

## Neighborhood Council Street Repair Program

### CONFLICT OF INTEREST GUIDELINES

Office of the City Attorney

The City of Los Angeles is embarking upon a program to allow Neighborhood Councils to assist the Department of Public Works, Bureau of Street Services, in establishing street repair priorities in each Neighborhood Council area.

The City will earmark \$100,000 for street repairs within the geographic boundaries of every Neighborhood Council which has an operating Governing Body. It is anticipated that each Neighborhood Council will vote on the priority guiding which of the eligible streets within their Neighborhood Council should be repaired and communicate those recommendations to the Department of Public Works.

#### Background

Neighborhood Councils are subject to the Political Reform Act and must comply with the conflict of interest rules under that Act when they make decisions and recommendations to the City decision makers. In addition to the rules set forth in the Political Reform Act, courts have developed principles of law (the "common-law") regarding conflicts of interest. Those rules generally "prohibit public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." *Noble v. City of Palo Alto* (1928) 89 Cal. App.47, 51.

In the context of the Street Repair Program, conflict of interest concerns may arise when Neighborhood Council board members make decisions/recommendations in selecting and/or prioritizing the streets for repair in the Neighborhood Council area. Neighborhood Council board members must be aware of those concerns and take appropriate action when those conflicts arise. Thus, Neighborhood Council board members who reside on streets that are on the City's qualification list should be aware of these rules.

In general, conflict of interest concerns arise if a Neighborhood Council board member has an *economic* interest that may be affected by a decision or a *personal* interest that affects the ability to evaluate the matter fairly and impartially.

Economic interests may include real property in which you, or a member of your family owns an interest. Leasehold interests may also be treated as an economic interest. Economic interests may also include those who have a 10% interest in a business which owns real property.

Under the Political Reform Act, a decision affects your property which is located within 500 feet of the boundaries of the project subject to the decision. However, the Act provides that if the decision solely concerns "repairs, replacement, or maintenance of existing streets" the interest is presumed to be an "indirect interest" which does not

result in automatic disqualification to act on the matter. Regulation 18704.2 (6) (b) (2). Applying this provision to the Neighborhood Council Street Repair Program, if a board member resides within 500 feet of a street or even *upon* a street being considered for repair, the board member would not be required to disqualify him or herself from acting on the matter under the Political Reform Act

However, as noted above, the courts have developed principles of law to prevent public officials from acting on matters in which an individual has a personal or economic interest<sup>1</sup> from which it can be construed that the person has a bias or a sufficient interest in the matter such that those private interests conflict with their official duties. In the words of one court, where the factual circumstances “can conceivably raise a substantial question of fairness and bias, prejudice or influence . . . obvious enough to have an effect on public confidence in such process” disqualification should occur. *Kimura v. Roberts* (1979) 89 Cal. App. 3d 871, 875.

In the context of the Street Repair Program, Neighborhood Council decisions in establishing priorities for street repairs should be made based upon objective standards of need and what will benefit the good of the community, as contrasted with a personal desire for the street upon which a board member resides to be repaired. Thus, applying the common law principles of conflicts of interest, it is our view that public confidence in the process of deciding which residential streets should be repaired may be eroded should Neighborhood Council board members who reside upon a residential street being considered for street repairs participate in the decision-making process.<sup>2</sup>

## Guidelines

Applying the rules under the common law conflict of interest principles, the City Attorney offers the following guidelines for Neighborhood Councils when making decisions about prioritizing their streets for improvements:

1. Board members who reside upon any street that qualifies for street repairs within its own Neighborhood Council area as listed by the Department of Public Works are disqualified from participating in any decision-making with respect to prioritizing those streets for repair.
2. In the case where paragraph 1 applies, at a public meeting at which the decisions are being made, the affected board member(s) must publicly announce the nature of

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<sup>1</sup> Even though an interest may not be considered an economic interest under the Political Reform Act which would require recusal, the same economic interest may require recusal under the common law principles of conflict of interests.

<sup>2</sup> Even if board members disqualify themselves from voting on whether to repair his or her street, board members could collectively decide to vote against any street upon which a board member does not reside, effecting by default, a decision to repair those streets upon which all the board members reside. For this reason, we conclude that board members who reside on a street which is on the list for consideration should not participate at all in the decisions to prioritize the streets for repairs.

the conflict (that he/she resides on a street that qualifies for repair), announce that he/she is unable to participate in the matter and excuse him/herself from the room while the board is discussing the item.

3. If a board member knows in advance that he/she will likely be disqualified from participating in the matter, he/she should immediately contact the President of his/her Neighborhood Council but no later than 48 hours prior to the meeting at which the decision will take place. This will allow the President to assess whether there is an adequate number of board members present (a quorum) who are able to take action on the item.

4. If due to the conflict of interests of several board members, there will likely not be an adequate number of board members available to act, the President should immediately contact the City Attorney's Office, Neighborhood Council Advice Division for consultation and advice.

***Please contact the City Attorney's Office, Neighborhood Council Advice Division at (213) 978-8132 if you have any questions regarding these Guidelines.***