



OFFICE OF THE CITY CLERK

REPORT

TO: The Honorable Chair and
Members of the Rules Committee
For the Meeting of September 19, 1994

DATE: September 7, 1994

FROM: Charles G. Abdelnour, City Clerk

REPORT NO.: 94-05

SUBJECT: CONFLICT OF INTEREST CODES FOR CITY ADVISORY BOARDS

At the Rules Committee meeting on June 20, 1994, you approved our recommendation that the members of City Advisory boards listed in categories A and B of our June 10 report (Attachment A), continue to file Statements of Economic Interest. These boards fall within the guidelines of state law and are thus required to have Conflict of Interest Codes. Additionally, they are covered by the penalties contained in the Political Reform Act. You also directed us to review those "solely advisory" boards listed in Category C, and to come back with a recommendation for those boards dealing with land use issues.

The City Clerk, City Attorney, and City Manager have reviewed the functions of the advisory boards in Category C and for the purposes of this report, we have grouped them into two categories. Those that address land use issues are grouped in C1 and all others are grouped in C2 (Attachment B). As directed by the Rules Committee, we recommend that members of the boards listed in C1 file Statements of Economic Interest disclosing narrowly defined financial interests which would include any interests in real property and any investments, business positions and income from entities which engage in land development, construction or the acquisition or sale of real property. Furthermore, we recommend that the City Council adopt an ordinance to establish penalties for those members who file their statements late or fail to file statements at all.

It is our recommendation that those boards listed in Category C2 not have Conflict of Interest Codes. This would require the City Council to rescind Resolution No. R-275742 adopted in May 1990 requiring that all city advisory boards have such codes.

DISCUSSION

In order to address the Clerk's concerns about the lack of penalties for advisory board members listed in Category C who fail to file Statements of Economic Interests, and to respond to Rules Committee direction that those boards that deal with land use issues - those listed in C1 - be required to disclose financial interests which could present conflicts, the City Attorney has prepared a draft ordinance for your consideration (Attachment C). This ordinance would amend Chapter II, Article 6 of the San Diego Municipal Code relating to Boards and Commissions.

Specifically, the proposed ordinance:

1. Adds sections 26.0101 and 26.0103 through 26.0108. (Section 26.0102 pertaining to records of Boards and Commissions already exists, but is renumbered.) These new provisions are intended to implement state law pertaining to conflict of interest codes and to set out penalties for board and commission members who fail to file their disclosure statements or who file them late. They also set forth special provisions to govern advisory boards and commissions that deal with land use matters.

The key provisions are more particularly described as follows:

Section 26.0104 states expressly that the City Council serves as the body to review and approve conflict of interest codes for the City's boards and commissions and that the City Council is the body to determine whether a particular board or commission will be required to have a conflict of interest code.

Section 26.0105 essentially parrots state law by declaring that "solely advisory" boards and commissions are not required to have conflict of interest codes. It further declares that, with the exception of boards and commissions dealing with land use matters, these "solely advisory" board members will not have to disclose their economic interests.

Section 26.0106 declares that boards and commissions dealing with land use matters pose unique and serious potential conflicts of interest. It also requires these boards and commissions to have conflict of interest codes even though they may be "solely advisory," and this section also specifically sets forth the scope of disclosure for these boards and commissions.

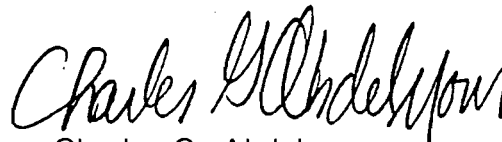
Section 26.0107 sets forth the authority of the City Clerk to enforce these new provisions.

Section 26.0108 sets forth the penalties for violating these new conflict of interest sections.

The City Attorney has also prepared a companion ordinance which would amend Section 11.0201 of the Municipal Code to allow the City Clerk to take enforcement actions pursuant to Chapter 1 of the Code (Attachment D).

In summary, we recommend that the proposed ordinance and the companion ordinance be adopted. These ordinances would specify the disclosure requirements for those "solely advisory" boards in Category C1 and would establish penalties for non-filers. We also recommend that Resolution No. R-275742, requiring all city advisory boards to have conflict of interest codes, be rescinded. This would eliminate the requirement that those advisory boards in Category C2 have conflict of interest codes.

