

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** December 14, 2007

**TO:** La Jolla Community Parking District Advisory Board Members

**FROM:** City Attorney

**SUBJECT:** Application of Political Reform Act

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**INTRODUCTION**

In recent weeks, you have received a series of letters from Steven W. Haskins, an attorney representing La Jollans for Clean Government, Inc., suggesting that, as members of the La Jolla Community Parking District Advisory Board (the "Board"), you are "obligated to file an individual Statement of Economic Interest" as required under the Political Reform Act ("PRA"), Cal. Gov't Code section 81000 et seq. On November 16, 2007, Leslie E. Devaney, an attorney representing recently resigned Board Chairman Peter Wagener as an individual, as well as Promote La Jolla, Inc., responded with a letter disagreeing with Mr. Haskins, and concluding that Board Members need not file Statements of Economic Interest ("SEIs"). At your November 19, 2007 meeting, you asked this office to render an opinion regarding Mr. Haskins' contentions.

This Office has reviewed the letters of both Mr. Haskins and Ms. Devaney on the question of the PRA's application. Initially, we note that Mr. Haskins, in his November 13, 2007 letter, has cited a Fair Political Practices Commission ("FPPC") Advice Letter regarding the City of Stockton's Central Parking District Advisory Board, *In re Petzold*, FPPC Priv. Adv. Ltr. A-89-591 (November 13, 1989) (the "Stockton Letter"), which he views as controlling authority compelling the conclusion that Board members must file SEIs under state law. Ms. Devaney's letter does not address or acknowledge this authority. Instead, she observes that, while state law does require disclosure by certain officials listed in the PRA, advisory board members are not included in this list. And, while local agencies may add others to the list of those required to file, and the City of San Diego has not added members of Community Parking District Advisory Boards to the list under a locally adopted Conflict of Interest Code.

**QUESTIONS PRESENTED**

Are members of the Board required, under the PRA, to file statements of economic interest?

## SHORT ANSWER

Because the Board makes governmental decisions, it is subject to the PRA's conflict of interest and disclosure requirements. However, the duty of board members to file SEIs under the PRA must be triggered, in the first instance, by the adoption of a local conflict of interest code. Such a code is required by the PRA, but has not been adopted. Therefore, we are advising the City that such a code is required, and will recommend a code appropriately tailored to reflect the Board's decision-making authority. Upon the adoption of such a code, members will be required to comply with it by filing appropriate disclosures within 30 days.

## ANALYSIS

### I. The Political Reform Act's Filing Requirements

Obviously, the omission of a category of official from a local agency's list of SEI "code filers" will not relieve such officials from the obligation to file, if that obligation is imposed by the PRA itself. However, the details of how the PRA's requirements are applied at the local level are relevant here. For certain positions at the local government level, filing an SEI is a direct requirement of the PRA. *See* Cal. Gov't Code § 87200 (listing officials such as Mayors, Council Members, and City Attorneys as being directly subject to the filing requirement). However, other officials not directly named in section 87200 may also be required to file "full or limited disclosure" under locally adopted "agency conflict-of-interest codes," which *must* be adopted pursuant to section 87300 et seq. *See* "Your Duty to File: A Basic Overview of State Economic Disclosure Law and Reporting Requirements for Public Officials," Fair Political Practices Commission, September, 2004. The City of San Diego is an "agency" and a "local government agency,"<sup>1</sup> under Cal Gov't Code section 82041. Thus, it must have a conflict of interest code under section 87300. Any officials who, even if not named in section 87200, are involved in "the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest" must be covered. Cal. Gov't Code §87302(a).

### II. The Stockton Letter

We have reviewed the Stockton Letter and find it to be both controlling and well supported by other authority. It compels the conclusion that the La Jolla Community Parking District Advisory Board members are "public officials" for whom the application of a conflict of interest code, with an appropriately tailored disclosure requirement, is mandatory. However, to the extent that Mr. Haskins' letters may be construed as suggesting that an obligation to file

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<sup>1</sup> In addition to the City itself, the definition of a "local government agency" under section 82041 includes "any department, division, bureau, board, commission or other agency of" the City. Thus, the Board is also subject to the PRA's code requirements, unless it is "solely advisory," under section 82019(b)(1). This issue is addressed below.

exists independently of the City's adoption of a local code applicable to Board members, we disagree with that suggestion.

The Stockton Central Parking District Advisory Board was, in all relevant ways, remarkably similar in its powers and duties to the La Jolla Community Parking District Advisory Board, and the issues were virtually identical. At pages 2-3, the FPPC considered whether board members were "public officials" under the PRA, specifically Cal. Gov't Code section 82048; this would make them subject to the PRA's disclosure requirements under section 87300 et seq. A "public official" under section 82048(a) includes any "member" of a "local government agency." Under the implementing regulations, a "member" includes "salaried or unsalaried members of boards or commissions with decision-making authority." Cal. Code Regs. tit. 2 §18701(a)(1).

