Council Agenda #4F
Meeting of September 26, 2006

Staff Report

ADOPTION OF DESIGNATED EMPLOYEES IN CONFLICT OF INTEREST CODE

Honorable Mayor and Council Members:

Summary
The City Council is required to review biennially and revise the City's Conflict of Interest Code. Staff requests that the City Council review and adopt the proposed revisions in order to update the Code to conform to current requirements in the Political Reform Act.

Background and Discussion
The Political Reform Act of 1974, approved by the voters, requires state and local government agencies to adopt a Conflict of Interest Code. The City adopted a Conflict of Interest Code on October 9, 1979 pursuant to City Resolution No. 5149 and has periodically updated the Code as required by state law by adopting by reference the terms of 2 California Code of Regulations §18730, as may, from time to time, be amended by the Fair Political Practices Commission (FPPC).

The Conflict of Interest Code lists each employee position within the City that makes or participates in the making of governmental decisions. Individuals employed in these positions are called "designated employees." In addition, certain consultants to public agencies must also file disclosure forms because they make or participate in making governmental decisions on behalf of the City.

The code reviewing body for the City is the Council. Periodically, the code reviewing body, by resolution, must update the list of designated employees shown in the Appendix of Designated Officers and Employees.

Attachment 1 is a copy of the City's Conflict of Interest Code and the 2004 Appendix of Designated Officers and Employees. The only change is the addition of the adult Parks and Recreation Commissioners. Attachment 2 reflects this change. A resolution is also attached for the City Council's review. With this amendment, the City's Conflict of Interest Code accurately reflects positions that may make or participate in making governmental decisions for the City.

Fiscal Impact
None.

Recommendation
It is recommended that the City Council approve the attached Conflict of Interest Code.

Alternatives
1. Decline to approve the Code.
2. Request staff to provide added information prior to action.

Attachments
1. 2004 Conflict of Interest Code
2. Resolution Approving the Amendment of the Local Conflict of Interest Code with 2006 Proposed Appendix

Respectfully submitted,

Marc L. Zafferano
City Attorney

ATTACHMENT 1

CONFLICT OF INTEREST CODE

CITY OF BELMONT

CITY OF BELMONT

The Political Reform Act of 1974 (Government Code Sections 81000 et seq.) requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Section 18730), which contain the terms of a standard Conflict of Interest Code and can be incorporated by reference in an agency's code. After public notice and hearing, it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act.

Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating officials and employees and establishing disclosure categories, shall constitute the Conflict of Interest Code of the City of Belmont.

Designated officials and employees shall file statements of economic interests with the City Clerk for the City of Belmont, who will make the statements available for public inspection and reproduction (Government Code Section 81008). The City Clerk will retain statements for all designated officials and employees.

APPENDIX OF

DESIGNATED OFFICERS AND EMPLOYEES

Position:	Disclosure Categories:
City Engineer	4, 6
Assistant City Manager	1, 2, 3
Assistant Finance Director	1, 2, 3
Associate Civil Engineer	4, 6
Associate Planner	4, 6
Building Official	4, 6
Building Inspector	4, 6
Chief of Police	1, 2, 3
City Attorney	1, 2, 3
City Clerk	4, 6
City Council	1, 2, 3
City Manager	1, 2, 3
Consultants	1*, 2, 3
Deputy City Attorneys	1, 2, 3
Deputy City Clerk/Administrative Assistant	4, 6
Director of Parks and Recreation	1, 2, 3
Economic Development Manager	1, 2, 3
Finance Commissioners	1, 2, 3

Finance Director	1, 2, 3
Human Resources Director	1, 2, 3
Park Supervisor	4, 6
Planning Commissioners	1, 2, 3
Planning and Community Development Director	1, 2, 3
Police Captain	5
Principal Planner	4,6
Public Works Director	1, 2, 3
Public Works Services Manager	4, 6
Recreation Superintendent	4, 6
Senior Civil Engineer	4, 6
Senior Mechanic	4, 6
Senior Planner	4, 6
Information Services Manager	4, 6