Respectfully submitted,



Charles G. Abdelnour
City Clerk

CGA:JL:jb
Attachments



OFFICE OF THE CITY CLERK

REPORT

TO: The Honorable Chair and Members of the Rules Committee
For the Meeting of June 20, 1994

DATE: June 10, 1994

FROM: Charles G. Abdelnour, City Clerk

REPORT NO.: 94-02

SUBJECT: CONFLICT OF INTEREST CODES FOR CITY ADVISORY BOARDS

At the Rules Committee meeting on May 9, 1994, we were directed to review and make recommendations on which City advisory boards should have Conflict of Interest Codes requiring their members to file Statements of Economic Interests.

The City Clerk, City Attorney and City Manager have reviewed the functions of all City advisory boards currently required by Council Resolution to file Statements of Economic Interests. We have grouped them into three categories. We recommend that members on the boards listed in categories A and B continue to file Statements of Economic Interest. The boards in these categories fall within the guidelines of state law regarding conflict of interest disclosure. It is our recommendation that those boards listed in Category C not have Conflict of Interest Codes requiring their members to file these statements. The reasons for our recommendations are noted below.

A. The following boards are either statutory filers under the Political Reform Act or have clear decision making authority and are thus required under state law to have Conflict of Interest Codes:

Center City Development Corporation
Civil Service Commission
Convention Center Corporation, Inc.
Data Processing Corporation Board of Directors
Funds Commission
Horton Plaza Theatres Foundation
Housing Commission
Housing Trust Fund
Mid-City Development Corporation
Planning Commission

Retirement System, City Employees Board of Administration
San Diego Festivals (Inactive)
San Ysidro Revitalization Corporation, Inc.
Southeastern Economic Development Corporation
Zoning Appeals, Board of

- B. The Political Reform Act requires that members of boards and commissions file Statements of Economic Interests when the board ... "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."

The following group of advisory boards make recommendations which are regularly approved by the City Council and for that reason should also have Conflict of Interest Codes and be required to file Statements of Economic Interests:

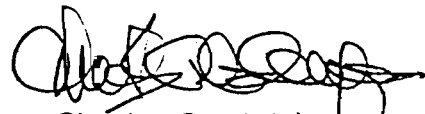
Appeals and Advisors, Board of (Buildings)
Arts and Culture, Commission for
Housing Advisory and Appeals Board
Park and Recreation Board

- C. The following group of boards appear to be "solely advisory." They have no clear decision making authority, and their recommendations are not regularly adopted by the City Council. Therefore, we would recommend that they not be required to have Conflict of Interest Codes requiring their members to file Statements of Economic Interests:

Agricultural Board
Binational Issues, Select Board on
Citizens Equal Opportunity Commission
Crest Canyon Park Reserve Advisory Committee
Elections, Campaign and Governmental Ethics Advisory Board
Grading Advisory Board
Historical Site Board
Human Relations Commission
International Affairs Board
La Jolla Shores Planned District Advisory Board
La Jolla Underwater Park Advisory Committee
Library Commissioners, Board of
Local Assessment Committee
Los Penasquitos Canyon Preserve
Mission Trails Regional Park Task Force
Noise Abatement and Control, Board of
Old Town San Diego Planned District Design Review Board

Police/Community Relations, Citizens Advisory Board
Police Practices, Citizens' Review Board
Public Utilities Advisory Commission, City
Quality of Life Board
Relocation Appeals Board
Senior Citizens Advisory Board
Small Business Advisory Board
Tecolote Canyon Citizen Advisory Board
Tecolote Canyon Natural Park Task Force
Transportation Demand Management Appeals Board
Waste Management Advisory Board
Wetlands Advisory Board
Women, The Commission on the Status of

In summary, of the advisory boards currently required by Council Resolution to have Conflict of Interest Codes, we would recommend that the thirty-one listed in Category C not be required to have codes and that their members not be required to file Statements of Economic Interests. They appear to be exempt from this requirement under state law.



