



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
**FROM:** DAVID C. LAREDO, CITY ATTORNEY  
**MEETING DATE:** NOVEMBER 5, 2008  
**SUBJECT:** **CONSIDER HOLDING A FIRST READING AND  
INTRODUCE AN ORDINANCE TO AMEND AND CODIFY  
THE CITY’S CONFLICT-OF-INTEREST CODE**  
**CEQA:** THIS ACTION DOES NOT CONSTITUTE A “PROJECT” AS  
DEFINED BY CALIFORNIA ENVIRONMENTAL QUALITY  
ACT (CEQA)

**RECOMMENDATION:**

Hold a public hearing on the first reading of an Ordinance to amend the City’s Municipal Code to add a new Chapter 2.40, entitled “Conflict-of-Interest.” The Ordinance will amend and codify the City’s Conflict-of-Interest Code, which was adopted by Resolution in 2006.

The Council may approve or reject the first reading of the Ordinance. Council may direct that publication of the Ordinance may be satisfied by publication of a summary, approved by the City Attorney. If the Ordinance is approved, a second reading shall be set at the next Council meeting.

**DISCUSSION:**

On October 1, 2008, the City Council received a report regarding the amendment procedure for the City of Pacific Grove’s Conflict-of-Interest Code (Conflicts Code), which was adopted by Resolution No. 06-032 on December 20, 2006.

The Political Reform Act (“Act”) directs every local government agency that has adopted a Conflicts Code to conduct a biennial review, and submit any amendments, if necessary, to the Council. The City Attorney’s office reviewed the City’s Conflicts Code, determined that an amendment is necessary, and submitted the requisite notice to the Council at the October meeting.

The Act requires agencies to designate all positions that make or participate in the making of governmental decisions, and to assign specific disclosure categories to each position. The disclosure category must specify the types of investments, business positions, and economic interests which may “foreseeably be affected materially by the decisions made by those holding

the designated positions.” Since the Resolution was adopted in 2006, the City has made personnel changes, resulting in the creation of several new positions, and the elimination of others. In addition, the City desires to include City boards and commissions that make substantive recommendations to Council. The Conflicts Code has been amended to reflect those changes. The amendment must be approved by Council prior to December 30, 2008.

The Council previously directed that the scope of disqualification should be amended so that it does not solely apply to gifts received prior to a decision, but would also apply to all presently-known gifts that may be received. To respond to this concern, provision 2.40.060 (c), entitled “Disqualification,” is proposed to be amended so as to require disqualification *within* twelve months of any source of income promised to an official.

Following the public hearing, the Council should review and discuss the proposed Ordinance. The Council may approve or reject the first reading of the Ordinance. Council may direct that the publication of the Ordinance, as required by the Charter Article 15, may be satisfied by publication of a summary of the Ordinance, approved by the City Attorney. If approved, the Ordinance shall then be set for second reading at the next Council meeting.

The proposed amendment is not defined as a project under CEQA because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**FISCAL IMPACT:**

None.

**ATTACHMENT**

- Draft Ordinance Amending the City’s Conflict-of-Interest Code

RESPECTFULLY SUBMITTED:

---

David C. Laredo  
CITY ATTORNEY

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE  
TO AMEND AND CODIFY THE CITY’S “CONFLICT-OF-INTEREST” CODE**

**WHEREAS**, the Political Reform Act (“Act”), set forth at Government Code section 81000 et seq, requires state and local government agencies to adopt and promulgate a Conflict-of-Interest Code; and

**WHEREAS**, the City Council of the City of Pacific Grove desires that elected and appointed officials be prohibited from making, participating in the making or attempting to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest; and

**WHEREAS**, on December 20, 2006, by Resolution No. 06-032, the City Council adopted a Conflict-of-Interest Code (“Conflicts Code”); and

**WHEREAS**, the Act directs every local agency that has adopted a Conflicts Code to conduct a biennial review; and

**WHEREAS**, upon biennial review by the City Attorney’s office, it was determined that an amendment to the Conflicts Code was required to reflect personnel changes that resulted in the creation and/or elimination of positions, and the inclusion of boards and commissions making substantive recommendations to Council; and

**WHEREAS**, this Ordinance will supersede Resolution No. 06-032, and will codify the current conflict-of-interest requirements, providing means to further promote disclosure of conflicts and sets forth disqualification procedures; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:**

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. Title 2, entitled “Administration and City Government,” shall be expanded to include new Chapter 2.40, entitled “Conflict-of-Interest.”

