

**THE SAN BRUNO COMMUNITY FOUNDATION**  
**CONFLICT OF INTEREST POLICY**  
Adopted October 5, 2016

**ARTICLE I**  
**Purpose**

The purpose of this Conflict of Interest Policy is to protect The San Bruno Community Foundation (the “Foundation”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer, employee, or member of a committee of the Foundation, might result in a possible excess benefit transaction, or might violate the laws applicable to public entities. This policy is intended to supplement, but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations and/or public entities.

Directors of the Foundation should also be aware of their obligation under the Nonprofit Public Benefit Corporation Law to perform the duties of a director, including duties as a member of any committee of the Board of Directors (the “Board”) upon which the director may serve, in good faith, in a manner that director believes to be in the best interests of the Foundation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

**ARTICLE II**  
**Definitions**

For purposes of this Conflict of Interest Policy, the following terms are defined as follows:

**1. Interested Person**

Any member of the Board, officer, employee, or member of a committee that has been created by the Board and/or pursuant to the Bylaws (herein, a “Committee”), who has a direct or indirect Financial Interest, as defined below, is an Interested Person.

**2. Financial Interest**

A person has a Financial Interest if the person has, directly or indirectly, through business, investment, or Family, as defined below:

- a. An ownership or investment interest in any entity with which the Foundation has a transaction or arrangement,
- b. A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement,

- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement, or
- d. Any other material financial interest or economic benefit that would be subject to applicable laws regarding (i) self-dealing under the California Nonprofit Public Benefit Corporation Law, (ii) excess benefit transactions under Internal Revenue Code Section 4958, or (iii) conflicts of interest as defined by state and federal law applicable to public entities.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A Financial Interest is not necessarily a conflict of interest. Under Article IV, Section 2(b), a person who has a Financial Interest may have a conflict of interest only if the appropriate Board or Committee decides that a conflict of interest exists.

However, a director, officer, employee, or member of a Committee may also have a conflict, potential conflict, or an arrangement that could be perceived as a conflict that is not a Financial Interest arising out of such individual's non-financial or personal relationships. Although such conflicts or potential conflicts may not necessarily be governed by this Conflict of Interest Policy, in many instances, it may be appropriate for the individual to recuse herself or himself from participating in or influencing any Foundation decision connected to or that could impact those interests.

### **3. Family**

The term Family includes a person's spouse (including a registered domestic partner recognized by state law), ancestors (*e.g.*, parents, grandparents), children (whether natural or adopted), grandchildren, great-grandchildren, brothers and sisters (whether by the whole or half-blood), and the spouses (including the registered domestic partners recognized by state law) of such person's children, grandchildren, great-grandchildren, brothers, and sisters.

## **ARTICLE III State and Federal Laws Applicable to Public Entities**

As a quasi-public entity, the Foundation is subject to a number of state and federal laws that apply to public entities (collectively referred to herein as the "Public Entity Laws"). The Public Entity Laws applicable to the Foundation include, but are not necessarily limited to, the provisions beginning with California Government Code Section 1090 and the provisions beginning with California Government Code Section 87100, and related regulations.

The following descriptions are intended to provide general information regarding and examples of some of the Public Entity Laws applicable to the Foundation, but are not intended to be and do not represent a comprehensive list of all such applicable Public Entity Laws. Accordingly, any Interested Person who has an actual or possible Financial Interest that may violate the Public Entity Laws shall follow the procedures outlined in Article IV below.

- a. Government Code Section 1090 *et seq.* prohibits the Foundation from entering into contracts in which directors or covered employees have a Financial Interest. It also prohibits those individuals from influencing or participating in the making of a contract in their official capacity in which they have a Financial Interest. Certain types of contracts (such as payment of salary and reimbursements) are exempt from this provision, as are certain specified non-interests and remote interests enumerated in Government Code Sections 1091 and 1091.5.
- b. Government Code Section 87100 *et seq.* prohibits Foundation directors and covered employees from influencing or participating in governmental decisions in which they have a material Financial Interest. The law requires disclosure of certain financial interests and disqualification from influencing or participating in decisions that could affect those financial interests.

## **ARTICLE IV Procedures**

### **1. Duty to Disclose**

Where any Interested Person has a Financial Interest or other possible conflict of interest, the Interested Person must first disclose the existence of the Financial Interest and all material facts to the Foundation's Executive Director; provided, however, that if the Executive Director is the Interested Person, the Executive Director will disclose the existence of the Financial Interest and all material facts to the Foundation's President. The Interested Person shall make such disclosure in a timely manner upon learning of the Financial Interest associated with any transaction or arrangement, whether existing or proposed.