Charles G. Abdelnour
City Clerk

Note: There are four additional City Advisory Boards which are not included in this report. They are the Planetarium Authority Governing Board, San Diego Unified Port District, Stadium Authority Governing Board and the Water Authority Board. The County of San Diego administers these boards and their Conflict of Interest Codes.

cc: City Council
City Manager
City Attorney

#1866

C1

CATEGORY C ADVISORY BOARDS THAT DEAL WITH LAND USE ISSUES

Agricultural Board
Crest Canyon Park Reserve Advisory Committee
Grading Advisory Board
Historical Site Board
La Jolla Shores Planned District Advisory Board
La Jolla Underwater Park Advisory Committee
Los Penasquitos Canyon Preserve
Mission Trails Regional Park Task Force
Old Town San Diego Planned District Design Review
Relocation Appeals Board
Tecolote Canyon Citizen Advisory Board
Tecolote Canyon Natural Park Task Force
Wetlands Advisory Board

C2

ALL OTHER CATEGORY C ADVISORY BOARDS

Binational Issues, Select Board on
Citizens Equal Opportunity Commission
Clean Water Program Oversight Committee
Elections, Campaign and Governmental Ethics Advisory Board*
Human Relations Commission
International Affairs Board
Library Commissioners, Board of
Local Assessment Committee
Noise Abatement and Control, Board of
Police/Community Relations, Citizens Advisory Board
Police Practices, Citizen's Review Board
Public Utilities Advisory Commission, City
Quality of Life Board
Senior Citizens Advisory Board
Small Business Advisory Board
Transportation Demand Management Appeals Board
Waste Management Advisory Board
Women, The Commission on the Status of

* This board was abolished by Council action on July 11, 1994

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(O-94-130)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 6, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 1, ENTITLED "GENERAL," ADDING SECTIONS 26.0101, 26.0103, 26.0104, 26.0105, 26.0106, 26.0107 AND 26.0108; BY RENUMBERING SECTION 26.03; BY ADDING DIVISION 2 ENTITLED "BOARD OF LIBRARY COMMISSIONERS"; AND BY RENUMBERING SECTION 26.01, ALL RELATING TO BOARDS AND COMMISSIONS.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 6, Division 1 of the San Diego Municipal Code be and the same is hereby amended by adding Division 1, to read as follows:

Division 1

General

Section 2. That Chapter II, Article 6, Division 1 of the San Diego Municipal Code be and the same is hereby amended by adding Section 26.0101, to read as follows:

SEC. 26.0101 Purpose and Intent

(a) City Council intends to implement Government Code Sections 87300 through 87313 pertaining to conflict of interest codes for City boards and commissions.

(b) The City Council also intends to implement penalties for boards and commission members who fail to file required statements

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of economic interest.

(c) The City Council also intends to establish a system for maintaining records for boards and commissions.

Section 3. That Chapter II, Article 6, Division 1 of the San Diego Municipal Code be and the same is hereby amended by renumbering Section 26.03 to Section 26.0102 to read as follows:

SEC. 26.0102. Official Records of Boards and Commissions

Official records of the Boards and Commissions of The City of San Diego may be maintained by the City Department responsible for staffing each Board and Commission unless otherwise provided by State law or the City Charter.

Section 4. That Chapter II, Article 6, Division 1 of the San Diego Municipal Code be and the same is hereby amended by adding Sections 26.0103, 26.0104, 26.0105, 26.0106, 26.0107 and 26.0108 to read as follows:

SEC. 26.0103. Definitions

"Code Reviewing Body" means the entity authorized to carry out the duties described in California Government Code section 87303.

SEC. 26.0104. The City Council As Code Reviewing Body for Conflict of Interest Codes.

(a) The City Council shall serve as the Code Reviewing Body under Government Code Section 87303 for review and adoption of

conflict of interest codes for boards and commissions created by City Charter, ordinance, resolution, or formal action of the City Council.

(b) Upon recommendation of the City Manager in consultation with the City Attorney and City Clerk, the City Council shall determine by resolution whether a particular board or commission is required by Government Code section 87100 and 2 California Code of Regulations 18700(a)(1) to have, and be subject to, a conflict of interest code.

