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CALIFORNIA

CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
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February 19, 2008

BY MESSENGER

The Honorable City Council
c/o Frank Martinez, City Clerk
200 North Spring Street
City Hall – 3rd Floor
Los Angeles CA 90012

**Re: Council File # 05-0894-S3
Neighborhood Councils Filing Statements of Economic Interests**

FOR COUNCIL CONSIDERATION

Dear Councilmembers:

On January 15, 2008, the City Council voted to approve, with some modifications, the recommendation of the Neighborhood Council Review Commission (NCRC) to create a two-year pilot project through which neighborhood councils may create City Council files (Council Files). Also approved was an amending motion, which proposed requiring each member of a neighborhood council that introduces or seconds a Council File to submit the California Statement of Economic Interests (Form 700). It also proposed requiring the Ethics Commission (the Commission) to review the Form 700s submitted by neighborhood council members for potential conflicts.

On January 18, the Commission received a letter from Councilmembers Hahn and Greuel, asking for “advice on the adopted measure and possible modifications that could be made, such as instituting a more accessible form” Additionally, on January 23, the Commission received a letter from Councilmember Alarcón, asking staff to provide “advice and testimony” to the Education & Neighborhoods Committee regarding the amending motion.

Responding to the requests of Councilmembers Hahn, Greuel, and Alarcón, the Commission met publicly on February 12, 2008, and discussed what the appropriate level of reporting should be for neighborhood council members. Given the City Council’s adopted position that neighborhood council members should be required to make some disclosure with respect to potential conflicts of interest when introducing or seconding Council Files, the Commission centered its discussion on the narrower issue of what the *appropriate level of disclosure* should be to balance competing policy concerns and to meet the objectives of the Commission’s mandate to promote and foster an open and transparent political process. For the



reasons identified below, the Commission has unanimously endorsed the position that the use of Form 700 is not appropriate for neighborhood councils at this time and strongly recommends using an alternate disclosure form, in lieu of Form 700.

We understand that this issue is scheduled for consideration by the full Council today, and we are providing the following information to aide in the Council's deliberation.

Ethics Commission Concerns

As one of its core Charter mandates, the Commission is charged with promoting accountability and transparency in the making of governmental decisions. The Commission is also charged with promoting public confidence and participation in City government and the political process. As the Commission considered how best to balance those interests with the role of neighborhood councils, the Commission expressed its understanding of and support for the City Council's policy position, adopted through the amending motion, of requiring some level of disclosure by neighborhood council members who are involved in creating a Council file. However, the Commission also expressed its concerns that any proposed disclosure requirements be proportional and balanced so as not to inadvertently chill public participation in the neighborhood council system, which is still in a nascent stage.

At its February 12 meeting, the Commission discussed a number of policy considerations regarding the proposed use of Form 700. As a starting point, the Commission first considered the extent to which a neighborhood council's ability to introduce or second a Council File could create the risk of a conflict of interest or other concern for which a disclosure obligation would be appropriate. The Commission expressed its view that a neighborhood council's ability to introduce a Council File does not imbue it with any decision-making authority over any matter of public policy affecting either its own interests or those of other City residents. Nor does the ability to introduce or second a Council File impart any authority to influence or control City policy, as the City Council retains complete discretion and authority to decline consideration of any proposed Council File.

Nevertheless, the Commission did recognize that the potential for actual or apparent conflicts of interest could exist, in limited circumstances, such that some degree of disclosure would be appropriate. In this respect, the Commission agreed with the Council's expressed policy preference for some required disclosure.

As a result, the Commission concluded that, while disclosure is important for reasons of transparency and the need to avoid the risk of actual or perceived conflicts of interest, the level of disclosure that would be required by Form 700 would be disproportionate to the advisory role that neighborhood council members fill.

The Commission's opposition to the use of Form 700 for neighborhood council members at this time derives from the following additional policy considerations:

- ***Neighborhood councils are currently exempt under existing law.*** Los Angeles Administrative Code (LAAC) § 2.20.1 specifies that neighborhood councils are not

required to adopt a conflict of interest code or file Form 700. That is a one-time exemption, which the City Attorney's office has advised cannot be reinstated once it is eliminated. If the Council determines that neighborhood councils should be required to file Form 700, conflict of interest codes will need to be developed for all neighborhood councils. It is not clear whether each neighborhood council would be required to adopt its own conflict of interest code, which could result in confusion and an inconsistent standard applied across different neighborhood councils.

