

<h1>POLICY MANUAL</h1>	Date Adopted: January 10, 1977
Classification: BOARD OF DIRECTORS	Date Last Amended: 03/14/83; 04/24/13; 04/10/24
Subject: Conflict of Interest	Approved By: <i>Peter Sanchez</i>

**I. PURPOSE:**

The purpose of this Conflict-of-Interest Policy (this “Policy”) is to ensure public confidence in the integrity of the decision-making process of the Fresno Metropolitan Flood Control District (“FMFCD” or “District”) and its appointed directors, staff, and consultants:

- (a) While encouraging experienced and competent persons to seek and accept a seat on the FMFCD Board and District employment;
- (b) While facilitating interchange between the community and the District;
- (c) By establishing clear rules of conduct respecting conflicts-of-interest applicable to all directors, employees, and contractors in compliance with applicable State law; and
- (d) By minimizing the possibility of conflicts arising between the private interests and public duties of the directors, employees, and contractors and providing for the resolution of such conflicts in the public interest should they arise.

The Fresno Metropolitan Flood Control District Act (“FMFCD Act”) is codified in the California Water Code Appendix Section 73 *et seq.* The FMFCD Act creates the Fresno Metropolitan Flood Control District and states that the objects and purposes of the FMFCD Act and of the District shall be to provide for:

- 1. The control of flood, storm, and other waste waters of or within the district, including waters which arise outside the district and which flow or drain into or through the district;
- 2. The protection from damage by flood, storm, or waste waters of private property and of public highways and other public property within the district; and
- 3. The conservation of flood, spreading, storing, retaining, or causing those waters, or any part thereof, to percolate into the soil within or without the district or the saving and conservation in any manner of any or all of those waters. (Water Code App. § 78-7.)

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The FMFCD Act further states in Section 73-5 that the governing board of the District shall consist of a Board of Directors of seven members. The legislative body of the City of Fresno shall appoint four members to the Board, none of whom shall be public officials of the City. The Board of Supervisors of the County of Fresno shall appoint two members to the Board, none of whom shall be public officials of the County. The legislative body of the City of Clovis shall appoint one member to the Board, who shall not be a public official of the City of Clovis.

Because the FMFCD Act requires District directors be appointed by agencies that may receive public funds, the District seeks to ensure that its purposes are not compromised by even the appearance of a conflict-of-interest by its directors, staff, or consultants.

## II. APPLICABLE LAW:

The following laws and regulations guide the District directors and staff on how to prevent or minimize the risk of an actual or potential conflicts-of-interest as well as the appearance of a conflict-of-interest:

### (a) Government Code Section 1090 *et seq.*

Section 1090 addresses conflicts of interest in the contract-making process. This section prohibits public agency board members and commissioners, officers, employees and certain contractors from being financially interested in contracts made by them in their official capacities, or by their respective boards or commissions. This prohibition extends to votes made by boards or commissions irrespective of whether or not the interested public agency board or commission member abstained from voting on the matter, disclosed the interest, or avoided discussions regarding the interest. While there are some limited exceptions to Section 1090, a contract made in violation of its provisions is void even if a court finds no intentional wrongdoing by the financially interested member.

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**(b) Political Reform Act (Government Code Section 87100 *et seq.*)**

The Political Reform Act addresses financial conflicts of interest (i.e. conflicts of interest arising from economic interests). Under the Political Reform Act, no public official at any level of state or local government may make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know that he or she has a "financial interest."

Generally, the Political Reform Act provides that a public official has a financial interest if it is reasonably foreseeable that a decision made by the public official will have a material financial effect on one or more of the official's interests as identified and distinguishable from the decision's effect on the public generally. District directors, staff, and consultants are directed to the California Fair Political Practices Commission's checklist to assist a public official in determining whether or not he or she has a financial conflict-of-interest. ([www.fppc.ca.gov/](http://www.fppc.ca.gov/))

**(c) Incompatible Offices/Activities (Government Code Section 1126)**

FMFCD directors, officers and staff are prohibited from engaging in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to, his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed.

The incompatible activities policy is contained below in Section III, subdivisions (d) and (e).

**(d) Assembly Bill No. 1234**

Assembly Bill No. 1234 requires, among other things, that all local agencies that provide compensation, salary, or stipends to, or reimburse the expenses of, members of a legislative body must provide ethics training every two (2) years.

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**(e) Conflict-of-Interest Code; Statement of Economic Interests**

By July 1 of each even-numbered year, the District must review and adopt a Conflict-of-Interest Code in accordance to the Political Reform Act. If a change in the Code is necessitated by changed circumstances, the District must submit an amended Conflict-of-Interest Code to the Clerk of the Fresno County Board of Supervisors.

Upon review of the Code, if no change in the Code is required, the District shall submit a written statement to that effect to the Clerk of the Fresno County Board of Supervisors by October 1 of the same year, or as specified by the Clerk of the Fresno County Board of Supervisors.

All “Designated Employees,” which are persons who make or participate in the making of decisions that may have a foreseeable material effect on financial interests, must complete a Form 700, Statement of Economic Interests form (the “Statement”), pursuant to and under the rules provided in the California State Fair Political Practices Commission’s Regulation 18730.

For purposes of this policy, “designated employees” are the duly appointed members of the District, the General Manager of the District, and any other District employee with independent decision-making authority. Specifically, the District’s current Conflict-of-Interest Code designates the positions that need to report.