SEC. 26.0105 Exception for Solely Advisory Boards and Commissions

(a) The City Council finds that certain of the City's boards and commissions are "solely advisory" within the meaning of Government Code section 87100, and are therefore not required by law to have conflict of interest codes.

(b) Except as provided in Section 26.0106, for those boards and commissions not required by law to have conflict of interest codes, the City Council declares that citizens serving as volunteers on those boards and commissions shall not be required to complete and submit economic disclosure

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forms and shall not be required to disqualify themselves from deliberations or decisionmaking for economic reasons.

SEC. 26.0106 Members of Land Use Boards and Commissions.

(a) The City Council finds that unique and serious potential conflicts of interest arise by virtue of participation on City boards and commissions that deal with land use issues.

(b) The City Council finds that it is in the City's best interest that conflict of interest codes be adopted for those boards and commissions. The conflict of interest code shall be the same as that adopted for boards and commissions required by state law to have them (see Section 26.0104), except that the sole scope of disclosure shall be as follows:

Investments, business positions, and sources of income of the type which engage in land development, construction, or the acquisition or sale of real property; or

Interests in real property located within the City, including real property located within a two-mile radius of any property owned or leased by the City. An interest in real property that is used as a

personal residence is not required to be disclosed, unless the residence is also used for business purposes.

(c) Members of these boards and commissions shall be subject to the disqualification provisions in their respective conflict of interest codes.

SEC. 26.0107 Enforcement Authority

The City Clerk is authorized to administer and enforce Sections 26.0103 through 26.0106. The City Clerk and the Clerk's designees may exercise any enforcement powers set forth in Chapter I, Article 2, Division 1 of this Municipal Code. The City Clerk may promulgate policies and regulations reasonably necessary to implement the intent of Chapter II, Article 6, Division 1 of this Municipal Code.

SEC. 26.0108 Enforcement Remedies

(a) Violations of this division may be prosecuted as misdemeanors subject to the fines and custody provided in San Diego Municipal Code section 12.0201. The City Clerk may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue any administrative remedy set forth in Chapter I of this Code.

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(b) In addition to the general remedies in Chapter I, the City Clerk may levy a fine of \$10 per day, up to a maximum of \$100, for any person who fails to file a statement of economic interest as required by any conflict of interest code adopted under authority of Section 26.0106.

(c) In addition to the penalties set forth in Section 26.0108(a) and (b), members of boards and commissions required by Government Code section 87100 to file economic disclosure forms who fail to file the necessary forms or file them late are subject to applicable penalties set forth in Government Code sections 91000 through 91015.

Section 5. That Chapter II, Article 6 of the San Diego Municipal Code be amended by adding Division 2, entitled "Board of Library Commissioners" to read as follows:

Division 2

Board of Library Commissioners

Section 6. That Chapter II, Article 6 of the San Diego Municipal Code be amended by renumbering section 26.01 to read Section 26.0201, with no change in text.

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Section 7. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By _____
Cristie C. McGuire
Deputy City Attorney

CCM:jrl
08/17/94
Or.Dept:Mgr.
O-94-130
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Not For Distribution (0-95-16)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 1,
DIVISION 2, OF THE SAN DIEGO MUNICIPAL CODE
BY AMENDING SECTION 11.0210 RELATING TO
CONSTRUCTION, INTERPRETATION AND DEFINITIONS.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 1, Article 1, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 11.0210 to read as follows:

SEC. 11.0210 Definitions Applicable to Code Generally

The following words and phrases whenever used in this Code shall be construed as defined in this section unless a different meaning is specifically defined elsewhere in this Code and specifically stated to apply:

"Abatement" through "Council": [No changes in text.]

"Director" means the City Manager or any Department Directors including the following Departments: City Clerk, Planning, Development Services, Engineering & Development, General Services, Animal Control, Health, Water Utilities, Park and Recreation, Neighborhood Code Compliance, Environmental Services and the Fire and Police Chiefs, and any of their designated agents or representatives.

"Enforcement Hearing Officer" through "Written":

[No changes in text.]

