



## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

Upon motion of Supervisor Salinas, seconded by Supervisor Phillips and carried by those members present, the Board of Supervisors hereby:

Adopted Resolution 17-038 to approve the amendments to the Conflict of Interest Code of the Pacific Grove Unified School District.

PASSED AND ADOPTED on this 31st day of January 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on January 31, 2017.

Dated: February 15, 2017  
File ID: 16-1320

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Danise Hancock  
Deputy

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Resolution No. 17-038**

Resolution approving the Amended       )  
Conflict of Interest Code of Pacific       )  
Grove Unified School District.....    )

WHEREAS, pursuant to Government Code sections 87300 and 87301, the Pacific Grove Unified School District of the County of Monterey has adopted a Conflict of Interest Code, as revised by the memorandum from the Office of County Counsel (Attachment E);

WHEREAS, pursuant to Government Code section 87306, the Pacific Grove Unified School District has amended its conflict of interest code as necessitated by changed circumstances;

WHEREAS, pursuant to Sections 82011 and 87303 of the Government Code, the Pacific Grove Unified School District has submitted its amended code to the Monterey County Board of Supervisors, the code reviewing body, for approval;

WHEREAS, the amended Conflict of Interest Code of Pacific Grove Unified School District is attached hereto as Attachment C, including the memorandum from the Office of County Counsel (Attachment E) and incorporated herein by reference;

WHEREAS, pursuant to Government Code section 87303, the Board of Supervisors as code reviewing body may approve the code as submitted, revise the proposed code and approve it as revised, or return the proposed code to the agency for revision and resubmission; and

WHEREAS, the proposed code as amended is lawful under the Political Reform Act of 1974;

NOW THEREFORE, BE IT RESOLVED THAT, the Board of Supervisors does hereby approve the Amended Conflict of Interest Pacific Grove Unified School District, attached hereto as Attachment C, and direct the Clerk of the Board of Supervisors to notify Pacific Grove Unified School District of the approval.

**PASSED AND ADOPTED** upon motion of Supervisor Salinas, seconded by Supervisor Phillips carried this 31st day of January 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams  
NOES: None  
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on January 24, 2017.

Dated: February 15, 2017  
File Number: 16-1320

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By   
Deputy

# MONTEREY COUNTY

**OFFICE OF THE COUNTY COUNSEL**

CHARLES J. MCKEE, COUNTY COUNSEL



## MEMORANDUM

**DATE: November 17, 2016**

**TO: Chair Parker and Members of the Monterey County Board of Supervisors**

**FROM: Rebecca M. Cenicerros, Deputy County Counsel**

**SUBJECT: Pacific Grove Unified School District Conflict of Interest Code**

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Government Code section 87303(b) provides that the Board, as the code reviewing body for local agencies, may revise a proposed Conflict of Interest Code and approve it, as revised.


The Pacific Grove Unified School District has submitted an amended Conflict of Interest Code to the Board for review.

County Counsel recommends that the Board revise this Conflict of Interest Code to include a statement that the Pacific Grove Unified School District is entirely within the County of Monterey, thereby establishing that the Monterey County Board of Supervisors is the appropriate code reviewing body.

County Counsel further recommends that the Board revise this Conflict of Interest Code to provide that individuals who file Statements of Economic Interest pursuant to Government Code section 87200 shall file them in accordance with Title 2 of the California Code of Regulations, section 18753(d).

County Counsel recommends that the Board approve the proposed Conflict of Interest Code for the Pacific Grove Unified School District as so revised.

CHARLES J. MCKEE, County Counsel

By   
Rebecca M. Cenicerros  
Deputy County Counsel

## Pacific Grove Unified School District

### Board Bylaws

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The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

(cf. 9005 – Role of Board/Powers and Responsibilities – Governance Standards)

Even if a prohibited conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/her relative belongs. Relative means an adult who is related to the Board member by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes an individual's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse/registered domestic partner unless the individual is widowed or divorced.

The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the district's designated positions, and provides the disclosure categories required for each position. The conflict of interest code shall be submitted to the district's code reviewing body for approval, in accordance with Government Code 87303 and within the deadline for submission established by the code reviewing body. (Government Code 87303)

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code and submit any changes to the code reviewing body or, if no change is required, the Board shall submit a written statement to that effect. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated due to changed circumstances, such as the creation of new designated positions, changes to the duties assigned to existing positions, amendments, or revisions, the amended code shall be submitted to the code reviewing body within 90 days after the changed circumstances necessitating the amendments have become apparent. (Government Code 87306)

When reviewing and preparing the district's conflict of interest code, the Superintendent or designee shall provide officers, employees, consultants, and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

(cf. 9320 – Meetings and Notices – Scheduling and Posting)

Board members and designated employees shall annually file a Statement of Economic Interest/Form

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700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

(cf. 4017.2 – All Personnel – Resignation)

(cf. 9222 – Board Members – Resignation)

#### **Conflict of Interest under the Political Reform Act**

A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

A Board member, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of his/her office or position, authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

However, a Board member shall participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

#### **Additional Requirements for Boards that Manage Public Investments**

Any Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (Government Code 87105; 2 CCR 18707)

1. Publicly identify each financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting

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in violation of Government Code 87100. The Board member shall not be counted toward achieving a quorum while the item is discussed.

However, the Board member may speak on the issue during the time that the general public speaks on it and may leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion and deliberations of the matter with members of the public.

3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, but the Board member is not required to leave the room during consideration of the consent calendar.

4. If the Board's decision is made during closed session, disclose his/her interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. He/she shall not be present when the item is considered in closed session and shall not knowingly obtain or review a recording or any other nonpublic information regarding the Board's decision.

