

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

A Resolution of the City Council of the )  
City of Lafayette Establishing a Conflict of )  
Interest Policy for Members of The Planning )  
and Design Review Commissions )

Resolution No. 2018-18

WHEREAS, the City of Lafayette maintains a number of commissions and committees that advise the City Council and transact business on behalf of the City, including the Planning Commission and Design Review Commission;

WHEREAS, the citizens who volunteer to serve on City commissions and committees provide a valuable resource to the City; however, because commissions and committees are staffed by volunteers, at times the members' professions may intersect or conflict with City business;

WHEREAS, it is of great importance to the conduct of the City's business that citizens, when serving on commissions and committees, act with impartiality and in the best interests of the City, and that there be no appearance of bias or conflict of interest;

WHEREAS, the City Council is dedicated and committed to ensuring that the City's business is conducted without bias or conflicts of interest or the appearance of bias or conflicts of interest; and

WHEREAS, by adopting a policy governing Planning Commission members and Design Review Commission members and representations related to their positions, the City Council provides guidance and clear standards for such commission members and their firms and affiliates to avoid engaging in conduct that may pose a conflict of interest or the appearance of bias or a conflict of interest.

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council does hereby adopt the Conflict of Interest Policy for Planning Commission and Design Review Commissioners and Member Firms and Affiliates attached hereto and incorporated herein as Exhibit "A" (the "Policy").

Section 2. A copy of the Policy shall be distributed to all current Planning Commission members and Design Review Commission members. Newly appointed Planning Commission members and Design Review Commission members shall receive a copy of the Policy prior to or upon taking office. All current and newly appointed Planning Commission members and Design Review Commission members shall confirm in writing that they have received, understand, and shall comply with the Policy.

Section 3. If any portion of this Resolution or the attached Policy is for any reason held incorrect, invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Resolution or the Policy.

Section 4. This Resolution shall be effective sixty days after its adoption by the City Council. The Policy shall not be effective against any past commission or committee members or any commission or committee members that resign their respective positions prior to the effective date.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on March 26, 2018 by the following vote:

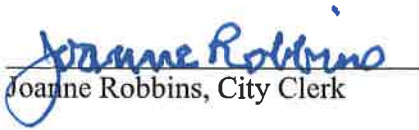
AYES: **Burks, Mitchell, and Samson**

NOES: **Tatzin and Anderson**

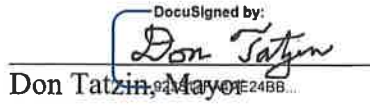
ABSENT:

ABSTAIN:

ATTEST:

  
Joanne Robbins, City Clerk

APPROVED:

  
Don Tatzin, Mayor

**EXHIBIT "A"**

**CONFLICT OF INTEREST POLICY FOR  
PLANNING COMMISSION AND DESIGN REVIEW COMMISSIONERS**

## CITY OF LAFAYETTE

### CONFLICT OF INTEREST POLICY FOR MEMBERS OF THE PLANNING COMMISSION AND DESIGN REVIEW COMMISSIONS

**Purpose:** To provide guidance and clear standards for Planning Commission members and Design Review Commission members, and the firms and businesses they own, manage, are employed by, or receive income from, and their immediate family members, to avoid engaging in conduct that may pose either an actual conflict of interest or the appearance of bias or a conflict of interest.

**Policy:** It shall be the Policy of the City (the “Policy”) that each member serving on the Planning Commission and the firms and affiliates of each member serving on the Planning Commission, and each member serving on the Design Review Commission and firms and affiliates of each member serving on the Design Review Commission, for the applicable term set forth herein, shall not:

1. Represent, for compensation, any client, customer, or any other person, before the City and its City Council, commissions or committees, staff, or any officer or employee of the City, by appearances at hearings or meetings, preparation or submission of applications or plans, or oral or written communications to the City Council, any commission, committee, subcommittee, or individual member thereof, or staff or any officer or employee of the City, or by participating indirectly in or providing advice or consultation on any such appearance, preparation or submission, or communication, for the purpose of encouraging or influencing any administrative or legislative action or proceeding, or the issuance, amendment, award, or revocation of any approval, entitlement, permit, license, grant, contract, or sale or purchase of goods or property.
2. Reference the Planning Commission or Design Review Commission position of the member in any solicitations for a business, including, but not limited to, advertisements in any form or media, websites, proposals, bids, or oral or written presentations. For example, a newspaper or radio advertisement, or website, for a business shall not recite or refer to a membership on the Planning Commission or Design Review Commission. The rule only applies to advertisements or solicitations of business and does not prohibit references to Planning Commission or Design Review Commission membership in materials that acknowledge professional or social accomplishments, such as résumés, curriculum vitae, biographies, social media profiles, etc.
3. Authorize or encourage any firms or affiliates to perform any act that would violate this Policy.
4. The prohibitions and provisions of the Policy shall include and be applicable to all firms and affiliates of the commissioner, except for the one-year post-service period exclusion contained in paragraph 6 below. As used herein, the term “firms and affiliates” shall include firms, businesses, or entities that a commissioner, or an immediate family member of such commissioner, owns any interest in, manages, is employed by, or participates in income therefrom. Immediate family member shall mean a spouse, registered domestic partner, child or step-child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, or sister-in-law.