- ***Requiring the use of Form 700 for neighborhood councils at this time would trigger additional restrictions, with unintended consequences.*** An individual who is required to file Form 700 is a "City official" under City law and is subject to the Governmental Ethics Ordinance (GEO). Los Angeles Municipal Code (LAMC) §§ 49.5.1 *et seq.* If neighborhood council members become City officials by virtue of having to file Form 700, they would be subject to City governmental ethics laws that are more rigorous than the state's conflict-of-interest laws—to which neighborhood council members are currently subject. For example, they would have to comply with stricter gift limits (LAMC § 49.5.10), and they would be limited in their ability to lobby City agencies after they leave City service (LAMC § 49.5.11). The provisions of the GEO are subject to enforcement by the Ethics Commission (LAMC § 49.5.19), so neighborhood council members could also be subjected to monetary penalties under a variety of laws if they become City officials.
- ***In the absence of any decision-making or policy-making authority, the disclosure requirements of Form 700 would unnecessarily burden neighborhood councils at this time.*** The Commission has expressed concern that the degree of financial disclosure required of neighborhood councils by Form 700 would be disproportionate to the risk of any actual or apparent conflicts of interest that would likely result from their work. The duties of neighborhood councils fall short of those of "City officials" and, therefore, the Form 700 disclosures are too broad.
- ***The risk of overdisclosure could discourage civic engagement and outweighs the benefits of any heightened disclosure required by Form 700.*** The Commission affirmed neighborhood councils as critical to cultivating civic engagement. The Commission heard testimony from the vice chair of the NCRC that neighborhood councils are overwhelmingly opposed to the broad level of disclosure required by Form 700, for fear of chilling participation in the neighborhood council system.

In light of the fact that the City Council affirmed the NCRC's recommendation that the creating of Council Files be a two-year pilot project, the Commission believes it is inadvisable to undertake these permanent, irreversible actions before the conclusion of the pilot project.

Alternative Disclosure

In light of these considerations, the Commission favors an alternative means of disclosure for neighborhood councils. A City-generated disclosure form would avoid the consequences associated with Form 700 while still promoting transparency and accountability in government.


Such a form would not require the adoption of a conflict of interest code, would not eliminate the one-time exemption in LAAC § 2.20.1, would not subject neighborhood council members to the GEO, and could be tailored specifically for neighborhood councils.

The Commission believes that an alternative form (such as "CEC Form 52") should be filed with the Commission and should require neighborhood council members who introduce or second a Council File to disclose employers, real estate interests, and business interests for both themselves and their spouses or domestic partners. In addition, the Commission believes neighborhood council members should be required to certify that they have no financial interests that would be affected by the matter at issue in the Council File, have not received a gift or other incentive to support the Council File, and that they are unaware of any other actual or apparent conflict of interest relating to the Council File. If a neighborhood council member cannot make the appropriate certification because of the existence of a financial interest, the receipt of a gift or incentive, or any other conflict, she would be required to disclose the nature of that interest, gift, or conflict. The form would require a signature under penalty of perjury.

The Commission believes the use and adoption of an alternative disclosure mechanism would adequately address the objectives and concerns of promoting transparency in government while appropriately balancing competing policy considerations, including the desire to promote active civic engagement through neighborhood councils. The Commission urges the City Council to reconsider requiring neighborhood council members to file Form 700 and, instead, to require the disclosure of financial interests through an alternate Commission form. The Commission will consider adopting such a form at its meeting on March 11.

We look forward to further discussing this issue with you. Please feel free to contact me or Heather Holt, our Director of Policy and Legislation, at (213) 978-1960 if you have questions.

Sincerely,


LeeAnn M. Pelham
Executive Director

Duplicate original to:

The Honorable Eric Garcetti
Chair of the Rules & Elections Committee

cc: Renee Stadel, Deputy City Attorney