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By

Cristie C. McGuire
Deputy City Attorney

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CCM:pev:jrl
08/17/94
Or.Dept:Clerk
O-95-16
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ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

NEW LANGUAGE: REDLINED

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 1, DIVISION 2, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 11.0210 RELATING TO CONSTRUCTION, INTERPRETATION AND DEFINITIONS.

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SEC. 11.0210 Definitions Applicable to Code Generally

The following words and phrases whenever used in this Code shall be construed as defined in this section unless a different meaning is specifically defined elsewhere in this Code and specifically stated to apply:

"Abatement" through "Council": [No changes in text.]

"Director" means the City Manager or any Department Directors including the following Departments: City Clerk, Planning, Development Services, Engineering & Development, General Services, Animal Control, Health, Water Utilities, Park and Recreation, Neighborhood Code Compliance, ~~Waste Management~~ Environmental Services and the Fire and Police Chiefs, and any of their designated agents or representatives.

"Enforcement Hearing Officer" through "Written": [No changes in text.]

CCM:pev:jrl
08/17/94
Or.Dept:Clerk
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CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 1,
DIVISION 2, OF THE SAN DIEGO MUNICIPAL CODE
BY AMENDING SECTION 11.0210 RELATING TO
CONSTRUCTION, INTERPRETATION AND DEFINITIONS.

A complete copy of the Ordinance is available for inspection
in the Office of the City Clerk of the City of San Diego, 2nd
Floor, City Administration Building, 202 C Street, San Diego, CA
92101.

CCM:pev
08/12/94
Or.Dept:Clerk

OFFICE OF
THE CITY ATTORNEY
 CITY OF SAN DIEGO

JOHN W. WITT
 CITY ATTORNEY

CITY ADMINISTRATION BUILDING
 202 "C" STREET
 SAN DIEGO, CALIFORNIA 92101 3863
 TELEPHONE (619) 236-6220
 FAX (619) 236-7215

February 6, 1990

REPORT TO THE COMMITTEE ON RULES, LEGISLATION,
 AND INTERGOVERNMENTAL RELATIONS

CONFLICT OF INTEREST REQUIREMENTS FOR CITY BOARDS AND COMMISSIONS

On January 9, 1990, during deliberations on the appointment of the City of San Diego's Ad Hoc Open Space Committee, the City Council discussed conflict of interest requirements for all City boards, commissions and advisory committees (hereafter "boards and commissions"). Specifically, the Council questioned which policy determines whether a particular board or commission is required to file an economic interest disclosure form and to adopt a conflict of interest code.

The issue was referred to the Rules Committee for further discussion. On January 31, 1990, the Mayor by memorandum asked this office to provide a report to the Rules Committee outlining the legal determinations which play a role in determining which boards and commissions must have conflict of interest codes and must file disclosure forms. This report is in response to that request.

To assist us in preparing this report, we obtained a copy of the City Clerk's register of the City's boards and commissions (copy attached as Exhibit A) and a list of those boards and commissions that are required to file statements of economic interests (SEI's) (copy attached as Exhibit B). Note on Exhibit B that all but the Planning Commission file what is known as a "730" disclosure form. The Planning Commission files a "721" disclosure form similar to those filed by elected officials since it is equated to elected officials by statute. California Government Code section 87200.

The reason why some boards file SEI's and others do not is based in part on statute and case law, in part on Fair Political Practices Commission (FPPC) regulations and opinions, and in part on the law (statute, charter, ordinance, or resolution) that creates a particular board or commission and defines a particular board or commission's duties.

REPORT TO THE COMMITTEE ON RULES, LEGISLATION
AND INTERGOVERNMENTAL RELATIONS -2- February 6, 1990

The following outlines the statutory, case and regulatory law that governs this area.

Statutory and Case Law

A. Statutes

The chief source of law requiring boards and commissions to adopt conflict of interest codes and file disclosure forms is the Political Reform Act, as codified in Government Code section 87100 et seq. ("Act"). The object of the Act is to promote impartial and ethical behavior among public officers in the conduct of public affairs by both state and local government officials. Government Code section 81000. The FPPC has primary responsibility for administering and interpreting the Act. Government Code section 83111.

