



SOLANO COUNTY GRAND JURY
2018-2019

AN ANALYSIS OF
POTENTIAL CONFLICT OF INTEREST
WITHIN THE CITY OF FAIRFIELD

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Solano County Grand Jury 2018-2019

I. SUMMARY

The Solano County Grand Jury 2018-2019 (Grand Jury) undertook an analysis of the City of Fairfield's Administrative Policy Manual (Administrative Policy) regarding its Code of Ethics for City employees, and handling of Statements of Economic Interest, in response to a citizen complaint. Based on the information gathered by the Grand Jury, it became apparent there are certain City policies that are not followed. Additionally, there is a gap in the City's wording of certain policies making those policies difficult to ascertain and unable to be carried out by City staff. Lastly, the Administrative Policy details responsibilities to be undertaken by the Administrative Services Department that does not exist. Expansion and updating of the City's Administrative Policy is necessary to protect the interests of the City, City employees and the public from unethical conduct and conflict of interest violations.

II. INTRODUCTION

Fairfield was incorporated in 1903. It has a Council-Manager form of government with a separately-elected mayor and four councilmembers elected-at-large to staggered four-year terms. The City Clerk and City Treasurer are elected. The City Council appoints the City Manager and the City Attorney. Department Heads are appointed by the City Manager. The City is organized into eight departments, including the City Manager's Office and Human Resources. It is the responsibility of the City Manager to ensure all laws and ordinances of the City are enforced.

A citizen complaint sought the Grand Jury's assistance to investigate certain activities by City of Fairfield management personnel that could be perceived as inappropriate and unethical. The complaint alleged the use of insider knowledge for personal gain. A conflict of interest arises (or may arise) when a person is in a position to derive personal benefit from actions or decisions made in their official capacity. The Administrative Policy includes provisions for completion of conflict of interest statements and for obtaining prior approval for second jobs. Every public employee who makes or influences governmental decisions is required to submit a Statement of Economic Interest, California Fair Political Practices Commission Form 700 (Form 700) pursuant to the California Political Reform Act and the guidelines provided by the California Fair Political Practices Commission. The Grand Jury determined it is important to investigate the effectiveness of the City of Fairfield's current Administrative Policy as it pertains to potential conflicts of interest by City employees.

III. METHODOLOGY

- Interviewed Human Resources Department personnel
- Interviewed City Manager's Office personnel
- Interviewed representatives of City government
- Reviewed City of Fairfield Administrative Policy Manual (Issue Date: August 9, 2010) as provided by management of the City of Fairfield
- Reviewed New Employee Orientation Checklist Forms packet as provided by management of the City of Fairfield
- Reviewed sections of the California Fair Political Practices Commission (FPPC Form 700)

- Reviewed California Fair Political Practices Commission website: www.fppc.ca.gov
- Reviewed California Political Reform Act (Government Code §§81000-91014)
- Reviewed City of Fairfield website: www.fairfield.ca.gov
- Reviewed City of Fairfield Resolution No. 2012-214 (A Resolution of the City Council Approving Amendments to the City Fairfield Conflict of Interest Code) including Exhibit A and Exhibit B

IV. STATEMENT OF FACTS

The City of Fairfield's most recent Administrative Policy was issued on August 9, 2010 (with revisions to certain portions on 4/20/11 and 12/15/11 as it pertains to this report). The purpose of Chapter 100, Section 4 of the Policy was to establish a uniform Code of Ethics for all City employees. It is stated therein that the proper operation of municipal government requires that: 1) public employees be independent, impartial and responsible to the people; and 2) that government decisions and policy be made in the proper channels of the government structure. Further, public employees' conduct in both official and private affairs should be above reproach. As to responsibilities of public service, it is written that employees are bound to discharge faithfully the duties of their offices regardless of personal consideration. Public interest must be the primary concern. Additionally, on the subject of ethical considerations, the Policy provides that no employee shall disclose confidential information concerning the property, government or affairs of the City, and that no employee shall use confidential information to advance the financial or other private interest of themselves or others.

