

# BOARD POLICY 100

## ETHICS AND CONFLICT OF INTEREST CODE

### Article I. Conflict of Interest Code

#### Section 1-1.01. Conduct

Officers and employees shall disclose potential conflicts of interest, and shall not participate in decisions that could materially affect a financial interest.

#### Section 1-1.02. Definitions

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (“FPPC”), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

#### Section 1-1.03. Disclosure Code

The Political Reform Act (Government Code section 81000, *et seq.*) requires state and local government agencies to adopt and promulgate a conflict of interest code. The Fair Political Practices Commission has adopted a regulation – 2 California Code of Regulations 18730 – that contains the terms of a standard conflict of interest code. After public notice and hearing, it 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 into the conflict of interest code of the District by reference. This section, and those designating officials and employees, and establishing economic disclosure categories, shall constitute the conflict of interest code of the District.

#### Section 1-1.04. Designated Positions

(a) Designated employees. The persons holding positions listed below are designated employees. It has been determined these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests. These persons shall make the disclosures for the specified disclosure categories as defined below:

<u>Designated employees</u>	<u>Disclosure categories</u>
1. Members of Board of Directors	1, 2, 3
2. General Manager/CEO	1, 2, 3
3. Chief Operating Officer	1, 2, 3
4. Director of Administration	2, 3
5. Director of Marketing and Business Development	2, 3
6. General Counsel	1, 2, 3

## 7. Consultants – as determined by General Manager

(b) Consultants. Consultants, within the meaning of the Political Reform Act, who participate in decisions or provide information, advice, recommendation, or counsel that could affect financial interests shall file Statements of Economic Interests for all categories. If the General Manager determines a consultant performs a range of services limited in scope and not requiring full disclosure, the General Manager shall prepare a written description of the consultant's duties and a statement of the extent of the disclosure requirements. The General Manager's determination shall be a public record.

### **Section 1-1.05. Disclosure Categories**

(a) The following categories are established for conflict of interest disclosure:

**Category 1.** Persons in this category shall disclose all interests in real property within the District's jurisdiction. The definition for "interests in real property," as used herein, is found in the Political Reform Act.

**Category 2.** Persons in this category shall disclose all income from (including gifts and loans) and investments in businesses that are doing business with the District, or have done business with the District within the preceding two years, that manufacture, provide or sell services and/or supplies of a type used by the District and associated with the job assignment of designated positions assigned this disclosure category. The definitions for "income" and "gift," as used herein, are found in the Political Reform Act.

**Category 3.** Persons in this category shall disclose all businesses in which the designated employee as an owner, director, trustee or designated employee holds a position of management.

(b) The disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

### **Section 1-1.06. Place of Filing**

(a) Board; General Manager. The Board of Directors and General Manager shall submit a statement of economic interest with the General Manager, or his/her designee. The District shall make and retain a copy of all statements filed by its Board Members and General Manager, and forward the originals of such statements to the Clerk of the Board of Supervisors of Kern County.

(b) Others. Designated employees shall submit a statement of economic interest with

the General Manager, or his/her designee. The District shall retain the originals of statements for all other designated positions, including consultants, named in the conflict of interest code. All retained statements, original or copied, shall be available for public inspection and reproduction pursuant to Government Code section 81008.

**Section 1-1.07. Time of Filing**

(a) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to Board confirmation, 30 days after being nominated or appointed.

(b) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Service Member's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(c) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

**Section 1-1.08. Periods Covered by Statements of Economic Interests**

(a) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable interests for the specified disclosure categories in section 1-5 herein held on the date of assuming office or, if subject to Board appointment, income received during the 12 months prior to the date of assuming office or the date of being appointed.

(b) Contents of Annual Statements. Annual statements shall disclose any reportable interests for the specified disclosure categories in section 1-5 held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office, whichever is later.

(c) Contents of Leaving Office Statements. Leaving office statements shall disclose reportable interests for the specified disclosure categories in section 1-5 held or received during the period between the closing date of the last statement filed and the date of leaving office.

**Section 1-1.09. Manner of Reporting**

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission (Form 700) and contain the information required therein.

## ARTICLE II. ETHICAL CONDUCT

### **Section 1-2.01.        Conduct**

Directors, officers, employees, and consultants are expected to conduct business in conformance with the highest ethical considerations, including the Political Reform Act, Government Code section 1090 (contract conflict of interests), and other applicable state and federal laws.

### **Section 1-2.02.        Honoraria; Gifts**

(a) No designated employee of the District 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. This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

(b) No designated employee of the District shall accept gifts with a total value of more than the limit set by the FPPC in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

### **Section 1-2.03.        Loans**

(a) No elected officer shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the District.

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

(c) This section shall not apply to the following:

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

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

(3) Loans from a person which, in the aggregate, do not exceed Five Hundred Dollars (\$500) at any given time; and

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

(d) (1) Except as set forth in subdivision (b), no elected officer of the District shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan, the amount of the payments, and the rate of interest paid on the loan.

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

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

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

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

(e) Personal Loans.

(1) Except as set forth in subdivision (b), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

a. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired;

b. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

(i) The date the loan was made;

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

loan; and

(iii) The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

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

a. A loan made to the campaign committee of an elected officer or a candidate for elective office;

b. A loan that would otherwise not be a gift as defined in this title;

c. A loan that would otherwise be a gift as set forth under subdivision 1, but on which the creditor has taken reasonable action to collect the balance due;

d. A loan that would otherwise be a gift as set forth under subdivision 1, but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift based on this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations; and

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

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

**Section 1-2.04. 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, materially financial effect, distinguishable from its effect on the public generally, on the official, 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 \$2,000 or more;

(b) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by, or promised to the designated employee within 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 in excess of the limit in 2 CCR 18940.2 provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

**Section 1-2.05. Disclosure of Disqualifying Interest**

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

**Section 1-2.06. Assistance of the Commission and Counsel**

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and Regulations 18329 and 18329.5, or from the attorney for his or her agency; provided, nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

**Section 1-2.07. Violations**

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal, and civil sanctions provided in the Political

Reform Act, Government Code sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code sections 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003 of the Government Code.