In light of this definition, the FPPC turned its focus to whether the Stockton board had "decision-making authority." Again, the facts were strikingly similar to those present for the La Jolla Board. The FPPC observed at page 3 that because "there [was] no requirement of a super-majority to override its recommendations to the city council, and [that] the city council has at times rejected its recommendations regarding parking rates," the Stockton board might not be viewed as having decision making authority in the areas of parking rates or broad policy making. However, the FPPC found that more mundane decision making would trigger application of the PRA:

However, it appears that the board may have final decision making authority in a number of areas. For example, the documents referred to above indicate that the board may adopt "all rules, rates, and regulations as are in their opinion necessary or convenient for the proper and efficient administration and management of the City of Stockton's Central Parking District." Furthermore, it appears that the advisory board may be involved in making final decisions on a day-to-day basis regarding administration of the district. For example, decisions to hire or fire personnel, purchase supplies, or enter into contracts all involve final governmental decisions. If members or employees of the board possess any such decision making authority, the Central Parking District Advisory Board must adopt a conflict-of-interest code requiring financial disclosure by such persons.

The facts surrounding the La Jolla board's functions and duties compel the same conclusion here. Under City Council Policy 100-18(A)(1)(c)(1), the Board is appointed "for the purpose of managing the District." Such management includes how community input will be obtained, sources and amounts of revenue, proposed improvements, financing of improvements, and budgeting. Perhaps most significant, under subsection (B), 45% of a district's revenues are allocated to the district and thus managed independently by the Board without Council or mayoral oversight, subject only to the restrictions in subsection (C). There can be little doubt

that the power to control public funds is, for purposes of the PRA, the power to make governmental decisions.

Finally, the administration of the district at issue in the Stockton Letter was contracted to an organization called “Downtown Stockton Associates,” a nonprofit corporation whose role in day-to-day district management appears in all relevant respects to be similar to that of Promote La Jolla, Inc. This did not insulate board members from application of the PRA. Thus, as with the Stockton board, it appears that the La Jolla Community Parking District Advisory Board is “involved in making final decisions on a day-to-day basis regarding administration of the district.” This constitutes governmental decision making under the Stockton Letter, and thus subjects Board members to SEI filing.

### **III. The Ewing and Amen Letters**

This application of the Stockton Letter is also supported by additional FPPC advice letters. For example, in *In re Ewing*, FPPC Priv. Adv. Ltr. I-89-480 (October 13, 1989) (the “Ewing Letter”), the FPPC noted that the state’s High Speed Rail Corridor Study Group’s overall function was merely advisory. It was tasked with developing an implementation and funding plan for the development of a high-speed rail corridor in California, but its recommendations required legislative action that the Study Group itself could not initiate. Such recommendations would not trigger a requirement for a conflict of interest code under section 87300. However, the Study Group also had “the authority to hire outside consultants to conduct certain studies.” This authority, the FPPC found, meant that, for the purposes of the PRA, the Study Group was “empowered to make governmental decisions.” The FPPC had employed identical language and reasoning to require a code for the state’s Advisory Board on Air Quality and Fuels in *In re Amen*, FPPC Priv. Adv. Ltr. A-88-304 (September 6, 1988) (the “Amen Letter”). There, the FPPC also noted that, given the limited authority of the Advisory Board on Air Quality and Fuels, the code, while mandatory, “should be narrowly tailored to the decisionmaking authority of the board.”

The La Jolla Community Parking District Advisory Board has greater decision-making authority than the boards at issue in the *Stockton*, *Ewing*, and *Amen* Letters. As in *Ewing* and *Amen*, the La Jolla board is employing or plans to employ a consultant to assist with its duties, pursuant to a Request for Proposals approved by the Board on June 20, 2007 and released publicly in August, 2007. This alone would trigger the requirement of a code under *Ewing* and *Amen*. Unlike the *Ewing* and *Amen* cases, however, the La Jolla board has other, broader decision-making power. For example, under Council Policy 100-18, the board has the power to control the use of 45% of all parking-related revenues generated within the District. See CP 100-18, §(B)(1). In addition, plans for the management of community parking districts, though they must be approved by the City Council, must be initiated in the first instance with the board. CP 100-18, § (D)(1). A board or commission, even if nominally designated as “advisory,” is subject to the PRA’s disclosure requirements if “it may prevent a governmental decision...by reason of an exclusive power to initiate the decision.” Cal. Code Regs. tit. 2 §18701(a)(1)(B). Thus, for this additional reason, the board is subject to the PRA’s code requirement.

## CONCLUSION

For the reasons explained above, a code is required. No code was adopted for the Board upon its creation, however. Under section 87302.6, filing by a member of a newly created board or commission is mandatory, but the timing of such filing is dependent upon the timing of the creation of a code for that agency – “A member shall file his or her statement pursuant to Section 87302 once the agency adopts an approved conflict-of-interest code.” Thus, while the members of the Board are clearly subject to the PRA’s filing requirements, they are not presently in violation of those requirements for failing to file, in light of the failure to adopt a code. Thus, our office is recommending to the City Council that a code for the Board be adopted as soon as practicable.

It bears emphasis here that the disclosure requirements of the code must be tailored to the specifics of this situation. That is, disclosure will be required for those interests, and only those interests, that might reasonably be affected by the Board’s decisions. We look forward to input from Board members, as well as interested community members, as this code is drafted. Upon the approval of this Code by the City Council, members will be required to file within thirty days.

We caution Board members that, in the time prior to the City’s adoption of a code, they are still bound by the PRA’s general prohibitions on participating in governmental decisions in which they have a financial interest, as set forth at section 87100. The duty to serve the public interest with undivided loyalty is not a function of whether a code is adopted. Thus, if the Board considers any action that may have a reasonably foreseeable effect on a Board member’s financial interest beyond that of the public generally, that member must not participate in the making of that decision. Cal. Gov’t Code § 87103.

MICHAEL J. AGUIRRE, City Attorney



By

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MPC: