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OPINION NO. 2004:7

MAY 28 2004

The Honorable Education and
Neighborhood Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

**RE: ANALYSIS OF LEGAL FRAMEWORK APPLICABLE TO
NEIGHBORHOOD COUNCILS**

PART ONE: THE POLITICAL REFORM ACT

Honorable Members:

Pursuant to your request, this is the first in a series of reports addressing the legislative and regulatory scheme applicable to neighborhood councils as a result of their relationship to City government. This report will address the Political Reform Act, codified at Sections 87100, *et seq.* of the California Government Code (hereinafter the "Act"), directed at preventing government conflicts of interest and sets forth the requested options for the Council to consider in addressing issues raised by neighborhood councils.

BACKGROUND

California's Political Reform Act strives to ensure that government operates fairly, without regard to the wealth of constituents, or the financial or campaign contribution interests of officials. Cal. Gov't Code § 81001(b). The Act is the most powerful conflict of interest law in California. See, *Ethics Orientation for State Officials presented by The California Attorney General's Office and the Fair Political Practices Commission* (1999) <http://ag.ca.gov/ethics/accessible/conflicts.htm>. The Act is liberally construed to accomplish its purpose. Cal. Gov't Code § 81003.

The Act prohibits "public officials" from making or influencing any government decision if it is reasonably foreseeable that the decision will have a material financial impact on his or her economic interests. Cal. Gov't Code §§ 87100 and 87103. The Act

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imposes reporting requirements on “public officials” to safeguard against the influence of conflicts of interests on decision-making. Cal. Gov’t Code §§ 87300, *et seq.*; 2 Cal. Code of Regs. § 18351. Each public agency is required to establish a Conflict of Interest Code containing substantive conflict prohibitions as well as specifying “designated employees” within the agency who must file disclosure statements. Cal Gov’t Code § 87300, 87302. Statements and reports filed pursuant to the Act are available for inspection by the public. Cal. Gov’t Code § 81008.

The Act imposes both civil and criminal penalties for violations. Civil liability is imposed on every person who intentionally or negligently violates the reporting requirements of the Act. Cal. Gov’t Code § 91004. Liability for violations of the Act applies, jointly and severally, to all persons who are responsible for the violations. Cal. Gov’t Code § 91006. All reports and statements filed pursuant to the Act must be signed by the filer and subject the filer to prosecution for perjury for a knowingly false statement. Cal. Gov’t Code § 81004.

The administrative and financial implications of an application of the Act to neighborhood council board members is substantial. Current FPPC regulations are approximately 500 pages in length. The Act would impose a responsibility on the City to ensure that neighborhood council board members comply with the Act. The Act would require each board member to file a Statement of Economic Interests, Form 700. 2 Cal. Code of Regs. § 18351. The City would be required to supply necessary forms and manuals to filers, determine whether required forms have been filed, review the forms to determine if they are complete, report violations and maintain records relating to the forms. Cal. Gov’t Code § 81010; 2 Cal. Code of Regs. § 18115. Charter section 901(e) imposes on the City the obligation to “arrange training for neighborhood council’s officers and staff.” L.A. Charter § 901(e). Moreover, the Plan requires the Department of Neighborhood Empowerment (“DONE”), the City entity charged with assisting the neighborhood councils in their development, “to oversee [neighborhood council] compliance with City ordinances and regulations.” Plan Art. VI, § 1. Continuing education would be required as membership changes from year to year. Indeed, the Plan sets term limits for neighborhood council board members prompting changes in leadership. Plan Article III, § 2(c)(ii)(b).

DONE has considered the implications of the Act to neighborhood councils. If all of the neighborhood council board members were required to file Form 700 statements, DONE would be required to process 2,300 statements annually. By comparison, approximately 5,000 statements are filed citywide on an annual basis. The burden of the 5,000 filings citywide, however, is spread over numerous departments. The first filing year actually would result in twice the number of neighborhood council board member filings, as most board members would be required to do an initial and annual filing. Numerous

personnel would be needed to administer not just the forms, but the questions relating to the forms and their filing.

A Conflict of Interest Code has been developed but not yet adopted by the City Council. The proposed Code is pending before this Committee. The Committee has heard public testimony expressing concern that the invasive and complex filing requirements of Form 700 may chill participation in neighborhood councils.

