

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**Jan I. Goldsmith**  
CITY ATTORNEY

June 23, 2009

REPORT TO THE CITY COUNCIL

AMENDING THE CONFLICT OF INTEREST CODE FOR THE PARK AND RECREATION BOARD

**INTRODUCTION**

On November 4, 2008, San Diego voters approved Proposition C, amending the San Diego City Charter to add Section 55.2. The Charter section requires that annual lease revenue generated in Mission Bay Park exceeding \$23 million initially, and decreasing to \$20 million after five years, be appropriated 75 percent for capital improvements in Mission Bay Park and 25 percent for capital improvements in Chollas Lake, Balboa, Mission Trails, Otay River Valley, Presidio and San Diego River Parks; open space parks; coastal beaches and contiguous coastal parks; and future regional parks [the San Diego Regional Parks].

The new Charter section established two funds: the Mission Bay Park Improvement Fund, which will receive and spend Mission Bay Park lease revenues for the benefit of Mission Bay Park; and a San Diego Regional Parks Improvement Fund, which will receive and spend Mission Bay Park lease revenues for the benefit of the San Diego Regional Parks. San Diego Charter §§ 55.2(a)(5), 55.2(a)(10).

The new Charter section also established two committees to oversee the funds: the Mission Bay Park Improvement Fund Oversight Committee and the San Diego Regional Parks Improvement Fund Oversight Committee [the Committees]. San Diego Charter §§ 55.2(a)(6), 55.2(a)(11). The Committees will audit and review implementation of the Charter section; recommend priorities for expenditures and capital improvements; and verify that appropriate funds are collected, segregated, retained and allocated according to the intent of the Charter section, and spent as prioritized.

The City Council has designated the Park and Recreation Board, established in San Diego Municipal Code section 26.30(b), to serve as the San Diego Regional Parks Improvement Fund Oversight Committee.

The Park and Recreation Board will thus be taking on new duties of financial oversight. Members will be making or participating in making decisions that “may foreseeably have a material effect on financial interests.” Cal. Gov’t Code §§ 87300, 87302. California’s Political Reform Act recognizes such responsibilities as those warranting the disclosure of an individual’s financial interests.

Park and Recreation Board members already have been making financial disclosures under the terms of an existing conflict of interest code. The Board's code has not been updated since November 2002. California Government Code section 87306 states that every agency "shall amend its Conflict of Interest Code. . . when change is necessitated by changed circumstances." This includes "relevant changes in the duties assigned to existing positions." *Id.* Charter section 55.2, which created the San Diego Regional Parks Improvement Fund, is effective as of July 1, 2009. The City Council has approved an ordinance that directs the Park and Recreation Board to serve as the San Diego Regional Parks Improvement Fund Oversight Committee, which may begin meeting after July 1, 2009. Thus, amendments to the conflict of interest code are warranted and timely.

The City Attorney's Office proposes amending the existing Park and Recreation Board code to: (1) add the new duties to be assumed by the Board related to Charter section 55; (2) add a requirement to disclose gifts, which was not previously in the code, but may have been an oversight as it is standard language found in other codes for City boards and commissions; and (3) to clean up language to ensure definitions are the same in the codes for the Park and Recreation Board and the City's Park and Recreation Department.

#### DISCUSSION

The purpose of California's conflict of interest laws is "to promote and accomplish several state policies including (1) assuring the independence, impartiality and honesty of public officials; (2) informing citizens regarding those economic interests of officials which might present a conflict of interest; (3) preventing improper personal gain by persons holding public office; (4) assuring that governmental decisions are properly arrived at; and (5) preventing special interests from unduly influencing governmental decisions." *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 667 (1974), citing legislative findings in then-Government Code section 3601. See, Cal. Gov't Code § 81001(b).

The purpose of the conflict of interest provisions of the Political Reform Act [Act] is to ensure public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their financial interests or those of persons who have supported them. By disclosing relevant financial interests, public officials can determine whether a conflict of interest exists and avoid participating in a matter. The Act also makes this information available to the public to help ensure government decisions are free from undue influence or improper financial motives.