### **2. Determination of Applicable Law**

Upon such disclosure, and after obtaining appropriate legal counsel as necessary, the Executive Director or President, as appropriate, or the Foundation's attorney, shall inform the Interested Person as to whether the Financial Interest or other possible conflict of interest could cause the contemplated or existing transaction or arrangement to violate the Public Entity Laws.

#### **a. Procedures under Public Entity Laws**

If the Financial Interest or other possible conflict of interest could cause the contemplated or existing transaction or arrangement to violate the Public Entity Laws, the Executive Director or President, as appropriate, or the Foundation's attorney, shall inform the Interested Person as to whether recusal from participation in the decision would allow the Foundation to proceed with the transaction or arrangement. If the Foundation cannot enter into or continue with the transaction or arrangement under the Public Entity Laws, it shall not do so and the following procedures set forth below in this Article IV need not be followed.

#### **b. Procedures under Nonprofit and Exempt Entity Laws**

If the Financial Interest or other possible conflict of interest would not cause the contemplated or existing transaction or arrangement to violate the Public Entity Laws, the following procedures shall be followed to determine whether the contemplated or existing transaction or arrangement would benefit the private interest of a director, officer, employee, or member of a Committee of the Foundation; would violate the self-dealing rules specified in the California Nonprofit Public Benefit Corporation Law; or might result in a possible excess benefit transaction.

**i. Duty to Disclose to Board**

In connection with any Financial Interest or other possible conflict of interest, and after a determination is made that a transaction or arrangement will not pose a conflict or be prohibited under the Public Entity Laws, as described above, an Interested Person must disclose the existence of the Financial Interest and be given the opportunity to disclose all material facts to the directors and members of Committees considering the proposed transaction or arrangement. The Interested Person shall make such disclosure in a timely manner upon learning of the Financial Interest associated with any transaction or arrangement, whether existing or proposed.

**ii. Determining Whether a Conflict of Interest Exists**

After disclosure of the Financial Interest and all material facts, and after any discussion with the Interested Person, the Interested Person shall leave the Board or Committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or Committee members shall decide if a conflict of interest exists.

**iii. Procedures for Addressing the Conflict of Interest**

The Board or Committee shall follow the following procedures in order to determine whether to enter into a transaction or arrangement involving a possible conflict of interest and, if the Foundation does enter into such transaction or arrangement, to ensure that the terms of the transaction or arrangement are fair and reasonable as to the Foundation.

- a) An Interested Person may make a presentation at the Board or Committee meeting, but after the presentation, the Interested Person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b) The chair of the Board or Committee shall, if appropriate, appoint a disinterested person or Committee to investigate alternatives to the proposed transaction or arrangement.
- c) The Board or Committee shall exercise reasonable due diligence in gathering sufficient information about the proposed transaction or arrangement, the Interested Person's conflict of interest, and possible alternatives (*e.g.*, comparability data) to be able to determine the fairness and reasonableness of the transaction or arrangement.

- d) After exercising due diligence, the Board or Committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- e) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or Committee shall determine by a vote of a majority of the directors then in office without counting the vote of the interested director or directors whether the transaction or arrangement is in the Foundation's best interest, for its own benefit, and whether it will be fair and reasonable as to the Foundation at the time the Foundation is to enter into the transaction or arrangement. In conformity with the above determination, the Board shall make its decision as to whether to enter into the transaction or arrangement.
- f) If it is not reasonably practicable to obtain approval of the Board consistent with the standards set forth in subsections d and e (the "Standards") prior to entering into the transaction or arrangement, a Committee shall make the determination of whether to enter into such transaction or arrangement in a manner consistent with the Standards; and the Board shall consider in good faith whether (i) it was not reasonably practicable to obtain approval of the Board prior to entering into the transaction or arrangement, and (ii) the Committee approved the transaction or arrangement in a manner consistent with the Standards. If the Board determines that the conditions of (i) and (ii) were met, it may by a vote of the majority of the directors then in office without counting the vote of the interested director or directors ratify the transaction or arrangement.

#### **iv. Violations**

If the Board or Committee has reasonable cause to believe that one of its members has failed to disclose an actual or possible conflict of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

#### **v. Records of Proceedings**

The minutes of meetings of the Board and all Committees at which a transaction or arrangement involving a Financial Interest or other possible conflict of interest was disclosed, discussed, or voted on shall contain:

- a) The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest or other actual or possible conflict of interest, any action taken to determine whether a conflict of interest was present, and the Board's or Committee's decision as to whether a conflict of interest in fact existed; and

- b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the extent to which Interested Persons were excluded from the deliberations and the reason for any recusal, the content of the discussion (including any alternatives to the proposed transaction or arrangement and comparability data or other information reviewed in connection with the discussion), and a record of any votes taken in connection with the proceedings.