SECTION 3. The text set forth in this section shall be added as a new section 2.40.010 of the Pacific Grove Municipal Code, entitled “Purpose,” as follows:

***Section 2.40.010 – Purpose***

The Political Reform Act (“Act”), set forth at Government Code Section 81000 et. seq., requires state and local government agencies to adopt and promulgate Conflict-of-Interest Codes. Pursuant to the provisions of Government Code Section 87300, et seq., the City of Pacific Grove hereby adopts the following Conflict-of-Interest Code. Nothing contained herein is intended to modify or abridge the provisions of the Act, or other laws pertaining to conflicts of interest. Except as otherwise indicated, the definitions and provisions of said Act, and 2 Cal. Code of Regs. Section 18730, adopted pursuant thereto, shall be incorporated herein and this Code shall be interpreted in a manner consistent therewith.

SECTION 4. The text set forth in this section shall be added as a new Section 2.40.020 of the Pacific Grove Municipal Code, entitled “Designated Official,” as follows:

***Section – 2.40.020 Designated Official***

(a) A “designated official” is an officer, employee, member and/or consultant whose position is designated in this section because the position entails the making or participating in the making of governmental decisions which may foreseeably have a material effect on a financial interest.

(1) Making a governmental decision means the person: votes on a matter; appoints a person; obligates or commits his or her agency to any course of action; or enters into a contractual agreement on behalf of his or her agency.

(2) Participating in the making of a decision means the person: negotiates, without substantive review, with a governmental entity or private person regarding the decision, or advises or makes recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the official and the official is attempting to influence the decision.

(3) Consultant means an individual whom, pursuant to a contract with the City, performs substantially the same duties for the City that would otherwise be performed by an individual holding a position specified in this section.

(b) Designated official does not include:

- (1) Public officials specified in Government Code section 87200;
- (2) Solely clerical, ministerial or manual positions; or
- (3) Members of boards or commissions, which are solely advisory and do not make substantive recommendations.

SECTION 5. The text set forth in this section shall be added as a new Section 2.40.030 of the Pacific Grove Municipal Code, entitled “Disclosure Categories,” with changes from the Resolution text shown by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

***2.40.030 – Disclosure Categories***

Designated officials are assigned to specific categories of financial disclosure.

(a) Designated Positions and Disclosure Categories

- (1) Category 1
  - Mayor
  - Council Members
  - City Manager
  - City Attorney
  - Deputy City Manager***/City Clerk
  - Assistant City Attorney***
  - Management and Budget Director***
  - ~~Administrative Services Director~~
  - ~~Community Development Director~~
  - ~~Fire Chief~~
  - Business Manager*** (Public Works)~~Director~~
  - Police Chief
  
- (2) Category 2
  - ~~Management and Budget Director~~
  - Assistant Finance Officer***
  - Senior Accountant***
  - Deputy City Clerk***
  - ~~Police Commanders~~
  - ~~Assistant Fire Chief~~
  - Chief Planner***
  - Senior Planners***

*Housing Program Coordinator*

Museum Director *Manager*

Library Director

*Senior Librarians*

*Senior* Recreation Director *Coordinator*

Golf Course Director *Superintendent*

*Golf Shop Supervisor*

Members of the Library Board

Members of the Museum Board

- (3) Category 3
  - Members of the Architectural Review Board
  - Members of the Planning Commission
  - Members of the Administrative Enforcement Hearing Panel*
  - Members of the Recreation Board*
  - Americans with Disabilities Act Compliance Advisory Committee*
  - Budget and Finance Committee*
  - Cultural Arts Commission*
  - Beautification and Natural Resources Committee*
  - Economic Advisory Committee*
  - Housing Committee*
  - Special Events Committee*
  - Traffic Safety Commission*

(b) Disclosure Categories

- (1) Category 1 must report all interests in real property located within the City, as well as investments, business positions and sources of income, including gifts, loan and travel payments;
- (2) Category 2 must report all investments, business positions and sources of income, including gifts, loan and travel payments; and
- (3) Category 3 must report all interests in real property located within the City.

SECTION 6. The text set forth in this section shall be added as a new Section 2.40.040 of the Pacific Grove Municipal Code, entitled "Place and Time of Filing," with changes from the Resolution text shown by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

**2.40.040 – Place and Time of Filing**

Designated officials shall submit a statement of financial interest and shall file the original with the City Clerk. The City Clerk, upon receipt of the statement of financial interest, shall make and retain a copy and forward the original to the Clerk of Monterey County.

(a) Designated officials, other than those specified in Government Code section 87200, shall submit a statement of financial interest within thirty (30) days after the effective date of this Code, disclosing reportable investments, business positions and interests in real property and income (as required by Government Code sections 87206 and 87207) held on the effective date of the Code and income received during the twelve (12) months before the effective date of the Code.

(b) New officials, other than officers and their deputies, appointed to designated positions shall file statements within thirty (30) days after assuming office, disclosing reportable investments, business positions and interests in real property and income held on, and income received during the twelve (12) months before, the date of assuming office.

