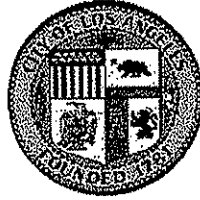



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August 29, 2008

To: Members of the City Ethics Commission

From: Heather Holt, Director of Policy and Legislation Re: **AGENDA ITEM 6**  
**Revisions to CEC Form 52 (CF Nos. 05-0894-S3 & 08-0351)**

At its meeting on August 12, 2008, the Education & Neighborhoods Committee expressed its support for the content of CEC Form 52 but stated its desire for all neighborhood council board members to file financial disclosure statements on an annual basis. The committee asked the Ethics Commission to consider revising Form 52, to make it an annual filing, rather than a filing that is triggered by the creation of a neighborhood council file. The committee also asked that the Commission provide feedback at the next committee meeting on September 9. This memo addresses the committee's request and provides a revised version of the Form 52 for your consideration.

## **BACKGROUND**

The following background information is provided for the benefit of the newer Commissioners, for whom financial disclosure by neighborhood councils may be an unfamiliar topic. Attachment A is a brief timeline of the history of neighborhood councils and financial disclosure. The significant events on that timeline are explained in more detail below

### A. Historical Context

Neighborhood councils were approved by the voters in June 1999 and given "an advisory role on issues of concern to the neighborhood." Los Angeles City Charter (Charter) § 900. As local government bodies, neighborhood councils are subject to both the Brown Act and the Political Reform Act of 1974 (PRA). See City Attorney Opinion Nos. 2004:7 and 2004:8. However, in 2005, the City Council adopted Los Angeles Administrative Code (LAAC) § 2.20.1, which exempts neighborhood councils from the PRA requirements of adopting conflict of interests codes and filing the California Statement of Economic Interests (Form 700).

When the neighborhood council system was created, an evaluation process was built into the enacting law. Charter § 912 required the Mayor and the City Council to appoint a commission to assess "the efficacy of the system of neighborhood councils" within seven years of the system's adoption and to make recommendations regarding changes. The Neighborhood

Council Review Commission (NCRC)—sometimes referred to as the “912 Commission” because of the Charter section mandating its formation—was created in 2006. In September 2007, the NCRC submitted a final report and made 73 recommendations for changes to the neighborhood council system.

B. Original Council Action

NCRC Recommendation #3 suggested that neighborhood councils be given the authority to create council files (called neighborhood council files or NCFs). On January 15, 2008, the City Council approved Recommendation #3 by establishing a two-year pilot project that permits the creation of an NCF when one neighborhood council introduces it and another one seconds it. As part of that program, the City Council adopted a motion to require each member of a neighborhood council board that introduces or seconds an NCF to file Form 700. The motion also required the Ethics Commission to review the Form 700s submitted by neighborhood council board members for potential conflicts.

On January 18, the Ethics Commission received a letter from Councilmembers Greuel (CD 2) and Hahn (CD 15), asking for “advice on the adopted measure and possible modifications that could be made, such as instituting a more accessible form . . . .” On January 23, the Commission received another letter from Councilmember Alarcón (CD 7), asking staff to provide “advice and testimony” to the Education & Neighborhoods Committee regarding the motion.

C. Initial Commission Response

At its meeting on February 12, the Ethics Commission considered these requests and identified a variety of issues, including the following:

1. The January motion is unenforceable because it does not take precedence over the existing exemption in LAAC § 2.20.1;
2. Requiring neighborhood council board members to file Form 700 would have a number of undesirable consequences, such as permanently eliminating the filing exemption in LAAC § 2.20.1 and subjecting neighborhood council members to additional restrictions under the Governmental Ethic Ordinance (GEO);
3. A City-generated form designed specifically for neighborhood councils could avoid the consequences associated with Form 700 while still promoting open and accountable government; and
4. Reviewing the financial disclosure statements of all 1800 neighborhood council board members would have significant resource implications for the Ethics Commission and could hinder the City Attorney’s role in evaluating potential conflicts of interests.

The Commission acknowledged the value of financial disclosure in general, as well as City Council’s desire for financial disclosure from neighborhood councils that participate in

creating NCFs, but also supported the suggestion that something other than Form 700 be used for that purpose. The Commission felt that the financial disclosure required of neighborhood council board members should reflect their advisory role and should not rise to the level of disclosure required by Form 700.

