

SECTION VI

Ethics Mandates from the Los Angeles City Attorney

Clarification on the Neighborhood Council Meetings

Conflict of Interest in Public Contracting

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Competitive Bidding



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Clarification on Neighborhood Council Meetings

Neighborhood Councils recently asked questions relating to the circumstances under which Neighborhood Council Boards may hold community meetings, as well as questions about the circumstances under which, Neighborhood Council Board members may attend a training or community meeting without violating the open meeting requirements in the Brown Act. Because the City Attorney's Office and Department of Neighborhood Empowerment are dedicated to assisting Neighborhood Council's fulfill their goals and objectives, this handout is designed to assist you in determining which meetings and community events are not subject to the Brown Act. Many meetings and community events do not trigger the Brown Act. Primarily, the focus of the Brown Act is ensuring that a majority of a Neighborhood Council board or committee does not hold a private meeting to discuss board/committee business outside the public view.

The following are examples of allowable meetings and events:

Option 1: Holding a private meeting to discuss neighborhood council business with less than the board's or committee's majority required for taking action. For example having a private meeting with your City Council representative, a meeting between limited board/committee members on the same board, or a meeting with limited members from another Neighborhood Council. Since the bylaws vary for different Neighborhood Councils, please feel free to contact our Office so that we may explain how to calculate the number that are allowed to meet.

As long as the private meeting does not exceed the least number of people required to act on behalf of the board or committee, the meeting is not subject to the Brown Act, does not need to be open to the public and no notice or agenda is required.

Option 2: Holding a public meeting following all of the Brown Act rules (including agendas and public input) where everyone attends and discusses board business, such as your Neighborhood Council meetings or a joint meeting with another Neighborhood Council or another community group.

To hold a joint meeting with another Neighborhood Council board or committee and discuss board or committee business, the Brown Act requires that the meeting be noticed as a joint meeting of both bodies subject to the Brown Act. To hold a joint meeting with a private community group, the Brown Act simply requires that the joint meeting be noticed as a meeting of the Neighborhood

Council with an agenda disclosing that a private community group will be invited to participate. If you are having trouble creating an agenda for a joint meeting, please contact the Department or our Office for assistance. Once the agenda is finalized, the Department will officially post it at City Hall and on the Early Notification System.

Option 3: Hosting a social event/party where no business will be discussed, such as holiday parties.

All Neighborhood Council Board and committee members may attend social events with each other provided that board/committee members do not engage in a discussion regarding board/committee business with the board's/committee's majority required for taking action. The Brown Act does not require notice of social events be posted or be open to the public if no public funds are used to conduct the event.

Option 4: Attending a conference or training with other board members, such as City trainings or the Congress of Neighborhood workshops.

If a conference, training or similar gathering is open to the public and involves issues of general interest to the public, everyone may attend as long as the board's majority does not discuss among each other their board business while in attendance. All board and committee members may attend these types of conferences and trainings. The Brown Act does not require conferences and trainings to be noticed unless the training with board members is during one of your board meetings or at your board retreat.

Additional exceptions exist for holding meetings. The purpose of this announcement is not necessarily to be comprehensive, but to clarify any misunderstandings that may impede the lawful and vigorous functioning of Neighborhood Councils. As always, please contact our Office or the Department of Neighborhood Empowerment if you have any questions or concerns.

The regional advisor for Neighborhood Councils in the South, Central, Harbor and West areas of the City is Deputy City Attorney Carmen Hawkins: carmen.hawkins@lacity.org.

The regional advisor for Neighborhood Councils in the North Valley, South Valley and East areas of the City is Deputy City Attorney Elise Ruden: elise.ruden@lacity.org .

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OFFICE OF THE CITY ATTORNEY
NEIGHBORHOOD COUNCIL ADVICE DIVISION

GOVERNMENT CODE SECTION 1090, et seq.

Introduction.