As set forth above, California Government Code sections 87300 and 87302 require local agencies to adopt conflict of interest codes designating positions that involve the making or participation in making of decisions which may foreseeably have a material effect on financial interests, and for each position, the financial interests which are reportable. Moreover, California Government Code section 87306 states that every agency "shall amend its Conflict of Interest Code . . . when change is necessitated by changed circumstances."

The Park and Recreation Board, while serving as the San Diego Regional Parks Improvement Fund Oversight Committee, will be receiving, auditing and recommending

priorities for expenditures and capital improvements to be paid for by the Fund. These activities meet the definition of the Government Code for the "participation in making of decisions" that may foreseeably "have a material effect on financial interests." These duties need to be included in the Board's conflict of interest code.

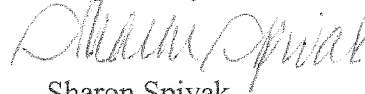
The City Attorney's Office has prepared a proposed amended code and will provide a strikeout version that highlights the changes.

The California Government Code designates the City Council as the City's code-reviewing body that may approve or amend a conflict of interest code for the Board. Cal. Gov't Code §§ 82011(c), 82003. The Park and Recreation Board may serve as the San Diego Regional Parks Improvement Fund Oversight Committee as of July 1, 2009. Thus, the amendments to the Board's conflict of interest code are timely.

### CONCLUSION

The expanded duties of the Park and Recreation Board warrant amendments to its existing conflict of interest code to comply with California law and to allow the public to monitor its decisions to ensure they are free from undue influence or improper financial motivations. The City Attorney's Office submits proposed amendments for the Council's review and adoption so they will be in place when the Board assumes its new duties.

Respectfully submitted,



Sharon Spivak  
Deputy City Attorney

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Attachments  
RC-2009-15

PARK AND RECREATION BOARD  
CONFLICT OF INTEREST CODE

(STRIKEOUT VERSION)

APPENDIX A  
DESIGNATED POSITIONS, DUTIES AND CATEGORIES

<u>POSITIONS</u>	<u>DUTIES</u>	<u>CATEGORY</u>
Chairperson and Voting Members, <b>Park and Recreation Board</b>	<p>Advise the Council <del>through the City Manager</del> on <del>public</del> policy matters relating to the acquisition, development, <del>and</del> maintenance and operation of parks, beaches, <del>playgrounds</del> and recreational activities <b>property and facilities</b>; review the recreational programs; <b>and</b> coordinate the work of such committees as may be established; <del>conduct investigations, studies and hearings.</del></p> <p><b>In the role of San Diego Regional Parks Improvement Fund Oversight Committee, perform oversight responsibilities of the Improvement Fund; audit and review implementation of Charter section 55.2; recommend priorities and expenditures and capital improvements; verify that the appropriate funds are collected, segregated, retained, allocated and spent appropriately.</b></p>	1
Consultant	As specified by contract.	2

PARK AND RECREATION BOARD  
CONFLICT OF INTEREST CODE

(STRIKEOUT VERSION)

APPENDIX B  
DISCLOSURE CATEGORIES

Category 1 All reportable interests in real property located in the City and including property located within a two-mile radius of any property owned or used by the City.

All reportable business positions, investments, **gifts** or income ~~for in or from~~ any person, firm or entity ~~which~~ **that** supplies goods or services to the Park and Recreation Department of the City of San Diego, including businesses with leaseholds in City parks, construction firms, **architectural, design, engineering or consulting firms**, recreational equipment or mortuary supply firms, supply firms, financial institutions, aquatic equipment or supply firms, ground or custodial maintenance or supply firms, **audiovisual equipment firms, computer firms, and fire or safety equipment firms.**

Category 2 **Consultants shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Department Director of the City's Park and Recreation Department may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.**

PARK AND RECREATION BOARD  
CONFLICT OF INTEREST CODE

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