D. Further Council Action

While the Commission was considering this matter on February 12, Councilmembers Smith (CD 12) and Garcetti (CD 13) introduced another motion. In response to the observations in our staff report, that motion asks the City Attorney's office to prepare an ordinance that eliminates the exemption in LAAC § 2.20.1 and requires neighborhood council board members to file Form 700. It asks the City Administrative Officer to report on the feasibility of having the City Clerk's office, rather than the Ethics Commission, receive and review the Form 700s filed by neighborhood councils. It also asks for a report from the City Administrative Officer on the positions and resources necessary to address "the concerns and issues as expressed in the City Ethics Report dated February 5, 2008."

On February 19, the Education & Neighborhoods Committee heard from Ethics Commission staff, members of the City Attorney's office, the executive director of the NCRC, and members of neighborhood councils regarding the first motion. The committee did not take formal action but expressed unanimous support for a modified financial disclosure form and for making the disclosure process as simple as possible for neighborhood council board members. Councilmember Alarcón indicated that he was not opposed to an annual filing for all neighborhood council board members, regardless of whether they create NCFs.

E. Adoption of Form 52

The Ethics Commission adopted CEC Form 52 on March 11, after considering input from the Education & Neighborhoods Committee, the City Attorney's office, the NCRC, the Department of Neighborhood Empowerment (DONE), and members of the public. The form is tailored to reflect both the advisory role of neighborhood councils and the need for transparent governmental actions. Currently, Form 52 is designed to be filed whenever a neighborhood council participates in creating an NCF. A filer would be required to disclose employers, real estate interests, business interests, and other financial interests and benefits that could be affected by the NCF. One example is a gift from a person whose business would be adversely affected by a proposed development project.

On March 20, the Commission transmitted Form 52 to the City Council. The transmittal explained the rationale for the form and urged the City Council to require financial disclosure by neighborhood council board members through Form 52, rather than through Form 700.

F. Committee Consideration

Form 52 was referred to the Education & Neighborhoods Committee and has been considered at several meetings. Councilmember Alarcón, the committee chair, created a third form as an alternative to both Form 52 and Form 700. That form is virtually identical to Form

700 and must be filed on an annual basis by all neighborhood council board members. On May 7, Councilmember Alarcón asked the Commission to adopt his form for use by neighborhood council board members. On June 3, the Commission considered Councilmember Alarcón's form and declined to adopt it. Finding that the policy considerations had not changed, the Commission instead reaffirmed its support for Form 52.

The Education & Neighborhoods Committee again considered the issue of financial disclosure by neighborhood council board members on August 12. At that meeting, the committee indicated its preference for an annual filing, as opposed to filings that are triggered by NCFs. The committee asked the Commission to consider revising Form 52 to make it a form that is filed on an annual basis. The committee plans to return to this issue at its meeting on September 9.

### **REVISED FORM 52**

In response to the Education & Neighborhood Committee's request, as well as further discussions with the City Attorney's office, the office of the Chief Legislative Analyst (CLA), and staff from Council District 7, we propose the revised version of Form 52 that is in Attachment B. The form maintains the three areas of disclosure that the Commission previously identified as core matters: employers, real estate interests, and business interests. The form also asks for the filer's position, length of term, and contact information.

The revised form further includes a section for reporting gifts that total \$390 or more that were received during the previous year from a source that currently has business pending before the neighborhood council or had business pending before the council in the previous year. The current version of Form 52 requires the disclosure of gifts valued at \$50 or more that are related to a particular NCF, and gifts to neighborhood council board members have been cited by the committee as a central issue of concern that should continue to be part of any financial disclosure by those individuals. The gift disclosure section was modified because the revised Form 52 is an annual filing, not tied to an NCF, and because the PRA requires neighborhood council board members to recuse themselves from matters that involve a person who has given them a total of \$390 or more in gifts.

In addition to the content of Form 52, there are a number of procedural aspects associated with Form 52. We recommend that the following procedures apply:

#### A. Timing

We recommend that the form be filed by new neighborhood council board members within 30 days of assuming office and then annually thereafter. Form 700 is due April 1 of each year, and we recommend that the same filing deadline apply to neighborhood council board members. As with the original version of the form, we also recommend that a neighborhood council board member be barred from participating in board actions as long as the member is out of compliance with a filing requirement.

B. Filing Officer

Form 52 was originally designed to be filed with the Commission, and that continues to be our recommendation for the revised form. Some thought was given to making DONE the filing officer, but we believe that public disclosure would be best served if filings were made through the Commission. That is where all other financial disclosures are housed and where City officials and the public know to find them. In addition, the Ethics Commission will be the agency to answer questions about Form 52 and how to complete it.