This handout discusses the specific conflict of interest concerns that arise when a neighborhood council spends its public funds, enters into a contract, or makes a recommendation regarding a City contract and a board member or committee member on the neighborhood council has a financial interest in that transaction. While other situations, e.g., the neighborhood council making advisory recommendations to the City on specific subjects, may also present conflict of interest concerns,¹ this handout focuses on situations involving contracting or the expenditure of public funds by neighborhood councils under Government Code section 1090 (also referred to as “Section 1090”). In addition, while this handout is prepared for neighborhood councils, the principles set forth herein apply equally to other boards that are subject to this law.²

In 2004, the City Attorney issued an opinion stating that Government Code section 1090, et seq., applies to board and committee members serving on the City’s certified neighborhood councils. Section 1090 is one of the primary conflict of interest statutes applicable to public servants involved in the public contracting process and is a State law that prohibits public officials, including employees, from making a public contract in their official capacity when those persons also hold a private financial interest in that same contract.³

The California Attorney General’s office oversees compliance with this law and violations of Section 1090 are subject to civil and criminal penalties. Thus, board and committee members serving on the neighborhood council should become familiar with this law and seek assistance from the Office of the City Attorney whenever such questions arise.

Purpose.

The purpose of Section 1090 is to discourage self-dealing and ensure that public servants do not have divided loyalties.⁴ Section 1090 developed from a body of decisions by the courts in what is referred to as the “common law.” In *Thomson v. Call*,

¹ E.g., the California Political Reform Act, common law, City ordinances and, in the case of neighborhood councils, their bylaws and board rules may pertain.

² *Government Code* section 1090, a California statute, applies equally to, among others, “city council members”, “commissioners”, “board members”, “officials”, and “employees”. Herein, reference is alternatively made to such persons to illustrate a point or as discussed in case law.

³ *Government Code* section 1090 also applies to City Council members, commissioners, officials, and employees.

⁴ See, *Breakzone Billiards et al. v. City of Torrance* (2000) 81 Cal. App. 4th 1205, 1230 and *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1170-1171 [citing, *Noble v. City of Palo Alto* (1928)].

the California Supreme Court explained the reasons underlying Section 1090 and stated that “no man can faithfully serve two masters whose interests are or may be in conflict ...”⁵ The State legislature codified this common law into Section 1090.

Generally, neighborhood council representatives are agents of the people and the constituents they represent. Section 1090 is intended to ensure that “every public officer be guided solely by the public interest rather than personal interest when dealing with contracts in an official capacity.”⁶ In interpreting the law, the courts caution public servants that they may not act in their official capacity to *influence* or *participate in* making a public contract when they simultaneously hold a private financial interest in the same contract.⁷ The purpose of the conflict of interest laws and the conduct expected of public servants is captured by the California Supreme Court, quoting the U. S. Supreme Court:

“The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. The broad proscription embodies recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning people when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, *the statute is more concerned with what might have happened in a given situation than with what actually happened.*”⁸

Thus, Section 1090 is also “aimed at ... avoiding the appearance of impropriety...”⁹

Application of Section 1090.

Specifically, Government Code section 1090 states:

“Members of the Legislature, state, county, district, judicial district, and *city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.* Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.” (Emphasis added.)

This law means that neighborhood council board members cannot be financially interested in any contract *officially* made by that body or board. Under Section 1090, the first determination that must be made is what type of financial interest exists. The type of financial interest that exists will determine what permissible activities are allowed by the person with the financial interest or the neighborhood council board. In general,

⁵ *Thomson*, 38 Cal. 3d at 647-648 [citing, *San Diego v. S.D. L.A.R.R. Co.*, (1872) 44 Cal. 106, 113.

⁶ *Id.* at 650.

⁷ *Stigall*, 58 Cal 2d 565, 569; *Finnegan*, 91 Cal. App. 4th 572, 579 and *People v. Honig* (1996) 48 Cal. App. 4th 289, 314.

⁸ *Stigall*, 58 Cal 2d 565, 570 *citing U.S. v. Mississippi Valley Generating Co* (1961) 364 U.S. 520. (emphasis added)

⁹ *Honig*, 48 Cal.App.4th at 314.

if a financial interest exists, the entire board is prohibited from acting on the contract unless a legal exception applies.