QUESTIONS PRESENTED

1. Are neighborhood councils considered to be “local governmental agencies” subject to the Act?
2. What attributes of neighborhood councils could trigger application of the Act?
3. Would neighborhood council board members deemed to be “public officials” for purposes of the Act?
4. What options, if any, exist to create an exemption from the Act or certain requirements of the Act for neighborhood councils?

SHORT ANSWERS

1. Neighborhood councils probably would be considered “local governmental agencies” subject to the requirements of the Act.
2. The FPPC has developed a four-part test to determine whether an entity is a “local governmental agency” for purposes of the Act:
 - a. Did the impetus for the formation of the entity at issue originate with a government agency?
 - b. Does the entity receive substantial funding from government?
 - c. Does the entity perform functions typically performed by government?
 - d. Do other laws applicable to government agencies apply to the entity?

Neighborhood councils probably would meet all four prongs of the test. The impetus for the creation of neighborhood councils originated in the City Charter. The neighborhood councils receive \$50,000 per year in funding from the City. Some of the functions established for neighborhood councils in the Charter and the Plan, such as holding hearings and monitoring the delivery of city services, are

services which government can perform. Several laws directed at government entities apply to neighborhood council by virtue of their quasi-governmental nature, including the Ralph M. Brown Act, and the disqualification laws of Section 1090 of the Government Code. Accordingly, neighborhood councils probably would be considered "local governmental agencies," under the FPPC's four-part test absent an applicable exception.

3. The Act requires financial interest disclosures from "members" of entities local governmental agencies possessing decision-making authority. For purposes of the Act, decision-making is defined to include the power to make a final governmental decision, the power to initiate or veto a governmental decision, or the power to make substantive recommendations to other persons or entities covered under the Act which, over time, are regularly approved as submitted.

Under applicable FPPC advice letters, even the seemingly administrative acts of hiring staff, contracting for office space, paying bills and purchasing supplies are deemed to constitute government decisions. The Plan grants neighborhood councils the ability to decide upon and spend budgeted funds on precisely these items. Plan Art. VII § 1. Further, the Plan allows neighborhood councils to use budgeted funds for neighborhood improvement projects. *Id.* Thus, neighborhood council members appear to have the authority to make "government decisions" and would be required to comply with financial disclosure obligations in the absence of an exception applicable to neighborhood councils.

4. It appears that the City Council, as the designated "Code Reviewing Body" for City agencies, is statutorily authorized to create an exemption for neighborhood councils from the requirement of adopting a conflict of interest code. The FPPC, the designated "Code Reviewing Body" for certain state agencies, has created a narrow exemption for state entities that meet certain criteria. That regulation also "encourage[s]" local code reviewing bodies to create similar exemptions for bodies under their jurisdiction. The criteria established by the State for determining when the Director of the FPPC may grant an exemption for a state agency from the Act include:

- (1) The agency does not exercise regulatory, permitting or planning functions;
- (2) The agency will not acquire real estate in the foreseeable future; and
- (3) The agency's annual operating budget, exclusive of salaries is less than \$70,000.

The narrow exception is no longer available to an agency once it has placed its conflict of interest code into effect.

It is our understanding that neighborhood councils will not have any employees who make "governmental decisions." Generally, to the extent neighborhood councils hire employees, they will be clerical in nature. Neighborhood councils currently do not exercise regulatory, permitting or planning functions. Nor will they acquire real estate in the foreseeable future. Current City funding to individual neighborhood councils is only \$50,000 annually. No conflict of interest code applicable to neighborhood council board members has yet been adopted. Accordingly, it appears that neighborhood councils meet the criteria applicable to state agencies, as set out in Section 18751(d).

Because this office was not aware of any local code reviewing body that actually had enacted a exemption similar to Section 18751(d) we have requested advice from the Fair Political Practices Commission ("FPPC") on the permissibility of both enacting criteria for exempting local agencies from the conflict of interest code provisions of the Act consistent with Title 2, California Code of Regulations, Section 18751(d), as well as the applicability of the exception to neighborhood councils. A reply from the FPPC is expected shortly.

In the event that the FPPC opines that the exemption process cannot be used, there are two additional options available to the City. The first would require the passage of legislation at the State level, securing a statutory exemption. There is precedent for such an exemption, as one exists in the Streets and Highways Code for Business Improvement Districts.

The remaining alternative would be dramatic and only should be undertaken after extensive consultation with and input from neighborhood councils. This alternative would require certain Charter and ordinance amendments to revoke characteristics of the neighborhood councils that trigger applicability of the Act.

A Charter change revoking the Council's ability to delegate hearing authority to neighborhood councils would be required. Charter revisions would be required to clarify that the function of neighborhood councils is strictly advisory. Additionally, an ordinance amendment would be required to revoke the neighborhood councils' ability to designate budgeted funds for neighborhood improvement projects. An ordinance retracting the ability of neighborhood councils to contract directly for office space, hire personnel, purchase office space also would be required. If the Council creates an exemption from the Act for neighborhood councils through any means,

this office suggests that replacement safeguards be enacted through ordinance to ensure that neighborhood council actions are not affected by conflicts of interest.

Lastly, we recommend that the City Council consult with and draw on the expertise of Ethics Commission in developing a course of action.

DISCUSSION

I. Neighborhood Councils May Constitute "Local Governmental Agencies" Subject To The Act, Unless Statutorily Exempted.

The Act is applicable to state and local governmental agencies. The Act defines "local government agency" as a "city or district of any kind . . . or any department, division, bureau, office, board, commission or other agency of the foregoing." Cal. Gov't Code § 82041. The Fair Political Practices Commission has established a four-part test to evaluate whether an entity is a "local government" agency for purposes of Section 82041. *In re Siegel* (1977) 3 FPPC Ops. 62. The four factors assess these issues:

Creation By Government Action? Did the impetus for the formation of the entity originated with a government agency?

Substantial Funding From Government? Is the entity in question substantially funded by, or is its primary source of funds, a government agency?

Public Function Served? Is one of the entity's principal purposes to provide services or undertake obligations which public agencies are legally authorized to perform or which, in fact, they have traditionally performed?

Applicability Of Other Laws? Is the entity treated as a public entity by other statutory provisions?

In re Siegel, supra, at 2-3. Although the FPPC has stated that the *Siegel* factors "were not intended to be viewed as constituting a litmus test" (*In re Vonk* (1981) 6 FPPC Ops. 1, 9), the FPPC applies these factors routinely in advice letters it has issued opining on the status of quasi-governmental entities.

An entity need not meet all of the criteria in order to be subject to the Act. "An entity will be characterized as a 'local government agency' if the answer to each of these questions is a 'yes.' But the same conclusion may result in some instances where the answer to one or more of these questions is 'no.'" *Aleshire Advice Letter*, 1999 Cal. Fair-

Pract. LEXIS 119 (June 14, 1999). See, e.g., *Deutsch Advice Letter*, 2003 Cal. Fair-Pract. LEXIS 172 (September 22, 2003) (Act applicable to design review board established by ordinance where the board performed the public function of rendering design review decisions review decisions that were unless appealed); *Kahoe Advice Letter*, 2003 Cal. Fair-Pract. LEXIS 20 (January 21, 2003) (Act applied to non-profit corporation formed to promote water conservation even though there was no government impetus for formation, funding was a mix of private and public monies and the only other applicable law, the Brown Act, applied only because the corporation's bylaws so provided).

In the voluminous number of advice letters issued by the FPPC where the issue of the status of a quasi-governmental entity is examined, the FPPC rarely finds the Act to be inapplicable. See, e.g., *Lyddan Advice Letter*, 2003 Cal. Fair-Pract. LEXIS 212 (January 7, 2003) (agricultural land trust statutorily authorized to acquire and hold easements); *Kranitz Advice Letter*, 2003 Cal. Fair-Pract. LEXIS 208 (November 6, 2003) (water education center formed pursuant to the California Water Code); *Doi Advice Letter*, 2002 Cal. Fair-Pract. LEXIS 125 (June 25, 2002) (California commission on tax policy); *Hearey Advice Letter*, 2001 Cal. Fair-Pract. LEXIS 173 (November 27, 2001 (regional training institute, an auxiliary organization of a community college district); *Dostart Advice Letter*, 2001 Cal. Fair-Pract. LEXIS 39 (March 20, 2001) (a non-profit workforce partnership corporation, formed to administer the federal Job Training Partnership Act); *Rasihah Advice Letter*, 2001 Cal. Fair-Pract. LEXIS 35 (February 27, 2001) (the Berkeley Community Energy Services corporation); *McKinney Advice Letter*, 2001 Cal. Fair-Pract. LEXIS 145 (September 28, 2001) (resident council formed to make recommendations to the Berkeley Housing Authority); *Burgess Advice Letter*, 2000 Cal. Fair-Pract. LEXIS 49 (March 27, 2000) (Diamond Bar community foundation formed to establish an endowment fund to ease government's burden in funding public and charitable projects); *Cool Advice Letter*, 1999 Cal. Fair-Pract. LEXIS 93 (May 18, 1993) (Avila Beach Community foundation formed to administer public improvements to be funded through a settlement with UNOCAL); *Alperin Advice Letter*, 1995 Cal. Fair-Pract. LEXIS 238 (May 1, 1995) (film permit office formed by City Council); *Soldani Advice Letter*, 1994 Cal. Fair-Pract. LEXIS 80 (March 16, 1994) (Madera County Action Committee, formed to administer and conduct anti-poverty programs); *Kirkpatrick Advice Letter*, 1991 Cal. Fair-Pract. LEXIS 95 (October 18, 1991) (Berkeley Housing Development Corporation); *Knox Advice Letter*, 1990 Cal. Fair-Pract. LEXIS 291 (March 15, 1990) (California/Nevada Super Speed Ground Transportation Commission).

