



## CITY COUNCIL AGENDA REPORT

**Meeting Date: May 19, 2022**

**From:** Thomas McMorrow, City Attorney, Clay Holstine, City Manager and Ingrid Padilla, City Clerk

**Subject:** Adoption of a Revised Conflict of Interest Code to Include the Complete Streets Safety Committee, Open Space and Ecology Committee, Public Arts Advisory Committee, and the Communications Manager

### **Recommendation:**

Adopt the attached resolution revising the City's Conflict of Interest Code

### **Background**

The State's Political Reform Act's conflict of interest prohibitions apply only to certain "public officials" and only to governmental decisions that have a financial effect. The Act applies specifically to members of the City Council and the Planning Commission, city managers, city attorneys and other public officials, such as finance directors and others who manage public investments.

In addition, the Act requires cities to adopt a conflict of interest code and include therein which "other" officials within the a city must comply with the disclosure and disqualification provisions of the Act. The City Council has adopted, via resolution, the City's Conflict of Interest Code. See attached Resolution. Currently, the City has identified 37 City staff positions, as well as the Park and Recreation Commission, that are subject to the Act, as is discussed below.

Similarly, while the Act specifies that planning commissioners are subject to its requirements, and the Council has included the Park and Recreation Commissions within the City's Conflict of Interest Code, the question of which other appointed, advisory bodies shall be subject to the Act is left to the City Council to decide in compliance with the Fair Political Practice Commission's Regulations. The Regulations provide that members of commissions or committees with "decision making authority" are subject to the Act, and that "decision making authority" exists where a commission or committee makes substantive recommendations to another governmental agency—here the City Council—and, over an extended period of time, those recommendations have been regularly approved without significant amendment. The members of commissions or committees not deemed to have decision making authority, as defined above, are not considered public officials and the conflict of interest provisions do not apply to them.

### *City of Brisbane's Conflict of Interest Code*

The City's Conflict of Interest Code is adopted by resolution and sets forth those "other" positions held by City employees (and the Park and Recreation Commission) that are subject to the Act. There are currently 37 such employee positions, including the City Clerk and Deputy City Clerk, department heads and their deputies, the Police and Fire Chiefs and their command staff. As might be expected, these are positions

where individuals make critical decisions for the City and/or make recommendations to the City Council and its commissions and committees.

As to commissions and committees, the Regulations provide that members of the Planning Commission are subject to the Act and the City's Conflict of Interest Code designates that the Parks and Recreation Commission is also subject to the Act. The members of both commissions are therefore deemed public officials for purposes of the Act and must comply with it. This includes disclosing their financial interests and being disqualified from participating in governmental decisions when it is reasonably foreseeable that the decision will have a material financial effect on the members' interests.

The Regulations require cities to review their conflict of interest codes every two years. The City Council last reviewed the City's Conflict of Interest Code in 2020. If the Council determines that additional advisory bodies have decision making authority as the term is defined in the Regulations, those additional advisory bodies will be designated in the Conflicts of Interest Code and members will be advised that they are subject to the Act and therefore required to file Form 700 that discloses their financial interests, resulting in their disqualification from participating in governmental decisions when those decisions effect their financial interests.

## **DISCUSSION**

The City has only two Commissions—the Planning Commission and the Parks and Recreation Commission—and, as discussed above, those members are already subject to the Act.

The City has four Committees—Complete Streets Safety (CSSC), Open Space and Ecology (OSEC), Public Arts Advisory, and the recently formed Inclusion, Diversity, Equality and Accountability (IDEA). None of these Committees are currently included in the City's Conflict of Interest Code.

There are good reasons to include the Complete Streets Safety Committee, the Open Space and Ecology Committee, and the Public Arts Advisory Committee in the City's Conflict of Interest Code because those three committees have "decision making authority" as defined in the Regulations. That is, unlike the IDEA Committee that has only been recently formed, the recommendations of those Committees have been over time regularly approved by the City Council without significant amendment.

Moreover, those Committees make recommendations on matters where a member's interest in real property or interest in a business entity could have a material financial effect on that interest. For example, the Complete Streets Safety Committee could recommend that a street that currently terminates be extended and a member of that Committee lives on that street. Certainly having additional traffic on that street could have a material effect on the value of that member's property. The Open Space and Ecology Committee could recommend that all businesses in Brisbane provide additional source separating that has a significant cost to the business. That cost could have a material financial effect on a Committee member who owns a business. And a source of income to a member of the Public Arts Advisory Committee may have artwork that the Committee will consider recommending that the City pay for.

Nevertheless, Council has the discretion to conclude that one or all of these Committees do not have the required decision making authority or that, given the scope and purpose of those Committees, the likelihood of decisions that materially affect the members' financial interests is too remote to necessitate adding these committees to the Conflict of Interest Code.