The January 15 motion asked the Commission to review financial disclosure statements filed by neighborhood council board members for potential conflicts of interests. For a number of reasons, however, we recommend that the Commission serve merely as a repository for Form 52. First, we are simply a repository for Form 700 filings; we provide a significant tool for the public and help promote confidence in government actions by collecting financial disclosure forms in a central location and providing easy access to the information they contain. Second, advice regarding whether a conflict of interests exists is provided through the City Attorney's office, which considers a fuller spectrum of interests when providing its advice. Finally, absent a significant infusion of new resources—or a significant refocusing of existing resources—we do not have the capacity to regularly monitor issues pending before all 90 neighborhood councils or identify potential conflicts for all 1800 neighborhood council board members.

C. Authority

The Commission previously recommended that the financial disclosure requirement for neighborhood councils be added to the Plan for a Citywide System of Neighborhood Councils. Again, we make the same recommendation for the revised form. The requirement could be added to the GEO, but penalties such as late filing fees would then apply. The nature of the two-year pilot project lends itself to an incremental approach of amending the Plan now and reexamining whether to add the requirement to the GEO once a permanent decision is made about neighborhood council board members filing financial disclosure forms.

D. Terms

Because the PRA already applies to neighborhood council board members, both the existing Form 52 and the proposed revision use the same definitions as those used in the PRA.

## OTHER CONSIDERATIONS

A. Allocation of Funds by Neighborhood Councils

The allocation of funds by neighborhood councils is another key issue mentioned by the committee and addressed in subsequent discussions with the City Attorney's office, the CLA's office, and staff from Council District 7. Under the Public Purposes Grant Program (created by Council File Number 02-0699), neighborhood councils may make individual grants of up to \$5,000 without City Council approval or a formal contracting process. Nonprofit organizations

that are exempt from federal taxation under 26 U.S.C. § 501(c)(3) are eligible for these grants, and there is some concern that a neighborhood council board member could also sit on the board of a 501(c)(3) organization that is applying for a grant from the board member's neighborhood council.

The City Attorney's advice is that the board member must recuse herself from a recommendation or a decision regarding a grant to the 501(c)(3) organization and must disclose her interest in the organization (which must be noted in the neighborhood council's official records). Cal. Gov't Code §§ 1090, 1091(a), 1091(b)(1); *Thomson v. Call* (1985) 38 Cal.3d 633. In addition, some interests held by neighborhood council board members could entirely prevent the neighborhood council from considering or approving a proposed grant.

To better educate neighborhood councils about their obligations under state law and to help avoid any actual or perceived conflicts of interests associated with the allocation of funds, the Public Purposes Grant Program could be amended to require neighborhood council board members to publicly disclose, at the time a vote is taken on a particular grant, whether they are a board member of—or have any other interest in—the proposed grantee. The disclosure could be simply a statement on the record and could include a declaration that all recusal procedures required by state law have been followed. Staff from Council District 7 have endorsed this approach.

We believe this would be a valuable tool in both educating neighborhood council board members of their responsibilities under state law and fostering public confidence in decisions made at all levels of City government. We would support any effort to modify the Public Purposes Grant Program in this way.

#### B. Resource Implications

Form 52 will be useful in providing the public with an appropriate level of financial disclosure by neighborhood council board members. As with any new program, however, it is not without cost.

There are currently about 1800 neighborhood council board members, and that number will increase as more neighborhood councils are certified. Staff resources will be necessary to process, track, and assess compliance with the 1800 annual filings. There will also be an educational component to the new requirement. To familiarize filers with the nuances of Form 52, staff support will be necessary to draft detailed instructions for the form (similar to those included with Form 700) and train the 90 neighborhood councils, their board members, and DONE staff. Because we understand that turnover on neighborhood councils occurs at a fairly high rate and because technical assistance will continue to be essential as specific questions arise, the educational component will be an ongoing need.

We estimate that the Commission will require one additional Management Analyst II position to manage the resulting workload. Additional funding will also be necessary for training materials.

**RECOMMENDATIONS**

We recommend that Form 52 be revised to require filing by neighborhood council board members on an annual basis. If you choose to revise the form, you may do so by adopting the resolution in Attachment C.