One of the Act's requirements is for local governments to adopt conflict of interest codes covering "designated employees," which is defined to include certain governmental advisory groups. (Government Code section 82019; 87300). Each conflict of interest code adopted by the local governing body is required to designate which "decision-making" positions ("designated employees") are required to file SEI's. The term "designated employee" as defined in the statute excludes "any unsalaried member of any board or commission which serves a solely advisory function" from the category of "designated employees." (Emphasis added.) (Government Code section 82019.) The statutory definition of the term "designated employees" is critical to the determination of which advisory boards and commissions must have conflict of interest codes and, therefore, must file disclosure forms.

Note that, according to the statute, an advisory body that is "solely" or purely advisory does not have to have a conflict of interest code and does not have to file disclosure forms. This information was confirmed by John Wallace, Staff Attorney, FPPC, Legal Division, by telephone on February 5, 1990.

B. Case Law

As construed by the court in Commission on Cal. State Gov. Org. Econ. v. Fair Political Practices Com., 75 Cal. App. 3d 716 (1977), the phrase "solely advisory" as used in Government Code section 82019 is a description of "function."

[T]he word advisory denotes indirect relatively passive, hortatory and nonbinding counsel or guidance, as contrasted with active

management, decision-making and imposition of obligatory orders or decrees [citations omitted].

. . . The exemption provision [section 82019] is part of a statutory structure aimed at preventing conflict of interest. The objective is to enhance the purity of decision-making by excluding participants who have a personal financial stake in the decision. The statutory exemption exists because solely advisory officials are not decision-makers; they only recommend. The presence or absence of decision-making power is thus an important factor in identifying the wielder of a solely advisory function.

Commission on Cal. State Gov. Org. Econ. v. Fair Political Practices Com., 75 Cal. App. 3d at 721.

In deciding whether the Commission on California State Government Organization and Economy was solely advisory and therefore exempt from the Act's disclosure requirements, the court examined the statute creating that commission. In so doing, the court found the commission had investigatory powers (e.g., to hold hearings, to issue subpoenas) in addition to its prime mission, which was to make recommendations to the Governor and State Legislature for structural and operational changes to state government, an admittedly advisory function. The court found that the investigatory functions were to be used only to make its recommendations. Nonetheless, the court concluded that the investigatory duties rendered the function of the commission to be more than "solely advisory." Therefore, the court found the commission not exempt from the definition of "designated employee." Consequently, the court found that this commission had to have a conflict of interest code that required filing of disclosure forms.

In making its decision, the court articulated the public policy underlying the legislatively imposed duty on some boards and commissions to file disclosure forms and to adopt conflict of interest codes:

The conflict of interest laws operate without regard to actual corruption or actual governmental loss; they establish an objective standard 'directed not only at dishonor, but at also at conduct that tempts dishonor;' they are preventive, acting upon tendency as well

as prohibited results. [Citations omitted.] A violation occurs not only when the official participates in the decision, but when he influences it, directly or indirectly. [Citations omitted.] Thus, a public official outside the immediate hierarchy of the decision-making agency may violate the conflict of interest law if he uses his official authority to influence the agency's decision.

75 Cal. App. 3d at 723.

In making its decision the court acknowledged that requiring certain advisory boards to file disclosure forms would possibly impair privacy and discourage membership on citizen advisory boards. In making this finding, however, the court stated that the exemption from the term "designated employee" was well within the purview of the state legislature. The court stated that:

[The law was] designed to induce citizens to accept uncompensated, parttime public service without vulnerability to periodic financial disclosures. Financial disclosure laws exact a cost in terms of impaired privacy. [Citation omitted.] Many citizens would rather hang onto their privacy than damage it through public service. The damage to privacy is inflated by enterprising journalists who mistake gossip for news. The cost, at any rate, is a concern of the legislative branch, not the courts. The statutory exemption is limited to boards and commissions which are solely, that is, exclusively advisory.

75 Cal. App. 3d at 724.

C. Statute Governing Planning Commission

There is a special statutory rule governing planning commissions. While the question of whether other boards and commissions must file disclosure forms turns on whether those boards and commissions are "solely advisory," the Planning Commission is required by separate statute (Government Code section 87200) to file a "721" form. This is the same form as is filed by the Mayor, Council, City Attorney, and City Manager. Note that the Planning Commission is the only board or commission to file a "721," as opposed to a "730" form.