Staff also recommends that the newly created position of Communications Manager be added to Appendix A that lists the various positions subject to the Conflict of Interest Code. Note that not all positions on Appendix A are currently filled.

Attached is a resolution adopting a revised Conflict of Interest Code for designated positions and committees. The three committees mentioned above have been added to Appendix. If Council concludes any of these committee need not be included, it may so direct.

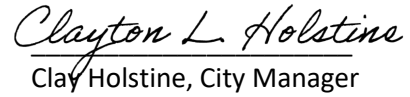
Attachment: Resolution adopting a revised Conflict of Interest Code



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Thomas R. McMorrow, City Attorney



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Ingrid Padilla, City Clerk



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Clay Holstine, City Manager

RESOLUTION NO. 2022-xx

**A RESOLUTION OF THE CITY OF BRISBANE ADOPTING A REVISED CONFLICT OF INTEREST CODE FOR DESIGNATED POSITIONS AND DECISION MAKING ADVISORY BODIES**

Whereas, the Political Reform Act, (Government Code, Section 87100 et seq.) establishes conflict of interest disclosure and disqualification requirements for public officials, including specified employees and decision making bodies; and

Whereas, the Political Reform Act requires state and local governmental agencies to adopt and promulgate conflict of interest codes for other employees and other advisory bodies with decision making authority; and

Whereas, the Fair Political Practices Commission has adopted Regulations in Title 2, Section 18730 of the California Administrative Code, to implement the provisions of the Political Reform Act and by incorporating by reference the terms of the Regulations it will save time and money by minimizing the actions required of the City Council to keep its Conflict of Interest Code in conformity with the Political Reform Act; and

Whereas, Appendix A to this Resolution sets forth certain designated positions within the City of Brisbane; and

Whereas, Appendix B to this Resolution sets forth certain advisory bodies of the City of Brisbane with decision making authority; and

Whereas, employees who are in those designated positions, and members of those designated advisory bodies, must file conflict of interest statements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

Section 1. The provisions of Title 2, Section 18730 of the California Administrative Code, attached as Exhibit 1, are hereby incorporated by reference and, together with the attached Appendix A and Appendix B, in which designated positions and designated advisory bodies with decision making authority, along with their disclosure categories, are set forth, are hereby adopted as the Conflict of Interest Code for the City of Brisbane.

Section 2. Employees in the designated positions, and members of designated advisory bodies, shall file with the City Clerk, the City's filing officer, statements of economic interests.

Section 3. All of the resolutions of the City of Brisbane that are in conflict with this Resolution are hereby repealed.

Section 4. This resolution shall be in full force and effect immediately upon its adoption.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on \_\_\_\_\_, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:

A handwritten signature in blue ink, appearing to read 'T. McMorrow', written over a horizontal line.

Thomas McMorrow, City Attorney

**APPENDIX A**

<b>Designated Positions</b>	<b>Disclosure Category</b>
Administrative Management Analyst	All Categories
Administrative Services Director	All Categories
Assistant to the City Manager	All Categories
Associate Civil Engineer	All Categories
Associate Planner	All Categories
City Clerk	All Categories
Community Development Director	All Categories
<b>Communications Manager</b>	<b>All Categories</b>
Deputy Building Official	All Categories
Deputy City Attorney	All Categories
Deputy City Clerk/Executive Assistant	All Categories
Deputy Finance Director	All Categories
Deputy Fire Chief	All Categories
Deputy Public Works Director	All Categories
Economic Development Director	All Categories
Financial Services Manager	All Categories
Fire Chief	All Categories
Harbormaster	All Categories
Information Technology & Systems Administrator	All Categories
Management Analyst	All Categories
Marina Services Director	All Categories
Parks and Recreation Commissioners	All Categories
Parks and Recreation Director	All Categories
Police Chief	All Categories
Police Commander	All Categories
Principal Analyst	All Categories
Principal Planner	All Categories
Program Manager (San Mateo Countywide NPDES)	All Categories

Public Works Director/City Engineer	All Categories
Public Works Superintendent	All Categories
Public Works Supervisor	All Categories
Recreation Manager	All Categories
Recreation Supervisor	All Categories
Senior Civil Engineer	All Categories
Senior Management Analyst	All Categories
Senior Planner	All Categories
Special Assistant	All Categories
Special Counsel	All Categories

## APPENDIX B

### Advisory Bodies with Decision Making Authority

### Disclosure Category

Complete Streets Safety Committee

All Categories

Open Space and Ecology Committee

All Categories

Public Art Advisory Committee

All Categories