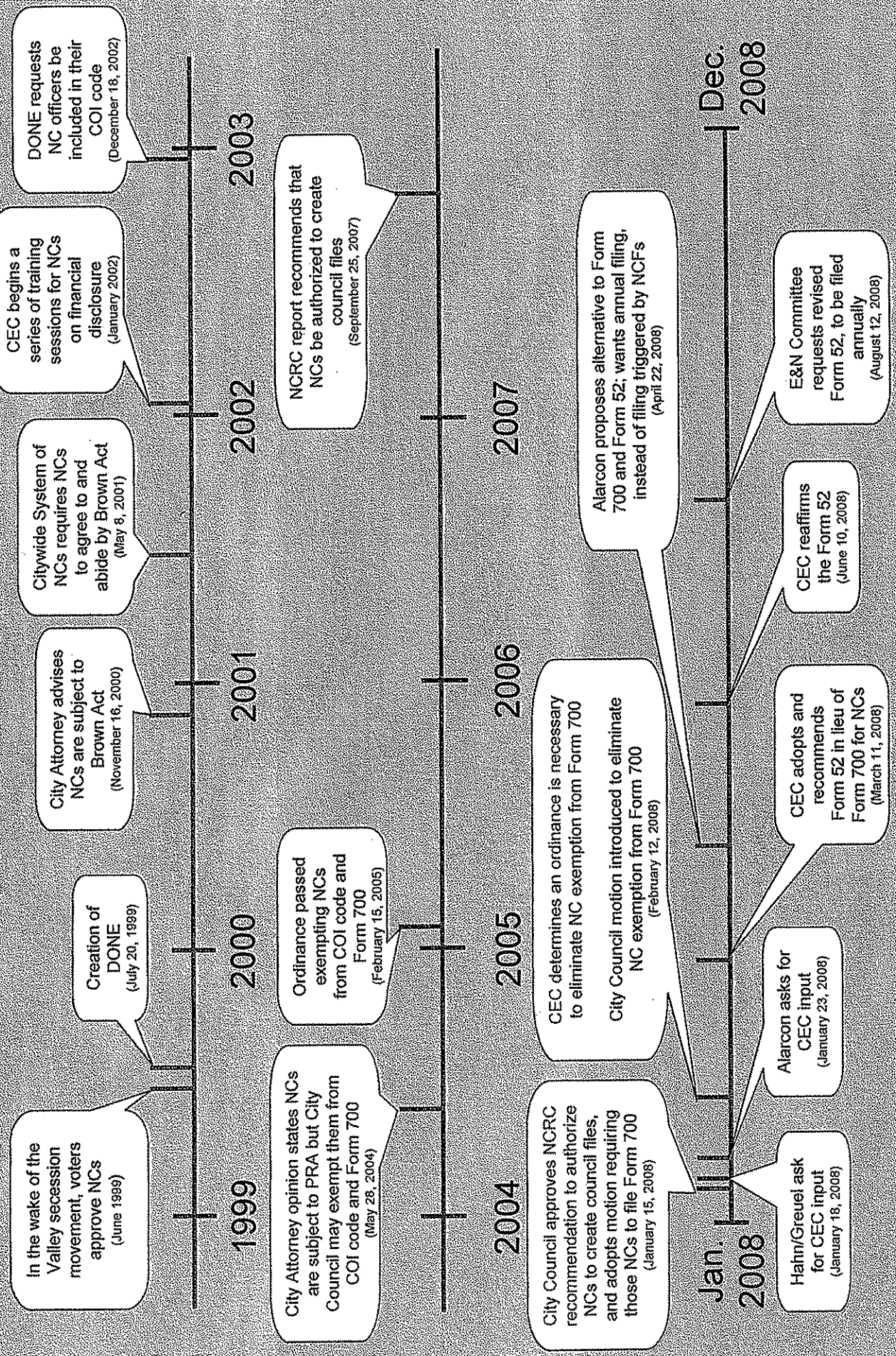
If you have questions about this item, please feel free to ask at any time. I look forward to discussing this with you at the meeting.

# **Attachment A**



# Neighborhood Councils and Financial Disclosure

1999-2008



# **Attachment B**



City Ethics Commission  
 200 N Spring Street  
 City Hall - 24th Floor  
 Los Angeles, CA 90012  
 Mail Stop 129  
 (213) 978-1960

# Neighborhood Council Financial Disclosure CEC Form 52

Please type or print in ink.

This is a public record.