Moonlighting & Other Business Activity

Chapter 100, Section 4, of the Administrative Policy sets out the following guidelines for Moonlighting and Other Business Activity: Employees considering a second job or outside activity must have prior approval from his or her supervisor to determine whether or not the outside employment or activity has a potential conflict of interest with the employee's duties, the objective of the department, or the City. The final determination will be rendered by the employee's department head and City Manager. Outside activity and business activity applies to any duties, services or functions performed by a City employee for compensation or other personal gain.

Despite these criteria, investigation showed there is no means to ascertain whether an employee has requested permission for secondary employment or if the request was approved or denied. No documentation exists and nothing is maintained in the employee's official personnel file. Additionally, during interviews it was discovered that there is confusion as to how the City's policy on moonlighting actually works, that is, whom to ask for permission and how or if the policy is enforced.

Statements of Economic Interest – Form 700

The Administrative Policy's Code of Ethics states that no employee shall engage in any business or transaction or shall have a financial or personal interest, direct or indirect, which would tend to impair his or her independence or judgment or action in the performance of his or her official duties. Additionally, employees of the City of Fairfield shall comply with the applicable provisions of State law relative to conflicts of interest and generally regulating the conduct of public officials and employees, including the completion of conflict of interest statements (Ch. 100, Sect. 4).

The California Political Reform Act requires many public officials and employees to file public, personal financial disclosure reports known as Statements of Economic Interests or Form 700. The Form 700 provides transparency and ensures accountability in two ways: 1) It provides necessary information to the public about certain officials' personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances; and 2) It serves as a reminder to the public official of potential conflicts of interest so the official can abstain from making or participating in governmental decisions that are deemed conflicts of interest.

Under the Act, cities are required to adopt and implement a separate conflict of interest code. The City of Fairfield has adopted a conflict of interest code designating positions that have decision-making capacity which may affect financial interests (Resolution No. 2012-214).

Per the Administrative Policy, the City's Resolution is to outline the procedures for implementing the Council-adopted Conflict of Interest Code (Ch. 100, Sect. 5). The Resolution includes two exhibits. Exhibit A contains the list of employees required to file Form 700 and Categories 1-4. Exhibit B (Summary of Categories) defines the disclosure requirements for each category as follows: 1) Persons in this category shall disclose interests in real property if the real property is located in the City of Fairfield; 2) Persons in this category shall disclose income from sources of income and business entities in which he or she has an investment, if the business entity or source of income owns real property within the City of Fairfield and does business within the City of Fairfield; 3) Persons in this category shall disclose income from sources of income and business entities in which he or she has an investment, if the source of income or business entity is in the construction or building industry within the City of Fairfield; and 4) Persons in this category shall disclose income from sources of income and investments in business entities in which he or she has an investment, if the source of income or business entity within the previous two years provided services, equipment, lease space, materials or supplies to the City of

Fairfield, Fairfield Housing Authority, Successor Agency to the Fairfield Redevelopment Agency, or Fairfield-Suisun Sewer District.

The Grand Jury was informed that Statements of Economic Interest are completed by personnel mandated to file the Form 700 pursuant to the City's Resolution and pursuant to the California Political Reform Act. The forms are turned into the City Clerk, checked for completion and signature only, date stamped, put in a file marked with the year of the filings and kept in a drawer in the Clerk's office. No review of the Form 700 is done by any City official to determine if there is a potential conflict between activity conducted by the employee as disclosed on the Form 700, and the business of the City.

Investigation further revealed that although the Administrative Policy calls for a check on those who fail to timely file a Form 700, that policy is not followed by the City of Fairfield (Ch. 100, Sect. 5, p. 5-2, 1.f. states: Failure to file statements with the City Clerk on or before the deadlines may result in payment of fines imposed in accordance with guidelines established by the California Fair Political Practices Commission.)

Within the Administrative Policy, Chapter 100, Section 5, Conflict of Interest Statements, is a heading: "Administrative Services Department Responsibility." Under this heading are procedures for the Administrative Services Department to immediately notify the City Clerk of new hires, promotions, terminations or resignations for the purpose of proper filing of Statements of Economic Interest. The Administrative Policy, Chapter 200, Section 1, states: "The role of the Administrative Services Department is to provide the City with well-trained and equitable and ethical personnel standards and effectively manage risks to the City." At the time information was gathered by the Grand Jury, the City did not have an Administrative Services Department.