**III. THE DISTRICT’S POLICY:**

The District has adopted the following rules and requirements, which will serve to assure adherence to the purpose of this Policy:

- (a) Each District director, staff member, and consultant shall individually determine whether or not he or she has a conflict-of-interest with respect to any action before the District. The directors, staff, and consultants are encouraged to contact District legal counsel regarding such matters.

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- (b) If a director, staff member or consultant of the District has determined that he or she has a conflict-of-interest, and such conflict does not violate the provisions contained in Government Code Section 1090 *et seq.*, that director, staff member, or consultant must disclose and recuse him or herself from the matter giving rise to the conflict. If the director, staff member, or consultant is concerned that such conflict could be a violation of Government Code section 1090 *et seq.*, that person must immediately recuse themselves from the action giving rise to the conflict and immediately contact the General Manager and District legal counsel to determine how to best address the matter.
  
- (c) District members shall not make, participate in making, or use their official position to influence the making of any governmental decision that may have a direct or indirect foreseeable material financial effect (distinguishable from its effect on the public generally) on:
  - (i) Any business entity in which the member has a direct or indirect investment worth one thousand dollars (\$1,000) or more;
  - (ii) Any real property in which the member has a direct or indirect interest worth one thousand dollars (\$1,000) or more;
  - (iii) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the member within twelve months prior to the time when the decision is made; or
  - (iv) Any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management. No member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that a vote of a member who is on the voting body is needed to break a tie does not make his or her participation legally required.

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(d) Determination and Prohibition of Incompatible Activities. Directors and District staff are prohibited from engaging in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to, their duties as a director or District staff or with their duties, functions, or responsibilities of the appointing power or the agency by which he or she is employed. Pursuant to Government Code section 1126(c), the District determines the following activities to be incompatible with service as an official or employee of the District, and are hereby prohibited:

- (i) Using for private gain or advantage his or her District time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of his or her District office or employment;
- (ii) Receiving or accepting any money or any consideration from anyone other than the District for the performance of an act that the officer or employee, if not performing such an act, would be required or expected to render in the regular course or hours of his or her District employment, or as a part of his or her duties as a District officer or employee;
- (iii) Except as permitted by subdivision (e)(ii) herein below, performing an act outside of one's capacity as a District officer or employee that is directly or indirectly subject to the control, inspection, review, audit, or enforcement of any other officer or employee of the District;
- (iv) Any activity involving time demands that would render performance of one's duties as a District officer or employee less efficient.

These provisions are principles and are not all-inclusive. Interpretation of this policy shall be made on a case-by-case basis. Furthermore, any activity known to the body appointing the District officer and not determined at that time to be in conflict with the officer's duties, is deemed approved.

(e) The District shall implement the following rules governing the application of incompatible offices/activities pursuant to Government Code section 1126:

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- (i) Each District officer and employee shall be provided a copy of this Conflict-of-Interest Policy. This Conflict-of-Interest Policy shall also be explained to employees by legal counsel as part of the annual conflict of interest presentation.
- (ii) When an outside pursuit of a director may constitute an incompatible activity prescribed in subsection (e)(i) above, he or she shall (1) identify the conflict of interest on the public record at the next meeting of the Board of Directors; and (2) abstain from participating in the transaction either on behalf of the District or the private entity. If the incompatibility is of such a continuing and pervasive nature that a director must constantly abstain from performing his or her duties, the Board of Directors shall refer the matter to the body appointing that director.
- (iii) District employees and their respective supervisors shall be responsible to determine if any of their present or potential future activities are subject to the prohibitions specified above by submitting a written request for review by the General Manager-Secretary (or another impartial designee of the Administrative Committee) of any potentially incompatible activities. The employee or officer shall receive a written reply determining whether any such potentially incompatible activities are in fact prohibited, and a copy of such request and notification shall be placed in the employee's or officer's personnel file. The reply may require that the employee or officer abstain from participating in all transactions between the District and the other entity, or may require that the employee or officer terminate the outside activity.
- (iv) An employee may appeal the determination of a prohibited activity, or the application of the determination of an incompatible activity against the employee, by requesting a hearing before the Administrative Committee.
- (v) The failure of an employee to comply with any requirement hereof may be cause for disciplinary proceedings pursuant to the District's Personnel Policy.

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- (vi) An employee may appeal (1) the determination of a prohibited activity; or (2) the application of the determination of an incompatible activity against him or her, by requesting a hearing before the Administrative Committee.
- (f) Every two (2) years, directors and certain District staff, as determined by the General Manager, must participate in AB 1234 ethics training.
- (g) All *newly appointed* directors shall complete the Statement within thirty (30) days of appointment to the District Board of Directors. All directors shall complete the Statement annually no later than April 1 of each year. All *directors leaving their seats on the District Board of Directors* shall file a Statement no later than thirty (30) days after leaving office.
- (h) By July 1 of every even numbered year, the District must review any Conflict-of-Interest Code adopted pursuant to the Political Reform Act. If changes to the Conflict-of-Interest Code are necessary due to changes in circumstances, an amended Code must be submitted to the Clerk of the Fresno County Board of Supervisors. If no changes are required, a written statement to that effect must be made to the Clerk of the Fresno County Board of Supervisors by October 1 of the same year.