*Consultants shall be included in the list of designate officials and employees and shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The City Manager, or his/her designee, may determine in writing on a case by case basis that a particular consultant, although a designed position, is hired to perform a range of duties that is limited in scope and thus does not require compliance, or full compliance with disclosure requirements. Any such written determination shall include a description of the consultant=s duties and a statement as to the extent of disclosure requirements. The City Manager may

Reform Act. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

CATEGORIES OF REPORTABLE ECONOMIC INTERESTS

Category 1. All-Inclusive Reportable Investments

A designated employee in this category shall disclose all reportable investments (worth more than $2,000):

(a) Owned by the designated employee, his or her spouse or dependent child;

(b) Owned by an agent on behalf of the designated employee;

(c) Owned by any business entity controlled by the designated employee (i.e., any business entity in which the designated employee, his or her agents, spouse and dependent children hold more than a 50% ownership interest);

(d) Owned by a trust in which the designated employee has a substantial interest (i.e., a trust in which the designated employee, his or her spouse and dependent children have a present or future interest worth more than $2,000);

(e) Representing the pro rata share (worth more than $2,000) of the designated employee, his or her spouse and dependent children, of investments of any business entity or trust in which the designated employee, his or her spouse and dependent children own, directly, indirectly or beneficially, a 10% interest or greater.

"Investment" means any financial interest in or security issued by a City of Belmont-related business entity, including, but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest.

A business entity is "City of Belmont-related" if and only if the business entity or any parent, subsidiary or otherwise related business entity: i) has an interest in real property within the jurisdiction, ii) does business in the City of Belmont, or iii) did business or plans to do business in the City of Belmont at any time during the period commencing two years prior to and ending one year after the time the designated employee is required by this Code to file his or her next Statement of Economic Interests or to disqualify himself or herself with respect to a City of

Belmont decision. (The term "parent, subsidiary, or otherwise related business entity" shall be construed as specifically defined by the Commission.)

No asset is deemed an "investment" unless its fair market value exceeds $2,000.

The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government agency.

Category 2. All-Inclusive Reportable Interests in Real Property

A designated employee in this category shall disclose all interests (worth more than $2,000) in real property located within the jurisdiction if the interests are:

(a) Held or owned by the designated employee, his or her spouse and dependent child; or

(b) The pro rata share (worth more than $2,000) of interests in real property of any business entity or trust in which the designated employee or spouse owns, directly or indirectly or beneficially, a 10% interest or greater.

"Interest in real property" includes any leasehold, beneficial or ownership interest, or any option to acquire such an interest, in real property, but does not include the principal residence of the filer.

Real property shall be deemed to be "located within the jurisdiction" if the property or any part of it is located within or not more than two miles outside the boundaries of the City of Belmont or within two miles of any land owned or used by the City of Belmont.

Category 3. All-Inclusive Reportable Income

A designated employee in this category shall disclose all income of the designated employee for any City of Belmont-related source aggregating $500 or more (or $300 or more in the case of gifts) during the reporting period.

(a) "Income" means, except as provided in subsection b), income of any nature from any City of Belmont-related source, including but not limited to any salary, wage, advance, payment, honorarium, award, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the general public without regard to official status, rebate, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse from a City of Belmont-related source. Income of an individual also includes a pro rata share of any income of any City of Belmont-related business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

A source, business entity or trust is "City of Belmont-related" if and only if he, she or it: (I) resides in the jurisdiction, (ii) has an interest in real property within the jurisdiction, (iii) does business in the City of Belmont at any time during the period commencing two years prior to and ending one year after his or her next Statement of Economic Interests or to disqualify himself or herself with respect to a City of Belmont decision.

(b) "Income" does <u>not</u> include:

(1) Campaign contributions required to be reported under Chapter 4 of the Act;

(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;

(3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;

(4) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(5) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph;

(6) Gifts of hospitality involving food, beverages, or lodging provided to the designated employee, if such hospitality has been reciprocated within the filing period.