The minutes of any such meeting must be prepared by the later of (i) the next Board or Committee meeting or (ii) 60 days after the final action of the Board or Committee with respect to the transaction or arrangement.

**vi. Compensation**

- a) A voting member of the Board or any Committee who receives compensation, directly or indirectly, from the Foundation for services provided other than as a Director is precluded from voting on matters pertaining to that member's compensation.
- b) No voting member of the Board or any Committee who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to the Board or any Committee regarding compensation.

**ARTICLE V  
Annual Statements**

Each director, officer, employee, and member of a Committee of the Foundation shall annually sign a statement which:

- a. Affirms that the person has received a copy of this Conflict of Interest Policy, has read and understood this Policy, and has agreed to comply with this Policy;
- b. Affirms that the person understand that the Foundation is a tax-exempt entity and, in order to maintain its federal tax-exempt status, must engage primarily in activities which accomplish one or more of its tax-exempt purposes; and
- c. Discloses that person's interests that could reasonable give rise to conflicts of interest with respect to the Foundation, including, but not limited to, all known affiliations with any organization with which the Foundation may have a financial relationship and any persons with whom such person has a close relationship who are affiliated with any organization with which the Foundation may have a financial relationship.

All such statements by directors, officers, Committee members, and employees shall be filed with the minutes of the Board or Committee.

**ARTICLE VI**  
**Periodic Reviews**

To ensure the Foundation operates in a manner consistent with its exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further exempt purposes and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

**ARTICLE VII**  
**Use of Outside Experts**

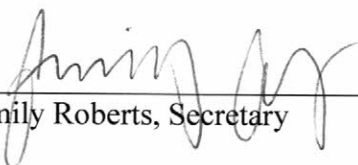
When conducting the periodic reviews as provided for in Article VI, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted, except where otherwise provided by a court of competent jurisdiction.

CERTIFICATE OF SECRETARY

The undersigned hereby certifies that:

1. I am the duly elected and acting Secretary of The San Bruno Community Foundation, a California nonprofit public benefit corporation; and
2. The foregoing Conflict of Interest Policy consisting of [7] pages constitutes the Conflict of Interest Policy of such corporation as duly adopted by the Board of Directors on October 5, 2016, and has not been amended or modified since such date.

IN WITNESS WHEREOF, I have executed this Certificate as of this October 5, 2016.

  
\_\_\_\_\_  
Emily Roberts, Secretary



**CONFLICT OF INTEREST POLICY  
ANNUAL AFFIRMATION AND DISCLOSURE STATEMENT**

The Conflict of Interest Policy of The San Bruno Community Foundation (the “Foundation”) requires an annual affirmation from each director, officer, employee, and member of any Committee of the Foundation: (a) has received a copy of the Conflict of Interest Policy, (b) has read and understands the Policy, (c) has agreed to comply with the Policy, (d) understands the Foundation is tax-exempt and in order to maintain its federal tax-exempt status, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes, and (e) has submitted a completed California Fair Political Practices Commission Form 700 to the San Bruno City Clerk’s Office as required.

Also, the Conflict of Interest Policy requires each such person annually to disclose (a) all known affiliations with any organization with which the Foundation may have a financial relationship, and (b) any known persons with whom such person has a close relationship (such as immediate family members) who are affiliated with any organization with which the Foundation may have a financial relationship.

In addition, Form 990, the annual information return that the Foundation must file with the Internal Revenue Service and disclose to the public, requires the Foundation to disclose certain information related to each officer, director, and key employee. In order to make such disclosures, each officer, director, and key employee shall annually complete this Statement and timely update the Executive Director of any changes during the current year.

By signing this Statement, you indicate your affirmation of each of the matters described in the first paragraph above.

In addition, please disclose below any affiliations known to you described in the second paragraph above.

|    | <u>Business/Organization</u> | <u>Nature of Relationship</u> | <u>Dates of Relationship</u> |
|----|------------------------------|-------------------------------|------------------------------|
| 1. | _____                        | _____                         | _____                        |
| 2. | _____                        | _____                         | _____                        |
| 3. | _____                        | _____                         | _____                        |
| 4. | _____                        | _____                         | _____                        |
| 5. | _____                        | _____                         | _____                        |
| 6. | _____                        | _____                         | _____                        |

Please use another piece of paper if your answer requires more space.

Please complete and return this Statement to the Executive Director of the Foundation by the first Board meeting in the following calendar year.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

Reviewed for the Foundation by: \_\_\_\_\_

Date: \_\_\_\_\_