Examples of some entities that the FPPC did not consider to be public were: 1) an entity formed to promote a downtown business area and operation a convention bureau (*In re Leach* (1978) 4 FPPC Ops. 48); the Yosemite Visitors Bureau (*Carter Advice Letter* 2002 Cal. Fair-Pract. LEXIS 195 (September 12, 2002)); a non-profit media corporation

formed to serve as a public educational television access provider (*Stark Advice Letter* 2003 Cal. Fair-Pract. LEXIS 107 (June 6, 2003)); a non-profit think tank corporation (*Donovan Advice Letter*, 2000 Cal. Fair-Pract. LEXIS 10 (January 27, 2000)); the California Fuel Cell Partnership (*Irvin Advice Letter*, 1999 Cal. Fair-Pract. LEXIS 198 (September 22, 1999)); a private corporation formed to raise scholarship and capital improvement funds for a community college (*Stone Advice Letter*, 1998 Cal. Fair-Pract. LEXIS 21)); a non-profit corporation formed to assist businesses transition from the defense industries to other industries (*Prestidge Advice Letter*, 1995 Cal. Fair-Pract. LEXIS 86 (November 22, 1995)).

An application of the *Siegel* test to neighborhood councils suggests that neighborhood councils probably would be considered to be local governmental agencies under Government Code Section 82041.

A. Government Plays A Role In The Creation of Neighborhood Councils

The FPPC appears to place great emphasis on the “government impetus” prong of the *Siegel* analysis. See, *In re Vonk*, (1981) 6 FPPC Ops. 1, 6 (the “constitutional provenance of the [State Compensation Insurance Fund] makes it absolutely plain that the Fund is public in nature.”)

The FPPC likely would conclude that impetus for the creation of the system of neighborhood councils originated with the City, through adoption of the Charter and enactment of the Plan. The neighborhood councils can be said to have a constitutional provenance in the sense that the impetus for their formation is contained in the City’s Charter, the City’s controlling legal authority. Moreover, the City bestows official certification on neighborhood councils that organize themselves in accordance with City-established criteria. L.A. Charter §§ 901(b), 904 and 906; Plan Art. IV. The City mandates certain procedural aspect of the neighborhood councils, such as diversity of membership, regular communications, open meetings and even term limits for board members. *Id.* The City also established a role for neighborhood councils to encourage their formation, including conducting hearings, monitoring City services, providing advice on issues of neighborhood concern and recommending and implementing improvement projects. L.A. Charter §§ 908-910; Plan Art. VIII.

B. Neighborhood Councils Receive Substantial Funding From The City

The “government funding” prong of the *Siegel* analysis can be established even when an entity receives mixed funding, both private and public monies. See, *e.g.*, *Kahoe Advice Letter*, 2003 Cal. Fair-Pract. LEXIS 20 (January 21, 2003).

The City provides funding to neighborhood councils both for their start up and ongoing operations. L.A. Charter § 911. The Plan also provides funding for certified neighborhood councils through budget appropriations and grants. Plan Art. VIII. Currently, each neighborhood council may receive \$50,000 per year in funding. The City's funding of neighborhood councils probably would satisfy this prong of the *Siegel* test.

