

CITY OF LOS ANGELES
CALIFORNIA

CITY ETHICS COMMISSION

(213) 978-1960
(213) 978-1988 FAX
<http://ethics.lacity.org>



CITY ETHICS COMMISSION
200 N. SPRING STREET
CITY HALL - 24TH FLOOR
LOS ANGELES, CA 90012

September 8, 2008

BY MESSENGER

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

**Re: Council File Numbers 05-0894-S3 and 08-0351
Financial Disclosure by Neighborhood Council Board Members**

FOR COUNCIL CONSIDERATION

Dear Councilmembers:

In March, the Ethics Commission adopted CEC Form 52 (Attachment A) as a financial disclosure form for neighborhood council board members who participate in creating a neighborhood council file (NCF). The Commission strongly urged the City Council to require financial disclosure through that form, rather than through the California Statement of Economic Interests (Form 700). After considering additional issues at the request of the Education and Neighborhoods Committee, the Commission reaffirms its support for Form 52 as the most appropriate tool at this time for financial disclosure by neighborhood council board members who participate in creating an NCF.

However, if the City Council concludes that all neighborhood council board members should be required to submit financial disclosure statements on an annual basis, the Commission recommends CEC Form 53 (Attachment B) for that purpose. The Commission strongly urges the City Council to narrowly tailor financial disclosure for neighborhood councils through Form 52, or through Form 53 if annual filings are required, rather than through Form 700.

FORM 52

In January, the City Council created a two-year pilot project, which authorizes neighborhood councils to create up to three NCFs per year, if one neighborhood council introduces the file and one seconds it. This was done in response to a recommendation made by the Neighborhood Council Review Commission under Council File Number 05-0894-S3. The



City Council also adopted a motion (Smith/Garcetti) to require each member of a neighborhood council board that introduces or seconds an NCF to file Form 700.

Shortly after that meeting, the Ethics Commission received requests from Councilmembers Alarcón (CD 7), Greuel (CD 2), and Hahn (CD 15) for input regarding the action taken by the City Council through the January motion. At its meeting on February 12, the Ethics Commission identified a variety of issues and reached the following conclusions:

1. The January motion is unenforceable because it does not take precedence over an existing provision in Los Angeles Administrative Code (LAAC) § 2.20.1, which currently exempts neighborhood council board members from filing Form 700;
2. Requiring neighborhood council board members to file Form 700 at this time would have a number of undesirable consequences, such as permanently eliminating the current filing exemption in LAAC § 2.20.1 and subjecting neighborhood council board members to additional restrictions under the Governmental Ethics Ordinance (GEO);
3. A neighborhood council's ability to create an NCF does not imbue it with decision-making authority over public policy, because the City Council retains complete discretion and authority to decline to consider any NCF, and the level of disclosure required by Form 700 is disproportionate to the advisory role of neighborhood councils;
4. There is, however, the potential for actual or apparent conflicts of interests, and some degree of financial disclosure is appropriate; and
5. An alternative City-generated form designed specifically for neighborhood councils could avoid the consequences associated with Form 700 and reflect the advisory nature of neighborhood councils, while still promoting open and accountable government.

While the Commission was considering this matter on February 12, Councilmembers Smith (CD 12) and Garcetti (CD 13) introduced another motion under Council File Number 08-0351. That motion, among other things, asks the City Attorney's office to prepare an ordinance to eliminate the exemption in LAAC § 2.20.1 and require neighborhood council board members to file Form 700.

On February 19, the Education & Neighborhoods Committee informally discussed financial disclosure by neighborhood councils. The committee expressed unanimous support for a modified financial disclosure form, as well as for making the disclosure process as simple as possible for neighborhood council board members.

The Ethics Commission adopted Form 52 on March 11, as a financial disclosure tool that reflects both the advisory role of neighborhood councils and the need for transparent government actions. The form asks for disclosure of the things the Commission identified as core financial

matters: employers, real estate interests, and business interests. It also asks for disclosure regarding the particular NCF that triggers the reporting. Filers are required to either make an affirmative statement that they have no other financial interests or benefits that relate to the NCF or to list the other financial interests or benefits that do relate to the NCF. The procedural recommendations for the form are identified in the Commission's letter of March 20. Form 52 was referred to the Education & Neighborhoods Committee.

FORM 53

Following the Commission's adoption and recommendation of Form 52, Councilmember Alarcón created a third financial disclosure form for neighborhood councils and asked the Commission to adopt it. On June 10, the Commission declined to adopt Councilmember Alarcón's form, because the form is essentially identical to Form 700 and does not reflect the advisory role of neighborhood councils.

On August 12, the Education & Neighborhoods Committee discussed both Councilmember Alarcón's form and Form 52. Councilmember Alarcón expressed his opinion that requiring financial disclosure only of neighborhood council board members who participate in creating NCFs is punitive and that financial disclosure is appropriate for all neighborhood council board members. The committee agreed that less disclosure than Form 700 is appropriate and asked the Commission to revise Form 52 so that it must be filed on an annual basis and is not tied to an NCF.

On September 5, the Commission considered a revised version of Form 52. The core financial matters that the Commission had previously identified (employers, real estate, and business interests) were maintained. Based on input from the committee, the new form also has a separate section that requires filers to disclose gifts totaling \$390 or more during the previous calendar year if they were given by a single source that currently has business pending before the neighborhood council or had business pending before the council in the previous year. That dollar threshold was selected, because the Political Reform Act of 1974 (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.

After hearing from members of neighborhood councils, staff from Council District 7, and the General Manager of the Department of Neighborhood Empowerment (DONE), the Commission stated that it remains concerned about the potential chilling effect that overly broad financial disclosure, including annual disclosure, could have on participation in neighborhood councils. The Commission also reaffirmed its opinion that financial disclosure is not too onerous when triggered by an NCF and made through Form 52. In its view, that level of disclosure gives the public sufficient information about potential financial conflicts of interests among neighborhood council board members without discouraging participation in the democratic process.

