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REPORT TO THE CITY COUNCIL

ADOPTING A CONFLICT OF INTEREST CODE FOR THE MISSION BAY PARK
COMMITTEE

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 Mission Bay Park Committee, established in San Diego Municipal Code section 26.30(g), to serve as the Mission Bay Park Improvement Fund Oversight Committee.

Previously, the Mission Bay Park Committee served in an advisory role that did not require members to disclose their financial interests. The Committee's new duties, however, involve financial oversight. Thus, 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. The City Attorney's Office thus has drafted

and recommends adoption of a Conflict of Interest Code for the Mission Bay Park Committee. The proposed code would require members to make specific disclosures on Statements of Economic Interests (Form 700 of the Fair Political Practices Commission), in categories similar to those applicable to City staff and members of other City boards and commissions.

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.

The Mission Bay Park 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." Thus, the Council should enact a code so that Committee members fully disclose their relevant financial interests.

The code to be enacted, however, must be appropriate to the duties to be assumed by the Committee. California law holds that a government entity must balance the public's interest in full disclosure of the economic interests of public officials (to shed light on potential conflicts of interest) against the privacy rights of the individuals who must disclose their holdings. Case law requires that financial disclosures be tailored to the interests that may be affected by the person's decision-making authority.

With this in mind, the City Attorney's Office has submitted a proposed code that reflects the type of disclosures warranted by the duties of the Committee. The code is modeled after that

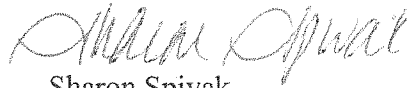
drafted for the City's Park and Recreation Board.¹ The disclosure categories are similar to those of other City boards and commissions.

The California Government Code designates the City Council as the City's code-reviewing body with authority to approve a conflict of interest code for the Committee. Cal. Gov't Code §§ 82011(c), 82003. Once the Council approves the code, members already appointed to the Mission Bay Park Committee will have 30 days to file an "assuming office" statement with the City Clerk's Office. New members would be required to file their first statement within 30 days of their appointment.

CONCLUSION

The expanded duties of the Mission Bay Park Committee warrant adoption of a conflict of interest code to comply with California law and to allow the public to monitor Committee decisions to ensure they are free from undue influence or improper financial motivations. The City Attorney's Office submits a proposed Conflict of Interest Code modeled after those in effect for similar City boards and commissions.

Respectfully submitted,



Sharon Spivak
Deputy City Attorney

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Attachments
RC-2009-16

¹ The Park and Recreation Board conflict of interest code will be amended slightly to account for its new duties, as of July 1, 2009, in sitting as the San Diego Regional Parks Improvement Fund Oversight Committee. See San Diego Charter §55.2. These amendments have been considered here.

MISSION BAY PARK COMMITTEE
CONFLICT OF INTEREST CODE

APPENDIX A
DESIGNATED POSITIONS, DUTIES AND CATEGORIES

<u>POSITIONS</u>	<u>DUTIES</u>	<u>CATEGORY</u>
Member, Mission Bay Park Committee	<p>Advise the City's Park and Recreation Board, City Council and City Manager on policy issues related to the acquisition, development, maintenance and operation of Mission Bay Park.</p> <p>In the role of Mission Bay Park Improvement Fund Oversight Committee, perform oversight responsibilities of the Mission Bay Park 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.</p>	1
Consultant	As specified by contract.	2

MISSION BAY PARK COMMITTEE
CONFLICT OF INTEREST CODE

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 in or from any person, firm or entity 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.