FPPC Regulation and Opinion

Since the 1977 court case described above, the FPPC has adopted a regulation in an attempt to further define which boards and commissions are "decision-makers" as opposed to "solely advisory." 2 Cal. Code of Regulations 18700(a)(1). The relevant portion of this regulation defines a "decision-making" type of board or commission to be one which:

. . . .

(A) [M]ay make a final governmental decision;

(B) [M]ay compel a governmental decision; or it may prevent a governmental either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) [M]akes 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.

In a 1987 opinion, the FPPC construed this regulation to determine whether redevelopment project area committee (PAC's) were the type of board or commission that required filing of disclosure forms. In the Matter of Opinion Requested by Doreet Rotman, et al, 10 FPPC Ops. 1 (1987). In construing this regulation, the FPPC decided that redevelopment PAC's were indeed the type that had to file disclosure forms ("730 type") because of recent legislative changes in redevelopment law. The FPPC found that, although these PAC's could not make a final governmental decision and could not compel or prevent a final government decision, they were in a position to make "substantive recommendations" within the meaning of regulation 18700(a)(1)(C), because a two-thirds vote of a city council was required to overrule a PAC recommendation to deny a proposed redevelopment plan or deny an amendment to a plan. The FPPC decided that it was not necessary to consider how regularly or over how long a time a PAC's recommendations were approved by a city council to reach its conclusion. Indeed, the FPPC appeared to ignore that part of the regulation and found that redevelopment PAC's are simply the type of decision-making body required to adopt conflict of interest codes and to file disclosure forms. 10 FPPC Ops. at 7.

Body of Law Creating Particular Board or Commission

It is apparent from analysis of the above statutes, case law, and FPPC regulation and opinions that it is necessary to examine the law (statute, charter, ordinance or resolution) that creates a particular board or commission to determine whether that board or commission is required to adopt a conflict of interest code and file a disclosure statement.

Some of the City of San Diego's boards and commissions are clearly the "decision-making" type. Looking at the attached Exhibits A and B, there are several entities that are corporations or bodies that are created by statute, charter, or ordinance, with clear and explicit "decision-making" powers (i.e., power to contract, to sue and be sued, etc). (See, e.g., Centre City Development Corporation Inc., San Diego Convention Center Corporation Inc.) These types are clearly the types that are covered by the Act and will require adoption of a conflict of interest code and the filing of disclosure forms.

Other boards and commissions are clearly "solely advisory." The International Affairs Board and Quality of Life Board are good examples of this type. These boards will not be required by law to adopt a conflict of interest code and will not be required by law to file disclosure forms, because their functions do not rise to the level of "decision-making."

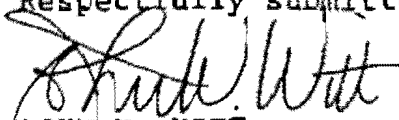
Many boards and commissions' functions fall in the gray area between clearly "decision-making" and "solely advisory" type. In each case, the City Attorney's office has examined the law creating the board or commission and has made a judgment as to whether that board or commission is a "decision-maker" or "solely advisory" within the meaning of the law. The City Attorney's judgment is made in the form of a recommended proposed conflict of interest code and resolution put forward to the City Council for its adoption. The City Attorney's recommendation to the Council is based on a case by case analysis of each board or commission in light of the then existing law. Hence, there is no bright line as to which board or commission will be required to have a conflict of interest code or to file a disclosure form.

Additionally, as a matter of policy, the City Council has required some "solely advisory" boards and commissions to abide by adopted conflict of interest codes, but has not required them to file disclosure statements. Having more stringent conflict of interest standards than is required by state law is acceptable legally.

February 6, 1990

The City Attorney's office recognizes the need for review of the current conflict of interest codes. Many are out of date. Some were adopted at a time when a particular board's functions were designed to be more of the "decision-making" type (e.g., the Commission for Arts and Culture) and since the time of their creation, their powers have become "solely advisory." Hence, the City Attorney's office will work in conjunction with the City Clerk's office to review and update the conflict of interest codes to ensure that the boards and commissions have the required conflict of interest codes and disclosure forms when necessary as required by state law.