There are several exceptions. There is an exception if the financial interest is a “remote interest” under Government Code section 1091. A “remote interest” requires the person with the financial interest to be disqualified from participating in the transaction but, upon disclosure of the financial interest in the neighborhood council’s records, allows the neighborhood council board to enter into the transaction. In addition, there is an exception that exists if the financial interest is deemed a “non-interest” under Government Code section 1091.5. A “non-interest” means that the person with the financial interest may participate in the transaction, as well as the neighborhood council board, if in certain cases an appropriate disclosure is made.

Section 1090 applies to a variety of public officials and employees representing government agencies in California.¹⁰ It “also applies to members of [governmental] advisory bodies if they participate in the making of a contract through their advisory function.”¹¹ It applies to board members serving on the City’s certified neighborhood councils because these boards spend public funds for their operations through contracts executed by the Department of Neighborhood Empowerment (DONE) for the benefit of neighborhood councils.¹² Moreover, Section 1090 applies to a variety of public contracts, including employment contracts, leases, sales of goods, consulting services, and development agreements. Neighborhood council boards regularly require contracts for their operations, including supplies, office space, and for neighborhood improvement projects. These contracts are executed in compliance with City contracting rules on their behalf.¹³ By recommending the approval of a specific contract for services or neighborhood improvements, neighborhood council board members are part of the City’s public contracting process.

¹⁰ *Stigall*, 58 Cal. 2d 565; *Thomson*, 38 Cal. 3d 633; *Bailey*, 103 Cal. App. 3d 191; [council members]; *Honig*, 48 Cal. App. 4th 289 [elected state official]; *City Council of the City of San Diego v. McKinley* (1978) 80 Cal. App. 3d 204 [park board member]; *People v. Sobel* (1974) 40 Cal. App. 3d 1046 [a city employee]; and 46 Ops.Cal.Atty.Gen. 74, (1965) [contractors/consultants who perform a public function].

¹¹ *Conflicts of Interests*, California Attorney General’s Office (pamp.) 2004, p. 68; 82 Ops.Cal.Atty.Gen. 126 (1999).

¹² Certified neighborhood councils are also referred to herein simply as “neighborhood councils” or “councils”.

¹³ Under the Neighborhood Council Funding Program, developed by the DONE, neighborhood council boards vote to approve all expenditures. Currently, under the Neighborhood Council Funding Program, the DONE prepares the appropriate written agreements for the neighborhood councils to ensure compliance with City contracting rules. City departments and agencies do not ordinarily prepare written agreements for purchases valued under \$1,000.00. (*Los Angeles Administrative Code* section 9.5) Certified neighborhood councils, therefore, purchase goods for their operations through their Stored Value Cards or from petty cash disbursements unless goods are obtained directly through the City and its established vendors.

“Making a Contract” Within The Meaning Of Section 1090.

If a person is prohibited from participating in a transaction under Section 1090, the prohibition applies to the “making of a contract.” Under Section 1090, a contract having been “made” does not simply refer to the point in time when a neighborhood council member or an official approves, or signs the contract.¹⁴ It also includes when a member or an official, in their official capacity, participates during the preliminary stages of the contracting process.¹⁵ That participation can include preliminary discussions, solicitation of bids, negotiations, and directly or indirectly influencing the decision to make a contract.¹⁶ Thus, a neighborhood council board could be prohibited from entering into a contract if a board or committee member was financially interested in the matter and engaged in early negotiations or discussions of the contract.

Mere membership on the board has import.