**Your Name**

LAST

FIRST

MIDDLE

**Type of Statement**     *Assuming Office* [ due 30 days after the date your term began ]  
                                    *Annual*                                    [ due April 1 for the previous calendar year of 20\_\_\_\_ ]

**Your Neighborhood Council:** \_\_\_\_\_

**Your Position or Title:** \_\_\_\_\_

*Appointed*             *Elected* [ date of election: \_\_\_\_ / \_\_\_\_ /20\_\_\_\_ ]

**Date Your Term Began:** \_\_\_\_ / \_\_\_\_ /20\_\_\_\_      **Date Your Term Ends:** \_\_\_\_ / \_\_\_\_ /20\_\_\_\_

**Your Contact Information** *(may be for your business or neighborhood council office)*

**Mailing Address\*:** \_\_\_\_\_  
 \_\_\_\_\_

**Daytime Phone Number\*:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

*\* Required information.*

**Your Spouse's/Domestic Partner's Name**

LAST

FIRST

MIDDLE

**Your Employers** *(please identify by checking box)* and **Your Spouse's/Domestic Partner's Employers**

EMPLOYER:

YOURS: FULL ADDRESS:

- |          |                          |       |
|----------|--------------------------|-------|
| 1. _____ | <input type="checkbox"/> | _____ |
| 2. _____ | <input type="checkbox"/> | _____ |
| 3. _____ | <input type="checkbox"/> | _____ |
| 4. _____ | <input type="checkbox"/> | _____ |
| 5. _____ | <input type="checkbox"/> | _____ |



City Ethics Commission  
 200 N Spring Street  
 City Hall — 24th Floor  
 Los Angeles, CA 90012  
 Mail Stop 129  
 (213) 978-1960

# Neighborhood Council Financial Disclosure

## CEC Form 52

**Real Estate In (or Within 1000 Feet of) the City of Los Angeles That Is:**

- Owned or leased by you or your spouse/domestic partner (excluding your primary residence); *and*
- Valued at more than \$2,000.

FULL ADDRESS:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Businesses In the City of Los Angeles That Are:**

- Owned by you or your spouse/domestic partner (an interest of at least 10%); *and*
- Valued at more than \$2,000.

NAME:

FULL ADDRESS:

- |          |       |
|----------|-------|
| 1. _____ | _____ |
| 2. _____ | _____ |

**Gifts To You (Or From Which You Received A Benefit) That:**

- Aggregated \$390 or more during the previous calendar year; *and*
- Were given by a single source that currently has business pending before your neighborhood council or had business before your neighborhood council during the previous calendar year.

NAME OF SOURCE:

DATE:

VALUE:

DESCRIPTION OF GIFT:

- |          |           |          |       |
|----------|-----------|----------|-------|
| 1. _____ | _ / _ / _ | \$ _____ | _____ |
| 2. _____ | _ / _ / _ | \$ _____ | _____ |
| 3. _____ | _ / _ / _ | \$ _____ | _____ |
| 4. _____ | _ / _ / _ | \$ _____ | _____ |

*I certify under penalty of perjury that the information provided in this form is true and correct.*

*I understand that I may be required under the Political Reform Act of 1974, Government Code § 1090, or the common law doctrine of conflicts of interests to recuse myself from board decisions that affect the interests identified in this form, as well as decisions that affect other financial or personal interests. I understand that the City Attorney's Office can advise me regarding when recusal is required.*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

# **Attachment C**

## RESOLUTION

WHEREAS on January 15, 2008, the Los Angeles City Council established a two-year pilot project through which neighborhood councils may create neighborhood council files that place items before the City Council for consideration; and

WHEREAS, through Council File Numbers 05-0894-S3 and 08-0351, the Los Angeles City Council originally expressed its desire for each member of a neighborhood council board that introduces or seconds a neighborhood council file to submit the California Statement of Economic Interests (Form 700); and

WHEREAS Councilmembers Alarcón, Greuel, and Hahn requested that the City Ethics Commission provide input regarding requiring neighborhood council board members to file Form 700; and

WHEREAS requiring neighborhood council board members to file Form 700 at this time could have unintended consequences, such as permanently eliminating the exemption that currently exists in Los Angeles Administrative Code Section 2.20.1, subjecting neighborhood council board members to the Governmental Ethics Ordinance, requiring disclosure that is disproportionate to the advisory nature of neighborhood councils, and discouraging civic participation; and

WHEREAS the City Ethics Commission adopted CEC Form 52 on March 11, 2008, as an alternative financial disclosure statement that would avoid the unintended consequences of Form 700 while still promoting open and accountable government; and

WHEREAS the Education and Neighborhoods Committee has since indicated a preference for a form that is filed annually by every member of a neighborhood council board, regardless of whether the board participates in creating a neighborhood council file;

THEREFORE, BE IT RESOLVED by the Los Angeles City Ethics Commission that CEC Form 52 is revised to be filed annually and is prescribed as a form that may be used to disclose the financial interests of neighborhood council board members.

I certify that this resolution was adopted by the Los Angeles City Ethics Commission on September 5, 2008, pursuant to Los Angeles City Charter Sections 704(a) and (b).

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Helen Zukin, President  
City Ethics Commission