"Reciprocity" as used in this subsection includes the providing by the designated employee to the host of any consideration, including entertainment or household gift of a reasonable similar benefit or value;

(7) Any devise or inheritance;

(8) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;

(9) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government; and

(10) Loans by a commercial lending institution in the regular course of business.

(c) "Honorarium" means a payment for speaking at any event, participating in a panel or seminar or engaging in any similar activity. For purposes of this subsection, free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and reimbursement or advance for actual intra-state travel and for necessary accommodations provided directly in connection with the event are not payment and need not be reported by the designated employee.

An honorarium must be reported as a gift unless it is clear from all of the surrounding circumstances that the services provided represented equal or greater value than the payment received. It if is clear form the surrounding circumstances that the services provided were of equal or greater value than the payment received, the honorarium is income, not a gift. When the designated employee claims that the honorarium is not a gift, he shall have the burden of proving that the consideration is of equal or greater value unless the designated employee is a defendant in a criminal action.

A prize or an award shall be disclosed as a gift unless the prize or award is received on the basis of a bona fide competition not related to the designated employee's official status. Prizes or awards which are not disclosed as gifts shall be disclosed as income.

<u>Category 4. Less-Inclusive Reportable Investments</u>

A designated employee in this category shall disclose those, and only those, Category 1 reportable investments which pertain to a business entity, a business activity of which is that of:

(a) Providing within the last two (2) years, or foreseeable in the future, services, supplies, materials, machinery or equipment to the City of Belmont.

(b) Conducting a business in the City of Belmont which requires a business license therefor pursuant to ordinances of the City.

(c) Sale, purchase, exchange, lease or rental, or financing, for its own account or as broker, of real property or the development, syndication or subdivision of real property or construction thereon of buildings or structures.

Category 5. Less-Inclusive Reportable Interests in Real Property

A designated employee in this category shall disclose those, and only those, Category 2 reportable interests in real property where the property or any part of it is located within or not more than 500 feet outside the boundaries of the City of Belmont.

Category 6. Less-Inclusive Types of Reportable Income

A designated employee in this category shall disclose those, and only those types of Category 3 reportable income which are derived from a source, an activity of which is that of:

(a) Providing within the last two (2) years, or foreseeable in the future, services, supplies, materials, machinery or equipment to the City of Belmont.

(b) Conducting a business in the City of Belmont which requires a business license therefor pursuant to ordinances of the City.

(c) Sale, purchase, exchange, lease or rental, or financing, for its own account or as broker, of real property or the development, syndication, or subdivision, of real property or constriction thereon of buildings or structures.

ATTACHMENT 2

RESOLUTION APPROVING THE AMENDMENT

OF THE LOCAL CONFLICT OF INTEREST CODE

AND 2006 PROPOSED APPENDIX

Resolution No. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
APPROVING THE APPENDIX DATED _____ 2006 OF
CERTAIN DESIGNATED EMPLOYEES IN THE LOCAL
CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act of 1974, amended (Government Code Section 81000, et seq.), requires state and local government agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, by adopting Resolutions No. 5149, 5744 and 7197, this Council adopted a Conflict of Interest Code for the City of Belmont, by adopting by reference, the terms of 2 Cal. Code of Regulations 18730, as may, from time to time be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act, and by also approving as an Appendix thereto, disclosure categories for certain designated positions with the City of Belmont; and

WHEREAS, the Appendix containing the disclosure categories for the designated positions reflects current personnel status; and

WHEREAS, this Council, as code reviewing body for the City of Belmont, has determined that the attached Appendix accurately sets forth those positions which should be designated and the categories of financial interests which should be made reportable for each position.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELMONT, as follows:

The Appendix dated _____ 2006 attached hereto and by reference made apart of the Conflict of Interest Code of the City of Belmont, is hereby approved; and