C. Neighborhood Councils Perform Some Public Functions, Although Their Advisory Role Is A Function Normally Performed By Constituents

The Charter states that neighborhood councils "shall have an advisory role on issues of concern to the neighborhood." L.A. Charter § 900. The advisory role of the neighborhood councils arguably is not a function normally performed by government. Rather, it is the type of function normally performed by constituents. The system of neighborhood councils, however, does facilitate and fund that function.

While the advisory role of the neighborhood councils may not constitute a government function, the Charter and the Plan do appear to establish public functions for neighborhood councils. Under Section 908 of the Charter, the City Council may delegate its "authority to hold public hearings prior to the City Council making a decision on a matter of local interest." L.A. Charter § 908. The Charter authorizes neighborhood councils to "present to the Mayor and Council an annual list of priorities for the City Budget." L.A. Charter § 909. The Charter also states that neighborhood councils "shall monitor the delivery of City services in their respective areas and have periodic meetings with responsible officials of City departments, subject to their reasonable availability." L.A. Charter § 910. It appears that the roles established for the neighborhood councils in the Charter, especially the delegation of hearing authority, may infuse neighborhood councils with the ability to perform government functions under the *Siegel* test.

D. Other Government Regulations Are Currently Applicable To Neighborhood Councils

Other regulations applicable to government entities are applicable to neighborhood councils. Currently, neighborhood councils are subject to the Ralph M. Brown Act (Government Code Sections 54950, *et seq.*) and the disqualification provisions of Section 1090, *et seq.* of the Government Code. Accordingly, this last factor of the *Siegel* test appears to be met.

II. **Members of Neighborhood Council Governing Boards Probably Would Be “Public Officials,” Subject To The Form 700 Filing Requirements Because They May Make “Government Decisions”**

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Cal. Gov’t Code § 87100. Individuals from the public who voluntarily serve on the governing boards of neighborhood councils would be treated as “public officials” under Section 87100 (and be require to file financial disclosure statements) if they fell within the definition of a “member” of a public agency, as defined in the Fair Political Practices Commission Regulation, 2 Cal. Code of Regs 18701(a)(1) and no filing exception were applicable. That definition provides:

Member shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision making authority. A board or commission possesses decision making authority whenever: (A) it may compel a final governmental decision; (B) it may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or (C) it makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

§ 18701(a)(1).

The Act does not apply to the actions of public officials that are solely ministerial or clerical in nature. 2 Cal. Code of Regs. 18702.4. However, the FPPC has generally treated even the seemingly administrative functions of hiring clerical staff, leasing office space, paying bills and purchasing supplies to be a government decisions rather than ministerial actions. See, *Hull Advice Letter* 2003 Cal. Fair-Pract. LEXIS 240 (December 12, 2003) (hiring of a consultant); *Moser Advice Letter* 2003 Cal. Fair-Pract. LEXIS 148 (July 23, 2003) (lease of property); *Berest Advice Letter* 2001 Cal. Fair-Pract. LEXIS 38 (March 8, 2001) (procurement of photocopy services); *Hill Advice Letter* 1997 Cal. Fair-Pract. LEXIS 424 (September 23, 1997) (payment of bills and purchase of school supplies); *Reddoch Advice Letter* No. A-92-336 (1992) (same).

The Plan expressly authorizes neighborhood councils to use budgeted amounts to fund their functions and operations, including procuring office space, equipment, supplies and the cost of communications. Plan Art. VII, § 1. More significantly, neighborhood councils can decide to spend City funds which they are allocated on neighborhood improvement projects. *Id.* Accordingly, under applicable FPPC decisions, the neighborhood councils probably would be deemed to make “government decisions.”

III. City Council Authority Regarding Form 700 Filing Requirements

The City Council appears to be statutorily authorized, as the code reviewing body for City agencies, to create and grant exemptions to the Conflict of Interest and Form 700 requirements of the Act for entities under its jurisdiction, including neighborhood councils.

Title 2, Regulation 18751, of the California Code of Regulations provides the procedures and standards for requesting an exemption from the filing requirement of the Act from the FPPC. By its own terms, Regulation 18751 applies only to entities for which the FPPC is the code reviewing body. 2 Cal. Code of Regs. Regulation 18751(a). Regulation 18751, does, however, provide that “[o]ther code reviewing bodies are **encouraged** to adopt the same or similar procedure and standards.” § 18751(a) (emphasis added).

