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December 17, 2007

Mr. Martin Mosier, Chair  
La Jolla Community Parking District Advisory Board  
1111 Prospect St.  
La Jolla, CA 92037

Via E-mail

*Re: City Attorney's Role in Advising the La Jolla Community Parking District  
Advisory Board*

Dear Mr. Mosier:

Per our December 14, 2007 memo to the La Jolla Community Parking District Advisory Board ("LJCPDAB" or "Board"), which you chair, the Board is required, pursuant to section 87300 et seq of California's Political Reform Act ("PRA"), to make certain financial disclosures.

In writing to you last week, we concluded that, though the Board must disclose certain financial interests, the duty to make such disclosures was a function of the adoption of a board-specific conflict of interest code, and thus had not yet been triggered.<sup>1</sup> We have since discovered additional authority that has led us to modify this conclusion. Specifically, Cal. Code Regs. tit. 2, §18754(a)(1) provides that, in a case where a "newly created agency"<sup>2</sup> has not timely adopted the required code, the agency's members must file a full disclosure, using FPPC Form 700 (available at <http://www.fppc.ca.gov/forms/700-06-07/Form700-06-07.pdf>), pursuant to section 87202 through 87210 of the PRA. This broader disclosure requirement "applies until such time as the member is included in an approved conflict of interest code." Cal. Code Regs. tit. 2, §18754(a)(1). In at least one case where a newly created agency has failed to timely create a code, the Fair Political Practices Commission has applied §18754(a)(1) by requiring the members of that agency to file within 30 days of being advised to do so. See *In Re Weaver*, FPPC Priv. Adv. Ltr A-03-225 (January 15, 2004).

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<sup>1</sup> You will also recall that, on the main question, we concluded that the LJCPDAB is required by the PRA to have a conflict of interest code, which must be adopted as soon as practicable. That conclusion has not changed.

<sup>2</sup> Under §18754(a)(2), the LJCPDAB is a "newly created agency" because it is a "local government agency" for reasons discussed in our December 14, 2007 memo to the Board, and because it came into existence after January 1, 2003.

The effect of the adoption of an agency-specific code, then, is not to trigger the obligation to file, but rather to narrow that obligation – which exists independent of the required code - by limiting disclosure to specific interests. Because the LJCPDAB members are not currently subject to an agency-specific code, and because more than 30 days have elapsed since the Board was created, Board members are currently subject to filing under sections 87202 through 87210. Cal Gov't Code §87302.6; Cal. Code Regs. tit. 2, §18754(a)(1). Thus, one of the following actions must occur prior to any Board action: either a) the members must file full disclosure, using Form 700, with the office of the City Clerk; or b) the Board must adopt and receive City Council approval of a code that is specific to the Board, and disclose under that code.

We advised the latter action last week. We continue to believe that is the better course, since full disclosure pursuant to sections 87202 through 87210 would go well beyond what is necessary to ensure that actual conflicts of interest are avoided, and may violate the privacy rights of Board members. However, in light of the above, ***we are hereby also advising you to cancel the currently scheduled December 19, 2007 meeting*** unless full disclosures are submitted to the City Clerk by all Board members prior to that meeting. An action taken by an agency in violation of Title 9 of the PRA, which contains all of the referenced sections, is subject to injunction. Cal Gov't Code §91003(a). A knowing violation of Title 9 is a misdemeanor. Cal. Gov't Code §91000.

***In its current posture, the Board is incapable of taking any legally defensible action.*** Further, my understanding is that at least some Board members would object to making the full disclosures required by sections 87202 through 87210. A narrowly tailored disclosure requirement under an agency-specific code might not lead to such objections. In light of this, we recommend that you cancel the pending December 19, 2007 meeting, that the Board and this Office cooperate recommending a code for City Council approval as soon as practicable, and that no other action be taken by the Board until that code is in place, disclosures under it have been filed, and all related legal issues are resolved.

Very truly yours,

MICHAEL J. AGUIRRE, City Attorney



By

Michael Calabrese  
Chief Deputy City Attorney

MPC:

Cc: Board Members