Respectfully submitted,


JOHN W. WITT
City Attorney

CCM:jrl:048(x043.1)
Attachments
RC-90-8

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LIST OF BOARDS AND COMMISSIONS WHO ARE REQUIRED TO FILE 730 FORMS

- 1) Appeals and Advisors, Board of (Buildings)
- 2) Arts and Culture, Commission of
- 3) Centre City Development Corporation, Inc.
- 4) (San Diego) Convention Center Corporation, Inc.
- 5) Funds Commission (City)
- 6) Historical Site Board
- 7) Housing Advisory and Appeals Board
- 8) Housing Commission, San Diego
- 9) La Jolla Shores Planned District Advisory Board
- 10) Noise Abatement and Control, Board of
- 11) Old Town San Diego Planned District Design Review Board
- 12) Retirement System, City Employees Board of Administration
- 13) San Diego Data Processing Corporation
- 14) Southeast Economic Development Corporation, Board of Directors
- 15) Zoning Appeals, Board of
- 16) Open Space Committee
Planning Commission - Files a Form 721 as do all other officials
(Mayor, City Council, Attorney, Manager)

City of San Diego

Office of the City Clerk

MEMORANDUM

533-4000

DATE: July 2, 1993

TO: Honorable Mayor and City Council

FROM: Charles G. Abdelnour, City Clerk

SUBJECT: FAILURE TO COMPLY WITH COUNCIL ACTION;
BOARD AND COMMISSION MEMBERS

The following is an updated list of those City advisory board and commission members who have failed to respond to repeated notification of their obligation to file Statements of Economic Interests as required by Council Resolution R-175742 adopted on May 21, 1990. All are at least 90 days in arrears of their respective filing deadlines.

Agricultural Board

Ben Hillbrecht
Gretchen Colachis

Citizens Equal Opportunity

Dora Ortega

Housing Advisory & Appeals

Priscilla Young
Walter Wells

Local Assessment Board

Margaret Welsh
Michael Strode
Maryann Miller

Park and Recreation Board

Thomas McPhatter

San Ysidro Revitalization

Victor Estrada

Tecolote Canyon Citizens

David Rodriguez
Timothy Graves
Helen Dillon Hiatt
John Lehr
Ingrid Lewis
Raymond Shipps

Appeals and Advisors Board

Anthony Court

Ethics Advisory Board

Walter Kudumu
Manny Lopez
David Rodriguez

Human Relations Commission

Betty Byrnes
Brian Bennett

Library Commissioners

Paula Siegel

Public Utilities Commission

✓ Gene Yee *file 7/8/93*
Joanne Cornwell-Giles

Senior Citizens Advisory Board

Cassandra Gulbransen

Transportation Demand Mgmt.

John Brand

Waste Management Advisory Board

James Whitmill

Wetlands Advisory Board
Jose LaMont Jones
Nancy Weare

Commission on Status of Women
Nellie Amondson
Joan Malone
Sharon Terrill

Zoning
Janice Brown

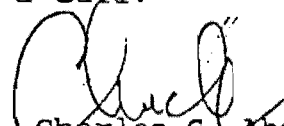
The City Attorney has advised that in the absence of a City ordinance establishing specific penalties for failure to file, or filing late, the City Clerk in these cases does not have the authority to impose fines to achieve compliance with the Council Resolution.

Therefore, as the appointing authority for these individuals, these names are being referred to you for your review.

We would suggest to you two alternate courses of action that could resolve this situation:

- o Rescind Council Resolution R-275742, which requires that all City advisory boards, commissions and ad hoc committees establish conflict of interest codes and file Statements of Economic Interest (Form 730).
- o Adopt an ordinance which would provide specific penalties for late filers and for those who fail to file a Statement of Economic Interests. This could include a provision for automatic removal for the failure to file a Statement, and/or provisions which would specifically authorize the City Clerk, as the filing officer, to assess fines for the late filing of statements.

We would be pleased to discuss these options with you or a member of your staff. As always, should you have any questions or need additional information, please give us a call.


Charles G. Abdelnour
City Clerk

CGA:JPL:jb

Copy to:
City Attorney