The criteria established by the FPPC to determine whether to exercise its discretion to grant an exemption set out the following criteria:

- (d) An exemption to Government Code Section 87300 may be granted to an agency when there would be no “designated employees” within the meaning of Government Code Sections 82019 and 87302(a) because all of the following apply:
 - (1) The agency does not have regulatory, quasi-regulatory, permit, licensing or planning authority or functions;
 - (2) The agency will not acquire real property in the foreseeable future; and
 - (3) The annual operating budget exclusive of salaries for the agency is less than \$70,000.

2 Cal. Code Regs. § 18751(d).

Moreover, subpart (e) of Section 18751 allows the FPPC to grant exceptions to entities, on a case-by-case basis, even for entities that do not meet the criteria of subpart

(d). § 18751(e). See, *Weiss Advice Letter* 2001 Cal. Fair-Pract. LEXIS 207 (December 13, 2001) (FPPC granted an exemption under sub-part (e) to an entity that met all of the requirements of sub-part (d) except that its budget exceeded the \$70,000 limit of sub-part (d)(3)).

The FPPC construes the exception narrowly and grants exceptions sparingly. *Watts Advice Letter* 2003 Cal. Fair-Pract. LEXIS 225 (November 26 2003) (non-functioning power authority must continue to comply with filing requirements). See, also, *Weiss Advice Letter* 2001 Cal. Fair-Pract. LEXIS 207 (December 13, 2001) (FPPC granted an exemption to the Southern California Regional Airport Authority ("SCRAA") when its sole function was to conduct a feasibility study but revoked the exemption at the end of the five years when SCRAA no longer could demonstrate that its function was so limited).

Moreover, the exception is no longer available to an agency once it has adopted and placed its conflict of interest code into effect. *Watts Advice Letter, supra*, 2003 Cal. Fair-Pract. LEXIS 225.

The City Council is the code reviewing body for all city agencies, other than the City Council itself. Cal. Gov't Code § 82011. Therefore, it appears that the City Council may adopt procedures and standards for granting exemptions to the conflict of interest code and filing requirements of the Act for entities under its jurisdiction, including neighborhood councils, that mirror the requirements of Title 2, California Code of Regulations, Regulation 18751.

Neighborhood councils appear to meet the criteria established in Title 2 California Code of Regulations, Regulation 18751(d). The primary criteria is established in the preamble of Regulation 18751(d). It requires that the agency have no employees who make "government decisions," pursuant to Government Code Sections 82019 or 87302(a). See, *Paetzold Advice Letter* 2001 Cal. Fair-Pract. LEXIS 44 (March 9, 2001) (FPPC revoked an exemption granted in 1978 when the agency had only a secretary, after the Board hired an Executive Director with authority to make "government decisions.") It is our understanding that, to the extent, neighborhood councils hire employees, they will be clerical in nature.

As to the three other numbered criteria, the current role of neighborhood councils does not include regulatory, quasi-regulatory, permit, licensing or planning authority or functions. It is not anticipated that neighborhood councils will acquire real estate in the foreseeable future. Each neighborhood council receives \$50,000 in funding annually from the City, although individual stakeholders contribute their own resources as well. However, it appears that the \$70,000 limit would not be reached even when considering the

resources donated by stakeholders, especially because clerical employee costs, a large component of many neighborhood council budgets, is exempted from the calculation. It should be noted that, in the aggregate, the total funding to all of the City's neighborhood councils exceeds the \$70,000 limit, amounting to approximately 3 million dollars. Yet, measuring the funding criteria only as it applies to individual neighborhood councils, rather than all neighborhood councils in the aggregate, appears to be warranted. Although alliances have developed among neighborhood councils, the Plan contemplated--and from an operational standpoint is the case--that each neighborhood councils operates independently of the others.

To date, no conflict of interest code has been adopted that would apply to neighborhood council board members and, hence, it appears as if the narrow exception contemplated by Regulation 18751(d) may be a viable option.

OPTIONS

1. Require Neighborhood Councils to Comply With Political Reform Act

Pursuant to the Act, the Council may adopt a Conflict of Interest Code for Neighborhood Councils and thereby require designated filers to file Form 700 statements.