(cf. 9321 – Meetings and Notices – Closed Session Purposes and Agendas)  
(cf. 9321.1 – Meetings and Notices – Closed Session Action and Reports)

#### **Conflict of Interest under Government Code 1090 - Financial Interest in a Contract**

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board or on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a Board member has such a financial interest in a contract made by the Board, the contract is void. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract in which he/she has only a "remote interest," as specified in Government Code 1091, if the interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member or district official to enter into a contract. (Government Code 1091)

A Board member shall not be considered to be financially interested in a contract in which he/she has

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only a "remote interest," as specified in Government Code 1091, if the interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member or district official to enter into the contract. (Government Code 1091)

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5.

#### **Common Law Doctrine Against Conflict of Interest**

A Board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties.

#### **Incompatible Offices and Activities**

Board members shall not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with, or inimical to the Board member's duties as an officer of the district. (Government Code 1099, 1126)

#### **Gifts**

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars, and periodicals. (Government Code 82028)

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation except when: (Government Code 89506)

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.
2. The travel is provided by a person or agency specified in Government Code 89506, including

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a government, governmental agency or authority, bona fide public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Gifts of travel exempted from the gift limitation, as described in items #1 and #2 above, shall nevertheless be reportable on the recipient's Statement of Economic Interest/Form 700 as required by law.

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

#### **Honoraria**

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Government Code 89501, 89502)

The term honorarium does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade, or profession, unless the sole or predominant activity of the business, trade, or profession is making speeches.
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes.

#### **APPENDIX**

##### **DESIGNATED POSITIONS/DISCLOSURE CATEGORIES**

It has been determined that persons occupying the following positions manage public investments and shall file a full statement of economic interests pursuant to Government Code 87200:

**Governing Board Members**  
**Superintendent of Schools**

1. Persons occupying the following positions are designated employees in Category 1:

Assistant/Associate Superintendent

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within



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two miles of district boundaries or of any land owned or used by the district.

- b. Investments or business positions in or income from sources which:
  - (1) Are engaged in the acquisition or disposal of real property within the district
  - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or
  - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

- 2. Persons occupying the following positions are designated employees in Category 2:

Director  
Principal  
Assistant Principal  
Maintenance and Operations Director  
Program Coordinator  
Project Specialist  
Supervisor

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
  - b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.
- 3. Full Disclosure: Because it has been determined that the district's Board members and/or Superintendent "manage public investments," they and other persons designated for "full disclosure" shall disclose, in accordance with Government Code 87200:
    - a. Interests in real property located entirely partly within district boundaries, or within two miles of district boundaries, or of any land owned or used by the district.
    - b. Investments, business positions, and source of income, including gifts, loans, and travel payments.
  - 4. Consultants are designated employees who must disclose financial interests as determined on

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a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

A consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: (2 CCR 18700.3)

- a. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18704, subsections (a) and (b), or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. (2 CCR 18700.3)

A current copy of Regulation 18730 for multi county agencies is available at  
<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter7/Article2/18730.pdf>

Legal Reference:  
EDUCATION CODE  
1006 Qualifications for holding office  
35107 School district employees  
35230-35240 Corrupt practices

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35233 Prohibitions applicable to members of governing boards  
41000-41003 Moneys received by school districts  
41015 Investments  
FAMILY CODE  
297.5 Rights, protections and benefits of registered domestic partners  
GOVERNMENT CODE  
1090-1099 Prohibitions applicable to specified officers  
1125-1129 Incompatible activities  
81000-91014 Political Reform Act of 1974, especially:  
82011 Code reviewing body  
82019 Definition of designated employee  
82028 Definition of gifts  
82030 Definition of income  
82033 Definition of interest in real property  
82034 Definition of investment  
87100-87103.6 General prohibitions  
87200-87210 Disclosure  
87300-87313 Conflict of interest code  
87500 Statements of economic interests  
89501-89503 Honoraria and gifts  
89506 Ethics: travel  
91000-91014 Enforcement  
PENAL CODE  
85-88 Bribes  
REVENUE AND TAXATION CODE  
203 Taxable and exempt property - colleges  
CODE OF REGULATIONS, TITLE 2  
18110-18997 Regulations of the Fair Political Practices Commission, especially:  
18700-18707 General prohibitions  
18722-18740 Disclosure of interests  
18750.1-18756 Conflict of interest codes  
COURT DECISIONS  
McGee v. Balfour Beatty Construction, LLC, (2016) 247 Cal.App.4th 235  
Davis v. Fresno Unified School District, (2015) 237 Cal.App.4th 261  
Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469  
Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655  
Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511  
ATTORNEY GENERAL OPINIONS  
92 Ops.Cal.Atty.Gen. 26 (2009)  
92 Ops.Cal.Atty.Gen. 19 (2009)  
89 Ops.Cal.Atty.Gen. 217 (2006)  
86 Ops.Cal.Atty.Gen. 138 (2003)  
85 Ops.Cal.Atty.Gen. 60 (2002)

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82 Ops.Cal.Atty.Gen. 83 (1999)  
81 Ops.Cal.Atty.Gen. 327 (1998)  
80 Ops.Cal.Atty.Gen. 320 (1997)  
69 Ops.Cal.Atty.Gen. 255 (1986)  
68 Ops.Cal.Atty.Gen. 171 (1985)  
65 Ops.Cal.Atty.Gen. 606 (1982)  
63 Ops.Cal.Atty.Gen. 868 (1980)

### **Management Resources:**

#### **WEB SITES**

Fair Political Practices Commission: <http://www.fppc.ca.gov>

CSBA: <http://www.csba.org>

Institute of Local Government: <http://www.ca-ilg.org>

#### **CSBA PUBLICATIONS**

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

#### **FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS**

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict of Interest Rules, 2005

#### **INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS**

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

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