



MEMORANDUM

TO: Ocean Protection Council

FROM: Jonathon Gurish, Staff Council

DATE: November 30, 2009

RE: Ocean Protection Council Conflict of Interest Code

EXHIBIT 1: [2009 Conflict of Interest Code](#)

RESOLUTION AND FINDINGS

Staff recommends that the Ocean Protection Council adopt the following resolution pursuant to Sections 35500 *et seq.* of the Public Resources Code and § 87306 of the Government Code:

“The California Ocean Protection Council hereby amends its Conflict of Interest Code, in the manner shown in Exhibit 1, to reflect the current Council staff who are subject to financial conflict of interest reporting requirements.”

Staff further recommends that the council adopt the following findings:

“Based on the staff memorandum and attached exhibit, the California Ocean Protection Council (OPC) hereby finds that:

1. Amendment of the OPC’s Conflict of Interest Code to reflect the current OPC staff is necessary to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code; and is authorized by section 87306 of the Government Code.
2. No alternative would be more effective in carrying out the purpose of the amendment, or would be as effective and less burdensome to affected persons than the proposed amendment.”

SUMMARY

Staff is recommending that the OPC amend its Conflict of Interest Code to reflect changes in the Council staff. All new, existing, or amended job classifications are included in the Conflict of Interest Code because these staff either provide recommendations to the OPC for consideration or are involved in contracting on behalf of the agency. The OPC is required to update the Conflict of Interest Code every two years.

BACKGROUND

The Political Reform Act of 1974 (Government Code §§ 87100, *et seq.*) requires public officials to disclose assets and income which may be materially affected by their official actions. The Act also requires, in appropriate circumstances, that public officials be disqualified from acting when a conflict of interest exists. The disclosure provisions of the Act, codified at Government Code § 87200 *et seq.*, apply to all officials and public employees who may materially affect their private economic interests through the exercise of their public duties.

Each agency is required to develop and keep current its list of staff (as part of the Code) who are in a position where their personal financial interests might create a conflict with recommendations they bring before the council. every state agency is required to review its Conflict of Interest Code biennially to determine whether the code accurately reflects the current staffing of the agency and the job duties of the various positions listed in the code (Govt. Code § 87306). If the code needs amending, amendments must be submitted to the Fair Political Practices Commission (FPPC) for final approval.

Pursuant to the Act and the OPC Conflict of Interest Code, OPC members, officers, and staff identified as “designated employees” must report on financial interests each year. The Lieutenant Governor and *ex officio* members of the Legislature must disclose pursuant to Gov. Code section 87200, *et seq.*, rather than the provisions of this Code. Designated employees for the OPC include the Executive Director, Council Secretary, Deputy Executive Officer for the Conservancy, Conservancy/Council Project Development Series, Staff Counsel, Staff Environmental Scientists, and consultants.

OPC staff have reviewed the existing Conflict of Interest Code and determined that, since the initial adoption of the code, several staff titles and functions have changed necessitating the amendment (Exhibit 1). Therefore, staff recommends that the OPC amend its Conflict of Interest Code to reflect the current job titles/classifications of the OPC and its staff. Staff are required to solicit public comments on the proposed changes prior to Council approval by publishing the Code in the California Regulatory Notice Register. Accordingly, notice of the proposed regulatory action was published in the Register on August 14, 2009. The written comment period ended on September 22, 2009; no comments were received. The OPC must conduct a public hearing on the proposed amendment if an interested party so requests; however, no such request was received.

Since publication of the proposed amendments in the California Regulatory Notice Register, the title of position of the Executive Policy Officer has been changed to Executive Director. Staff considers the amendment to the name of this position to be a non-substantive amendment to the code as published. Accordingly, the Code presented for adoption by the council reflects the current title to this position. The Office of Administrative Law and the FPPC staff agree that this is a non-substantive amendment.

Upon adoption of the amended Code by the council, staff will submit it to the Office of Administrative Law and FPPC for publication and final approval.

REGULATORY IMPACT CONSIDERATIONS

Apart from the administrative costs of preparing, publishing and obtaining approvals for the amendment, this amendment would not impose any costs on the OPC.

Under regulations established for the adoption or amendment of agency conflict of interest codes, the OPC is also required to make certain determinations with regard to potential costs or cost savings that might result from the amendment [2 Cal. Code Regs. §18750(c)(3)(J) and (K)]. Accordingly, OPC staff has determined that the proposed amendment:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any state agency.
3. Imposes no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In adopting the amendment, the OPC must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendment. Since all employees who are involved or participate in making decisions that may affect their financial interests are required by law to make these disclosures, there is no alternative to the proposed amendment and staff recommends that the OPC make this determination, as reflected in the proposed findings above.