5. The Policy may not be avoided by recusing or abstaining from participation and any effected Commissioner must resign and the Commissioner may not accept any business that is inconsistent with this Policy for a period of one year following the termination of membership on the Commission.
6. The Policy shall be applicable to each member serving on the Planning Commission and the firms and affiliates of each member serving on the Planning Commission, and each member serving on the Design Review Commission and the firms and affiliates of each member serving on the Design Review Commission, during the term for which each said member serves on such commission and for a period of one year after said membership ends.
7. The Policy shall not prevent the City Council or City staff from purchasing goods or services from a vendor with whom a Planning Commission member or Design Review Commission member is affiliated if the goods and services are purchased in the open market, or through the City's standard purchasing procedures, and the Planning Commission member or Design Review Commission member does not influence or participate in consideration of such purchase.
8. The Policy shall not prevent a member of the Planning Commission or member of the Design Review Commission from appearing before a City committee or commission, or meeting with City staff, on a matter where such member is representing his or her own personal interests. A member is "representing his or her own personal interests" within the meaning of this section where the appearance or meeting involves an application or proceeding related to real property held or owned entirely by such member and/or members of his or her immediate family or an entity owned entirely by such member and/or members of his or her immediate family.
9. The requirements of the Policy are intended to be supplemental to all existing rules and regulations, and each member shall be responsible for knowing and understanding all ethical duties related to serving on the Planning Commission and Design Review Commission and informing their firms and affiliates of the Policy.

**Violations:** Any violation of the Policy shall be grounds for removal from the respective commission or committee position, and may be a bar to serving on other commissions or committees at the sole discretion of the City Council. A material violation of the Policy may be a ground for a court to invalidate an action or decision taken in conjunction therewith.

*I have received a copy of the Policy for Representations Related to Planning and Design Review Commission Positions and I understand my responsibilities under this Policy and agree to abide by its terms. I recognize that I must not represent, for compensation, any client, customer, or other person in violation of this Policy for the applicable term, including one year following termination of my membership on the Commission.*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Planning Commission/Design Review Commission: \_\_\_\_\_

Frequently Asked Questions

\*These scenarios might still be a conflict and require recusal under the Political Reform Act and FPPC regulations, or under Government Code section 1090.

<b>Scenario</b>	<b>Required Action Under Conflict of Interest Policy</b>
<p>1a. A publicly traded firm, in which a Planning Commissioner is a stockholder and whose investment is large enough to appear on the Commissioner’s Form 700, proposes to create a new store that requires design review and a use permit from the DRC and PC. The Commissioner shall:</p> <p>1b. What if the publicly traded firm provides engineering services to the store chain and a firm member other than the Commissioner is part of the presentation team to the Commission?</p>	<p>1a. If the Affiliate is representing itself and not a client, customer, or any other person for compensation, there is no action required.</p> <p>1b. Resign and the commissioner will be unable to participate for one year following resignation.</p>
<p>2. A Planning Commissioner is a lawyer who specializes in family trusts in a firm that has not done business that brings any member of the firm before a Lafayette Commission. The firm hires a new partner who has an active Lafayette client and project approval is desired from DRC and PC. The firm allows the new lawyer to retain the client. The Commissioner shall:</p>	<p>Resign, if the firm intends to participate in the application. The commissioner will be unable to participate for one year following resignation.</p>
<p>3. A Commissioner’s spouse receives retirement benefits from a firm and lists those on the Form 700. The firm now desires to erect a building in Lafayette and needs approvals. The Commissioner shall:</p>	<p>Likely not applicable. Does not fall within the definition of “Affiliate”. Depends on the meaning of “participates in income therefrom”. Assuming the retirement benefit is fixed, such as a pension, it is not a participation in income and is not an Affiliate. If the retirement benefit is stocks or dividends, then it is an Affiliate. If it is an Affiliate, the commissioner would have to resign, if the firm is representing a client, customer or any other person for compensation. The commissioner will be unable to participate for one year following resignation. If not, no action required.</p>
<p>4. A DRC member who is an architect who as a member of a firm has designed a prototype free-standing building for a client and 15 examples have been erected in CA with some involvement from the architect. The client’s site location team has found a site and wants to submit an application to the City. The Commissioner shall:</p>	<p>If representing the client, must resign and cannot have any participation on the application for one year. If not representing the client, then no compensation and no action is required.</p>
<p>5. If the Commissioner resigns from the Commission in the above example, what is the effect of the one-year holdover provision on the architectural firm?</p>	<p>The firm can still submit the application, but the former commissioner cannot participate or advise on the application for one year.</p>

Scenario	Required Action Under Conflict of Interest Policy
6. A Commissioner is a real-estate broker who may be retained for brokerage services by the owner of a property looking to subdivide to create for sale lots. The Commissioner shall:	Depends on whether the commissioner has any role in the application. Not applicable if the commissioner's only role is selling the subdivided lots.
7. What if the broker is a member of a firm and the firm may be retained to provide brokerage services but the Commissioner will not be involved?	See above.
8. A Design Review Commissioner owns stock in a company that is reported on Form 700. The Commissioner sells the stock 30 days after the company files an application for Design Review but before any hearings occur. The Commissioner shall:	No action required. It is not an affiliate, and the commissioner is not representing the company before the commission.
9. A Commissioner provides free advice to a friend who wants to know how applications are processed. When the application is filed, the Commissioner shall:	No action required because no representation for compensation.
10. A PC or DRC Commissioner accepts a client for compensation who proposes a development that requires no review by either PC or DRC. The Commissioner shall:	Resign, and the former commissioner cannot participate or advise on the application for one year.
11. Same as above but the development requires review by at least DRC for issues that may include visibility, size, hillside development permit and setbacks. The Commissioner shall:	Resign, and the former commissioner cannot participate or advise on the application for one year.
12. An applicant approaches a Commissioner about designing a building in Lafayette in six months. The Commissioner resigns from the Commission immediately. May the Commissioner accept the project in six months? What can the City do if the former Commissioner accepts the project and then wants to appear before a Commission hearing about the project?	No, the former commissioner cannot submit to the City until one year has passed since commission membership ended. The City cannot prohibit Commissioner from appearing on the project, but the Council may bar service on future commissions.