(c) Designated officials shall file an annual statement during the month of April, disclosing reportable investments, business positions and interests in real property and income held or received at any time during the calendar year.

(d) Designated officials required to file a statement of financial interest with any other agency, which has the same territorial jurisdiction, may comply with the provisions of this Code by filing a duplicate copy of the statement filed with the other agency, in lieu of an entirely separate statement.

(e) Designated officials who leave office shall file, within thirty (30) days of leaving office, a statement disclosing reportable investments, business positions and 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.

SECTION 7. The text set forth in this section shall be added as a new section 2.40.050 of the Pacific Grove Municipal Code, entitled “Contents of Disclosure Statements,” as follows:

**2.40.050 – Contents of Disclosure Statements**

All disclosure statements shall be made on forms supplied by the City Clerk, and shall contain the following information:

(a) If an investment or an interest in real property is required to be disclosed under this Code, the statement shall contain:

- (1) A statement of the nature of the investment or interest;
- (2) 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;
- (3) The address or other precise location of the real property; and
- (4) 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 \$100,000 (\$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).
- (5) In the case of an annual statement or a statement from a person leaving office, 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.
- (6) This information need not be provided with respect to an interest in real property, which is used principally as the residence of the filer.

(b) When income is required to be reported under this Code, the statement shall contain:

- (1) The name and address of each source of income aggregating five hundred dollars (\$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;
- (2) 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 dollars (\$500) but did not exceed

one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than 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).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(c) When the designated official's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this Code, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity;

(2) The name of every person from whom the business entity received payments if the designated official's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(d) When a payment, including an advance for travel or reimbursement, for travel is required to be reported pursuant to this Code, it may be reported on a separate travel reimbursement schedule which shall be included in the designated official's statement of economic interest. A designated official 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 travel, in which case the travel may be reported as income.

SECTION 8. The text set forth in this section shall be added as a new Section 2.40.060 of the Pacific Grove Municipal Code, entitled "Disqualification," with changes from the Resolution text shown by the deletion of all text shown in strikeout text (~~strikeout text~~) and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

**Section 2.40.060 – Disqualification**

Designated officials must disqualify themselves from making, participating in the making, or using their official positions to influence the making of any decision in which they have a reportable financial interest when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the designated official, a member of his or her immediate family, or on any of the following:

- (a) Any business entity in which the individual has a direct or indirect investment worth two thousand dollars (\$2,000).
- (b) Any real property in which the individual has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made 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 or promised to, received by, the designated official within twelve (12) months ~~prior to~~ of the time when the decision is made.
- (d) Any business entity in which the designated official is a Director, Officer, Partner, Trustee, Employee, or holds any position of management.
- (e) Any donor of, or intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty (\$250) or more in value provided to, received by, or promised to the individual within twelve (12) months prior to the time when the decision is made. The amount of the value of gifts specified by this subsection shall be adjusted biennially by the Fair Political Practices Commission pursuant to Government Code section 89503.
- (f) Indirect investment or interest means any investment or interest owned by the spouse or dependent child of a designated official, by an agent on behalf of a designated official, or by a business entity or trust in which the designated official, the designated official's agents, spouse, and dependent children own directly, indirectly, or beneficially a ten ~~10~~-percent (10%) interest or greater.
- (g) Each elected official shall recuse him or herself from a governmental decision, which provides a Material Financial Effect to a contributor whose campaign contributions to the official's Candidate Committee relating to the official's current term of office accumulate to two hundred fifty dollars (\$250) or more. Recusal shall not be required, however, if the Material Financial Effect is similarly provided to the general public or a large class of persons.

No designated official shall be required to disqualify him or herself with respect to any matter, which could not be legally acted upon or decided without his or her participation.

SECTION 9. The text set forth in this section shall be added as a new Section 2.40.070 of the Pacific Grove Municipal Code, entitled “Resignation,” with changes from the Resolution text shown by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscoring text (***bold, italic, underscoring text***), as follows:

***Section 2.40.070 – Resignation***

Any individual who resigns a designated position within ***twelve*** (12) months following initial appointment or within ***thirty*** (30) days of the date of a notice mailed by the City Clerk, 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 City Clerk, the individual shall do both of the following:

- (a) File a written resignation with the appointing power.
- (b) File a written statement with the City Clerk 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.

SECTION 10. Resolutions Nos. 5134, 5113-A, and 06-032, and all other actions in conflict with this Ordinance hereby are rescinded.

SECTION 11. If any provision, section, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 12. This Ordinance shall become effective on the thirtieth (30<sup>th</sup>) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS \_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
DANIEL E. CORT, Mayor

ATTEST:

\_\_\_\_\_  
CHARLENE WISEMAN, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID C. LAREDO, City Attorney

U:\General (NEW)\City of Pacific Grove\Ordinances\Draft Conflict of Interest Code.doc