However, the Commission did acknowledge the possibility that the City Council might choose, instead, to require universal financial disclosure of all neighborhood council board members on an annual basis. Because the Commission remains strongly opposed to imposing

upon neighborhood council board members the level of disclosure that is required by Form 700 (or another form with similar breadth and scope), the Commission adopted Form 53, which is more narrowly tailored to the role of neighborhood councils.

As with Form 52, there are a number of procedural aspects associated with Form 53. The form was adopted with the following recommended procedures:

A. Timing

The Commission recommends that the form be filed by new neighborhood council board members within 30 days of assuming office and then annually thereafter. The Commission recommends that Form 53 be due each year on April 1, the same filing deadline for Form 700 filers. As with Form 52, the Commission also recommends that a neighborhood council board member be barred from participating in board actions as long as the member is out of compliance with a Form 53 filing requirement.

B. Filing Officer

Form 53 was designed to be filed with the Commission. 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 Commission will be the agency to answer questions about Form 53 and how to complete it.

We further recommend that the Commission serve merely as a repository for Form 53. 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—the Commission does 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 continues to recommend that the financial disclosure requirement for neighborhood councils—whether through Form 52 or Form 53—be added to the Plan for a Citywide System of Neighborhood Councils. 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 Form 52 and Form 53 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 Chief Legislative Analyst'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.

The Commission believes 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. The Commission would support any effort to modify the Public Purposes Grant Program in this way.

B. Resource Implications

As with any new program, Form 53 filings would not be without cost. There are currently about 1800 neighborhood council board members, and that number will increase as more neighborhood councils are certified. Staff resources would be necessary to process, track, and assess compliance with the 1800 annual Form 53 filings. There would also be an

educational component to the new requirement. To familiarize filers with the nuances of the form, staff support would 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.

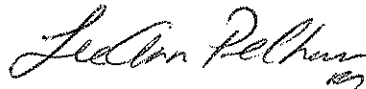
The Commission estimates that it will require one additional Management Analyst II position to manage the increased workload. Additional funding will also be necessary to produce training materials.

CONCLUSION

The Ethics Commission remains very concerned about the likely impact of requiring neighborhood council board members to file Form 700. As a result, the Commission strongly urges the City Council to require financial disclosure of neighborhood council board members through Form 52 and only of those members who participate in creating an NCF. If the City Council instead adopts a universal, annual financial disclosure requirement for all neighborhood council board members, the Commission strongly urges the City Council to require disclosure through CEC Form 53.

We appreciate the opportunity to provide comment and look forward to 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 Richard Alarcón
Chair of the Education & Neighborhoods Committee

cc: Renee Stadel, Deputy City Attorney
Gwen Poindexter, Deputy City Attorney
BongHwan Kim, General Manger, DONE
Paul Smith, Legislative Analyst, CLA
Darrell Powell, Legislative Analyst, CLA



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

Name

LAST

FIRST

MIDDLE

Spouse's/Registered Domestic Partner's Name

LAST

FIRST

MIDDLE

Neighborhood Council

Your Employer(s)

NAME:

FULL ADDRESS:

Your Spouse's/Registered Domestic Partner's Employer(s)

NAME:

FULL ADDRESS:

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

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

FULL ADDRESS:

Businesses In the City of Los Angeles That Are:

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

NAME:

FULL ADDRESS:



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

Neighborhood Council File (NCF)

NUMBER: _____ DATE CREATED: _____ [This form due within 30 days.]

SUBJECT MATTER: _____

ACTION YOUR NEIGHBORHOOD COUNCIL TOOK (circle one): **INTRODUCED** or **SECONDED**

Other Financial Interests or Benefits, Not Disclosed on Page 1, That Are:

- Held or received by you or your spouse/registered domestic partner in the previous 12 months; and
- Affected by the NCF identified above; and
- Valued at \$50 or more.

Example: Your neighborhood council seconded the NCF identified above, and your spouse received a \$100 gift from an individual whose business would be affected by that NCF.

CHECK ONE:

_____ I have no other financial interests or benefits that meet all three conditions above.

OR

_____ I have the following other financial interests or benefits that meet all three conditions above:

INTEREST/BENEFIT: _____

NAME OF SOURCE: _____

ADDRESS OF SOURCE: _____

POSSIBLE EFFECT OF NCF: _____

INTEREST/BENEFIT: _____

NAME OF SOURCE: _____

ADDRESS OF SOURCE: _____

POSSIBLE EFFECT OF NCF: _____

INTEREST/BENEFIT: _____

NAME OF SOURCE: _____

ADDRESS OF SOURCE: _____

POSSIBLE EFFECT OF NCF: _____

NOTE: If you listed other financial interests or benefits, you might be required under the Political Reform Act of 1974 to recuse yourself from decisions regarding the NCF identified above. The City Attorney's Office can advise you regarding whether recusal is required.

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

Date: _____ Signature: _____



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 53

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 you assume office]

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 You Assumed Office: ____ / ____ /20____ **Date You Left Office:** ____ / ____ /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/Registered Domestic Partner's Name

LAST

FIRST

MIDDLE

Your Employers *(identify by checking box)* and **Your Spouse's/ Registered 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 53

Real Estate Located Within Your Certified Neighborhood Council Boundaries That Is:

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

FULL ADDRESS:

1. _____
 2. _____
 3. _____

Businesses Located Or Doing Business In Your Certified Neighborhood Council Boundaries That Are:

- Owned by you or your spouse/registered 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: _____