2. Obtain FPPC Advice Letter Regarding Possible Exemption Through Ordinance

This Office has requested an advice letter from the FPPC to confirm that the City may adopt and grant an exemption for neighborhood councils with respect to the Act's filing requirements consistent with the criteria set forth in Title 2, Section 18751(d) or (e). If such an option does exist, the Council may wish to develop exemption criteria.

3. If The City's Policymakers So Desire, Seek A Statewide Legislative Exemption From The Act or Certain Requirements Of The Act

The City could consider sponsoring a legislative exemption to the Act or some of its requirements for neighborhood councils. A legislative exemption exists for Business Improvement Districts operated by private, non-profit entities under contract with a city. Cal. Sts.&Hwy Code § 36614.5. Although these entities are private, their roles are similar to, if not more authoritative than, neighborhood councils to the extent they are statutorily authorized to administer and implement improvements in various districts.

4. Restructure Neighborhood Councils To Clarify Their Advisory Role

As another alternative, the City could restructure neighborhood councils to eliminate the attributes that currently trigger application of the Act. A Charter change revoking section 908 of the Charter would be required. L.A. Charter § 908. This section allows the City Council to delegate broad, undefined hearing authority to neighborhood councils. § 908. Additionally, Charter Section 909 (giving neighborhood councils the express authority to present an annual list of budget priorities) and Section 910 (stating that neighborhood councils “shall” monitor City services) should be clarified to make clear that neighborhood councils role is strictly advisory.

An ordinance retracting the ability of neighborhood councils to contract directly for office space, hire personnel, purchase office space also would be required. Plan Art. VIII. These acts have been deemed by the FPPC to constitute “government decisions” triggering disclosure requirements, rather than ministerial acts. See, *Hill Advice Letter, supra*, 1997 Cal. Fair-Pract. LEXIS 424. Also, the Plan would need to be amended to preclude the use of City funds by neighborhood councils for local improvement projects. Plan Art. VIII.

This type of significant change to the system of neighborhood councils only should be taken after consultation with and input from neighborhood councils.

5. Impose Replacement Safeguards

If Neighborhood Council’s are exempted from all or certain requirements of the Political Reform Act, this office recommends that the Council impose replacement provisions to ensure that conflicts of interest do not influence the functioning of neighborhood councils. Council should also allow any neighborhood council that so wishes to adopt disclosure requirements for its board members.

Even in the absence of disclosure obligations pursuant to the Act, it is our understanding that neighborhood council board members still will be subject to the substantive conflict of interest provisions in the Act, however, we are seeking clarification from the FPPC on this point. Additionally, neighborhood council members still will be subject to Section 1090 of the Government Code. Section 1090 applies to any person who provides advice to a government agency (the very purpose and function of neighborhood councils) and precludes a financial interest in any contract made by them. Cal. Gov’t Code § 908; *Millbrae Ass’n Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.

6. Work In Concert With The City Ethics Commission

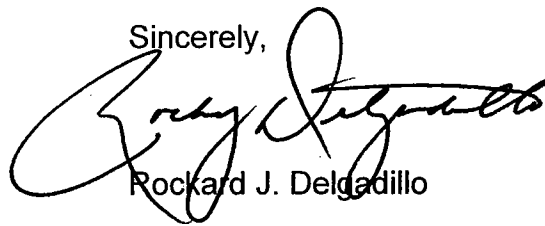
In any endeavor to exempt neighborhood councils, the City Ethics Commission should be consulted. It is the City agency vested with responsibility for ensuring compliance with the laws regulating government ethics, including the Act. Its expertise in this area would be of great assistance.

CONCLUSION

The Act probably would be applicable to neighborhood councils under the FPPC's four part test. If applicable, neighborhood councils would be required to adopt a Conflict of Interest Code and file Form 700 statements. If desired, the City Council may have the option to create an exemption for neighborhood councils from these requirements. The FPPC is currently considering this matter. If the FPPC does not authorize the exemption, the Council could either seek a legislative exemption at the State level or reconstitute neighborhood councils to withdraw their current characteristics that trigger application of the Act. Substitute safeguards should be imposed to ensure conflicts of interest do not affect the integrity of neighborhood council operations.

Please let us know if we can provide any additional information or assistance to the City Council in this endeavor.

Sincerely,



Rockard J. Delgado

RJD/VLF:lee

cc: The Honorable James K. Hahn, Mayor
Department of Neighborhood Empowerment
LeeAnn Pelham, Executive Director
Ethics Commission