All former resolutions or parts thereof conflicting or inconsistent with the provisions of this resolution are thereby repealed.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on _____, 2006, by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

_____
CLERK of the City of Belmont

APPROVED:

_____
MAYOR of the City of Belmont

APPENDIX OF

DESIGNATED OFFICERS AND EMPLOYEES

Position :	Disclosure Categories:
City Engineer	4,6
Assistant City Manager	1, 2, 3
Assistant Finance Director	1, 2, 3
Associate Civil Engineer	4,6
Associate Planner	4,6
Building Official	4,6
Building Inspector	4,6
Chief of Police	1, 2, 3
City Attorney	1, 2, 3
City Clerk	4,6
City Council	1, 2, 3
City Manager	1, 2, 3
Consultants	1*, 2, 3
Deputy City Attorneys	1, 2, 3
Deputy City Clerk/Administrative Assistant	4,6
Director of Parks and Recreation	1, 2, 3
Economic Development Manager	1, 2, 3
Finance Commissioners	1, 2, 3
Finance Director	1, 2, 3

Human Resources Director	1, 2, 3
Parks and Recreation Commissioners (Adults)	1, 2, 3
Park Supervisor	4,6
Planning Commissioners	1, 2, 3
Planning and Community Development Director	1, 2, 3
Police Captain	5
Principal Planner	4,6
Public Works Director	1, 2, 3
Public Works Services Manager	4,6
Recreation Superintendent	4,6
Senior Civil Engineer	4,6
Senior Mechanic	4,6
Senior Planner	4,6
Information Services Manager	4,6

*Consultants shall be included in the list of designate officials and employees and shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The City Manager, or his/her designee, may determine in writing on a case by case basis that a particular consultant, although a designed position, is hired to perform a range of duties that is limited in scope and thus does not require compliance, or full compliance with disclosure requirements. Any such written determination shall include a description of the consultant's duties and a statement as to the extent of disclosure requirements. The City Manager may determine whether a contract consultant constitutes a "consultant" as defined in the Political

Reform Act. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

CATEGORIES OF REPORTABLE ECONOMIC INTERESTS

Category 1. All-Inclusive Reportable Investments

A designated employee in this category shall disclose all reportable investments (worth more than $2,000):

(a) Owned by the designated employee, his or her spouse or dependent child;

(b) Owned by an agent on behalf of the designated employee;

(c) Owned by any business entity controlled by the designated employee (i.e., any business entity in which the designated employee, his or her agents, spouse and dependent children hold more than a 50% ownership interest);

(d) Owned by a trust in which the designated employee has a substantial interest (i.e., a trust in which the designated employee, his or her spouse and dependent children have a present or future interest worth more than $2,000);

(e) Representing the pro rata share (worth more than $2,000) of the designated employee, his or her spouse and dependent children, of investments of any business entity or trust in which the designated employee, his or her spouse and dependent children own, directly, indirectly or beneficially, a 10% interest or greater.

"Investment" means any financial interest in or security issued by a City of Belmont-related business entity, including, but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest.

A business entity is "City of Belmont-related" if and only if the business entity or any parent, subsidiary or otherwise related business entity: i) has an interest in real property within the jurisdiction, ii) does business in the City of Belmont, or iii) did business or plans to do business in the City of Belmont at any time during the period commencing two years prior to and ending one year after the time the designated employee is required by this Code to file his or her

next Statement of Economic Interests or to disqualify himself or herself with respect to a City of Belmont decision. (The term "parent, subsidiary, or otherwise related business entity" shall be construed as specifically defined by the Commission.)

No asset is deemed an "investment" unless its fair market value exceeds $2,000.

The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government agency.

Category 2. All-Inclusive Reportable Interests in Real Property

A designated employee in this category shall disclose all interests (worth more than $2,000) in real property located within the jurisdiction if the interests are:

(a) Held or owned by the designated employee, his or her spouse and dependent child; or

(b) The pro rata share (worth more than $2,000) of interests in real property of any business entity or trust in which the designated employee or spouse owns, directly or indirectly or beneficially, a 10% interest or greater.

