events</u>. If a staffer assists an official performing a ceremonial role, the staffer's admission to the event is not a gift. This exemption does not cover food, beverages, or other tangible items.
- <u>Home Hospitality</u>. Hospitality provided by someone in their "home" (which includes an owned or leased vacation home, timeshare, motorhome, yacht, etc.) is not a gift when the host is present, as long as the City Official has a relationship with the host unrelated to his or her City position.





Gifts – Reportable Value

- The reportable value of a ticket is its face value.
- The reportable value of other gifts is generally the fair market value as of the date of receipt.
- If you cannot determine the fair market value, you must make a reasonable approximation taking into account the price of similar items.
- It is your responsibility to obtain information concerning the value of a gift before it is accepted and/or used.





Gifts - Tickets to Invitations and Events

- If you receive a ticket to an event, and tickets are available for purchase by the general public, the value of the gift is the face value printed on the ticket.
- If you attend an invitation-only event such as a banquet, party, or gala, the value of the gift is your pro rata share of the catering services (food, beverages, etc.), feature entertainment, and other items given to all attendees.
- Tickets to fundraisers for political campaigns and 501(c)(3) charities are exempt for you and one guest if the host has provided you with the tickets.
- See the Ethics Commission Fact Sheet entitled "Tickets and Invitations to Events."





Gifts – Family Members

- A gift given to a family member is <u>not</u> a gift to you if:
 - There is an established working or social relationship between the donor and your family member; <u>and</u>
 - There is no evidence suggesting an intent to influence your actions as a City Official (e.g., the donor is not a lobbyist or the subject of a City decision you could influence).
- If you and any other member of your immediate family receive a gift jointly (e.g., a television for the family, weekend at timeshare, etc.), the reportable value of the gift is the gift's full value.

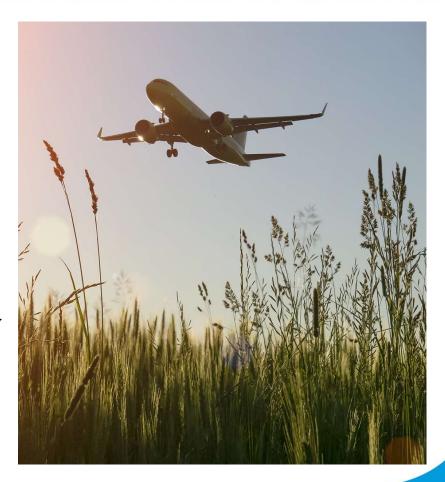
NOTE: your "family" includes children between 18 and 23 years of age who are full-time or part-time students and do not provide over one-half of their own support.





Gifts – Honoraria and Travel Expenses

- Honoraria (payments for speeches, articles, or attending events) are severely restricted. Contact the Commission for advice before accepting.
- Travel expenses (transportation, lodging, meals) paid by a federal, state, or local government entity are not a gift if the travel is related to your City job.
- Travel expenses paid by a 501(c)(3) organization for a legislative or governmental purpose are not subject to gift limits but are reportable and may trigger disqualification.
- Travel expenses paid by other entities will generally be treated as a gift, subject to limits, reporting, and disqualification.
- Travel rules can be complicated. You are encouraged to contact the Ethics Commission for assistance before accepting travel expenses.





Case Vignette – Gifts

You are invited to attend an invitationonly celebration party hosted by the San Diego Padres after they win the World Series. You are told that the cost of food and beverages at the party is \$250 per person. You attend the event but only stay for a few minutes and you don't eat or drink anything.

Have you received a reportable gift?

What if you ate a few appetizers before you left?

What if you stayed for the entire event?

What if you brought a guest with you?





Case Vignette – Gifts

A local consulting firm is hosting a seminar regarding homelessness in the City of San Diego. The firm offers you free admission to the seminar.

Can you accept the offer? Have you received a reportable gift? What if you receive lunch at the seminar?

What if the seminar is in Hawaii and the offer includes travel and hotel expenses?





FUTURE EMPLOYMENT



Future Employment

A City Official may not use his or her position to influence a decision that involves the interests of a person with whom the City Official or an immediate family member is seeking or negotiating for future employment.

This prohibition applies in each of these situations:

- You have submitted an application or bid;
- You have discussed the possibility of employment with an individual who has hiring authority.

This prohibition does not prevent from you from seeking future employment; it just requires you to recuse from matters that involve your prospective employer's interests.

The law does not apply if your prospective employer is another public agency.





Case Vignette – Future Employment

Monica is a Planning Commissioner. She is also a partner in a local architectural firm. The Commission has been asked to consider a permit that would allow a local developer to convert a downtown apartment building to condominiums.

One day, she runs into the developer, who tells her that he is accepting bids for the design of a small commercial building in Pacific Beach.

Monica indicates that her firm is definitely interested and asks about the deadline to submit a bid. Monica then participates in the Commission's decision regarding the condo conversion.

Has Monica violated the Ethics Ordinance?





HOW OUR OFFICE CAN HELP



Advice

The Ethics Commission provides verbal and written advice to City Officials:

- Verbal and written advice is only provided for specific contemplated future action.
- Formal written advice provides immunity (only from Ethics Commission).
- Written advice is a public record (posted on Commission website).
- Advice from another department or agency will not provide immunity from the Ethics Commission.





Additional Information

Our website: www.sandiego.gov/ethics

Our website contains links to:

- The Ethics Ordinance
- Fact Sheets
- Frequently Asked Questions

Need future advice? Contact:

- Ryan O'Connor, Education Program Manager
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