Administrative Policy Manual – Employee Guidelines

Chapter 200, Section 5 of the Administrative Policy, entitled: “New Employee Processing,” indicates that new employees will receive a City employee handbook from Administrative Services Department staff. Information provided to the Grand Jury indicates that no such handbook exists. The Grand Jury has received the City’s Administrative Policy Manual which purports to be an employee handbook. Also provided was a New Employee Orientation Checklist Forms packet. Within that packet is a document on how to access the Administrative Policy and includes the following statement in italics: “Most employees will find that Chapter 100 and 200 will be the most helpful in regards to looking up City policies and employee benefits.”

Chapter 200 of the Administrative Policy is replete with references to the Administrative Services Department and the administrative duties of the Director of Administrative Services (refer to Sections 2, 4, 5, 16, 19, 21, 22, 25, 26, 30, 34, 40, 42, 47, 48, 53). As previously referenced, the Grand Jury has been advised that there is no Administrative Services Department in the City of Fairfield. Employees are told in writing to rely on functions, policies and procedures of the Administrative Services Department and to sign an Acknowledgement of Receipt agreeing to be held accountable and to follow those policies. The General Purpose section of Chapter 200, states the purpose of personnel rules and regulations is to facilitate efficient and economical services to the public and provide for a fair and equitable system of personnel management. This section outlines in general terms the obligations, rights, privileges, benefits and prohibitions that are placed upon those in the employment of the City.

V. FINDINGS AND RECOMMENDATIONS

FINDING 1

Employees considering a second job or outside activity for compensation or other personal gain, must have prior approval from the employee's supervisor in order to rule out any conflict of interest. There is no evidence to ascertain whether the City of Fairfield enforces this policy.

Recommendation 1a

Create a Personnel Action Form for the employee to submit to their supervisor for advance written permission to take a second job, especially where that second job might be influenced by the employee's current position with the City. Place the form indicating the final decision in the employee's Official Personnel File. Documentation in lieu of verbal approval or denial would support the objective of the policy and protect the City and employee from any perceived presumption of wrongful conduct.

Recommendation 1b

Remind employees annually in writing of the policy regarding moonlighting and other business activities.

Finding 2

The City of Fairfield fails to ensure that required Form 700s are submitted and filed according to the California Political Reform Act and City regulations.

Recommendation 2

Follow-up to ensure all required Form 700s are submitted in accordance with the California Political Reform Act and City regulations.

Finding 3

Form 700s are not reviewed by City officials to ensure that employees do not engage in any business or transaction that would have a financial or personal interest which could impair the employee's independence or judgment in the performance of their official duties.

Recommendation 3

Review and evaluate Form 700s to determine whether the content contains information which could be interpreted as a conflict of interest.

Finding 4

The completed Form 700s are placed in the City Clerk's office drawer by year of filing, making it difficult to locate and determine if the required 700 is actually on file.

Recommendation 4

Place a copy of the Form 700 in the employee's Official Personnel File, whether the form is manually filed or e-filed.

Finding 5

Several sections of the City's current Administrative Policy Manual are incomplete and inaccurate. Information provided to new employees is lacking in accuracy and refers to the Administrative Services Department and the Director of Administrative Services which are non-existent. In its current form the Manual cannot be totally relied upon by

employees. It is further lacking in detail to protect the public and the City from potential conflict of interest activity by its employees.

Recommendation 5a

Correct, update and expand the Administrative Manual (issuance date of August 9, 2010) to include present policies, at a minimum:

Chapter 100 – Administration

Section 4 – Code of Ethics for City Employees

Section 5 – Conflict of Interest Statements

Chapter 200 – Administrative Services

Section 1 – General Purpose

Section 5 – New Employee Processing

Recommendation 5b

Provide the revised Policy to the employees and post on-line.

COMMENTS

Grand Jury feels strongly that employees receive up-to-date and specific guidelines and procedures they can rely on, and there is oversight of those policies. Other inconsistencies in the Administrative Policy Manual were noted beyond those specifically addressed in the Findings and Recommendations.

REQUIRED RESPONSES

City of Fairfield City Manager (All Findings)

COURTESY COPIES

Fairfield City Council
Solano County Board of Supervisors