"Interest in real property" includes any leasehold, beneficial or ownership interest, or any option to acquire such an interest, in real property, but does not include the principal residence of the filer.

Real property shall be deemed to be "located within the jurisdiction" if the property or any part of it is located within or not more than two miles outside the boundaries of the City of Belmont or within two miles of any land owned or used by the City of Belmont.

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A designated employee in this category shall disclose all income of the designated employee for any City of Belmont-related source aggregating $500 or more (or $300 or more in the case of gifts) during the reporting period.

(a) "Income" means, except as provided in subsection b), income of any nature from any City of Belmont-related source, including but not limited to any salary, wage, advance, payment, honorarium, award, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the general public without regard to official status, rebate, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse from a City of Belmont-related source. Income of an individual also includes a pro rata share of any income of any City of Belmont-related business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

A source, business entity or trust is "City of Belmont-related" if and only if he, she or it: (i) resides in the jurisdiction, (ii) has an interest in real property within the jurisdiction, (iii) does business in the City of Belmont at any time during the period commencing two years prior to and ending one year after his or her next Statement of Economic Interests or to disqualify himself or herself with respect to a City of Belmont decision.

(b) "Income" does <u>not</u> include:

(1) Campaign contributions required to be reported under Chapter 4 of the Act;

(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;

(3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;

(4) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(5) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph;

(6) Gifts of hospitality involving food, beverages, or lodging provided to the designated employee, if such hospitality has been reciprocated within the filing period. "Reciprocity" as used in this subsection includes the providing by the designated employee to the

host of any consideration, including entertainment or household gift of a reasonable similar benefit or value;

(7) Any devise or inheritance;

(8) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;

(9) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government; and

(10) Loans by a commercial lending institution in the regular course of business.

(c) "Honorarium" means a payment for speaking at any event, participating in a panel or seminar or engaging in any similar activity. For purposes of this subsection, free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and reimbursement or advance for actual intra-state travel and for necessary accommodations provided directly in connection with the event are not payment and need not be reported by the designated employee.

An honorarium must be reported as a gift unless it is clear from all of the surrounding circumstances that the services provided represented equal or greater value than the payment received. It if is clear from the surrounding circumstances that the services provided were of equal or greater value than the payment received, the honorarium is income, not a gift. When the designated employee claims that the honorarium is not a gift, he shall have the burden of proving that the consideration is of equal or greater value unless the designated employee is a defendant in a criminal action.

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Category 4. Less-Inclusive Reportable Investments

A designated employee in this category shall disclose those, and only those, Category 1 reportable investments which pertain to a business entity, a business activity of which is that of:

(a) Providing within the last two (2) years, or foreseeable in the future, services, supplies, materials, machinery or equipment to the City of Belmont.

(b) Conducting a business in the City of Belmont which requires a business license therefor pursuant to ordinances of the City.

(c) Sale, purchase, exchange, lease or rental, or financing, for its own account or as broker, of real property or the development, syndication or subdivision of real property or construction thereon of buildings or structures.

Category 5. Less-Inclusive Reportable Interests in Real Property

A designated employee in this category shall disclose those, and only those, Category 2 reportable interests in real property where the property or any part of it is located within or not more than 500 feet outside the boundaries of the City of Belmont.

Category 6. Less-Inclusive Types of Reportable Income

A designated employee in this category shall disclose those, and only those types of Category 3 reportable income which are derived from a source, an activity of which is that of:

(a) Providing within the last two (2) years, or foreseeable in the future, services, supplies, materials, machinery or equipment to the City of Belmont.

(b) Conducting a business in the City of Belmont which requires a business license therefor pursuant to ordinances of the City.

(c) Sale, purchase, exchange, lease or rental, or financing, for its own account or as broker, of real property or the development, syndication, or subdivision, of real property or construction thereon of buildings or structures.