“California courts have consistently held that a public officer cannot escape liability for a [S]ection 1090 violation merely by abstaining from voting or participating in discussions or negotiations. [Citation.] Mere membership on [a] board or council establishes the presumption that the officer participated in the forbidden transaction or influenced other members of the council. [Citation.]”¹⁷

Courts have held that,

“[w]here section 1090 applies, it is an absolute bar to a board or commission entering into the prohibited contract. Even if the interested board or commission member abstains from any participation in the matter, [S]ection 1090 applies to prevent fellow board or commission members from being influenced by their colleague. [Citations.]”¹⁸

Applying this principle to neighborhood councils, a neighborhood council board member with a financial interest who has influenced the board to enter into a contract, for example, cannot avoid a Section 1090 violation by resigning from the board just before it recommends approving the contract, or by not appearing at the meeting where the contract is approved.¹⁹ Again, “[t]he purpose of the prohibition is to prevent a situation where a public official would stand to gain or lose something with respect to the making of a contract over which he could exercise some influence in his official capacity.”²⁰

¹⁴ *Stigall*, 58 Cal 2d at 571; *McKinley*, 80 Cal. App. 3d at 212; *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal. App. 2d 222, 237.

¹⁵ *Stigall*, 58 Cal 2d at 569.

¹⁶ *Id.* at 571; *Sobel*, 40 Cal. App. 3d at 1052.

¹⁷ *Thomson*, 38 Cal. 3d at 649.

¹⁸ *Thorpe v. Long Beach Community College District* (2000) 83 Cal. App. 4th 655, 659.

¹⁹ *Stigall*, 58 Cal.2d 565.

²⁰ *Id.* (quoting, *People v. Vallerga* (1977) 67 Cal. App. 3d 847, 867-868, fn. 5).

The Meaning Of “Financially Interested.”

Although Section 1090 is directed at an interest in a contract, the statute does not specifically define the term “financial interest.” Thus, we look at case law to provide further guidance as to the meaning of the term and to understand how the courts have upheld the legislative intent of this statute.

In *City of Imperial Beach v. Bailey*, the court found that a city council member had a conflict of interest due to her ownership of a concession stand (Concession) on a municipal pier, which lease was coming up before the city council for renewal.²¹ Council member Bailey had obtained her financial interest in Concession – a bait, tackle and refreshment stand – under an existing lease with the City of Imperial Beach before she became a councilmember. Although the lease came up for renewal after she became a council member, the court found that Section 1090 prohibited Bailey from exercising the “option” to renew the lease while simultaneously serving as a city council member. The court stated that:

“it is conceded that Hazel Bailey’s integrity is above reproach and we sympathize with her position of having to choose between remaining on the Council or continuing as owner of Concession. However, the purpose of [S]ection 1090 is not only to strike at actual impropriety, but to strike at the appearance of impropriety.”²²

The California Attorney General has identified two unique situations where it found a “financial interest” in a contract: 1) where a public entity board member requested reimbursement for a conference attended by a board member of the spouse and, 2) where a public entity entered into a development agreement with a developer.

Courts have generally agreed with, and have applied, the Attorney General’s analysis when confronted with similar scenarios. For example, the courts have found that “a member of a board or commission *always* is financially interested in his or her spouse’s source of income for purposes of section 1090. This is true even if the husband and wife have an agreement that their own earnings are to be treated as their separate property, since each spouse is liable for the necessities of life for the other [citations omitted].”²³

And, in *Thomson v. Call*, the California Supreme Court held that Section 1090 was violated where a city council member for the City of Albany sold his land to the city through a third party corporate developer.²⁴ The developer, Interstate General Corporation (IGC), sought a zone change and use permit to allow denser housing development on property it owned on Albany Hill. As part of IGC’s request, it also agreed to purchase property that it would convey to the City of Albany for a public park.

²¹ *Bailey*, 103 Cal.App.3d 191.

²² *Id.*, at 197.

²³ 78 Ops.Cal.Atty.Gen. 230 (1995); *Honig*, 48 Cal. App. 4th at 319 and *Thorpe*, 83 Cal. App. 4th at 659.

²⁴ 38 Cal. 3d 633.

Councilman Call had such a parcel to sell on Albany Hill and he sold it to IGC. The property was thereafter conveyed by IGC to the City for the park to fulfill the conditions of the zone change approval. Although Call technically sold his property under contract to IGC, not directly to the City, the Court found that section 1090 had been violated. It said “[a]s part of the transaction at issue Call sold his property to the City using IGC as a conduit. Whether we regard his interest as direct or indirect, it is clearly a pecuniary interest forbidden by section 1090 and by the decisions applying conflict-of-interest rules generally.”²⁵

Of significance, the benevolent purpose of the transaction – a public park carried no weight with the Court in the *Thomson* case. It found that “if the interest of a public officer is shown, the contract cannot be sustained by showing that it is fair, just and equitable as to the public entity.”²⁶

Courts have also found that it does not matter that the financial interest in the contract is immaterial or a small amount for section 1090 to apply. For example, in *People v. Honig*, an elected State official was prosecuted for using his position to steer Department of Education contracts to a non-profit organization employing his wife.²⁷ The court said that to be “‘financially interested’ in a contract within the meaning of section 1090 does not require that the prohibited interest have a material effect on the public official’s source of income. Any interest, except a remote one, which would prevent the official from exercising absolute loyalty and undivided allegiance to the best interest of the state is prohibited under the statute [citation.]”²⁸ The court found that the fact that the officer’s interest “might be small or indirect is immaterial so long as it is such as deprives the [state] of his overriding fidelity to it and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good. [citation]”²⁹ Indeed, the court added, “the prosecution [did] not have to prove fraud, dishonesty, or loss.”³⁰

Another example illustrating a financial interest can be found in *Fraser-Yamor Agency, Inc. v. County of Del Norte*.³¹ There, the County (insured) procured insurance from an insurance company (insurer) that was brokered through the Fraser-Yamor Agency, Inc (agency). Fraser, a principal and major shareholder in the agency, also served as a Del Norte County supervisor, the insured. The court found that Fraser held a financial interest in the contract between the County and the insurance company and stated that “[h]is interest in the agency and in any contracts from which it derives a pecuniary

²⁵ 38 Cal.3d at 646.

²⁶ *Id.* at p. 649; citing, *Capron v. Hitchcock* (1893) 98 Cal. 427 and *Honig*, 48 Cal. App. 4th 289, 314.

²⁷ 48 Cal.App.4th at 305-313.

²⁸ *Id.*, at 328.

²⁹ *Id.* at 315.

³⁰ *Id.* at 322.

³¹ *Fraser-Yamor Agency, Inc., v. County of Del Norte* (1977) 68 Cal. App. 3d 201.

benefit is clearly a financial one because the success of the agency inures to his personal benefit.”³²

Finally, in *People v. Watson*, a case involving a City of Los Angeles Harbor Commissioner, the court found a financial interest based on a debtor-creditor relationship.³³ This case involved bringing the vessel *S.S. Princess Louise* from Seattle to the Port of Los Angeles to serve as an attraction and a restaurant at the port. Charles Sutton, a local restaurateur, spearheaded the effort and needed to lease space from the Port of Los Angeles to dock the ship. Sutton also sought a liquor license as part of the business. City Harbor Commissioner Watson loaned Sutton’s corporation \$10,400 to acquire a liquor license and, at a commission meeting, Watson voted to approve the Los Angeles port lease to dock the ship.³⁴ The floating restaurant opened for business in September of 1966 and, thereafter, Sutton repaid the loan.

In affirming Commissioner Watson’s conviction for violation of sections 1090 and 1097, the court appeal upheld the use of the following jury instruction:

“ ‘financially interested’ means any financial interest which might interfere with a city officer’s unqualified devotion to his public duty. The interest may be direct or indirect and includes any monetary or proprietary benefits, or gain of any sort, or the *contingent possibility* of monetary or proprietary benefits.” (Emphasis added/portions omitted)³⁵

As it considered Watson’s appeal, the court stated that “[w]e must disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts [citation]. However devious and winding the trail may be which connects the officer with the forbidden contract, if it can be followed and the connection made, a conflict of interest is established.”³⁶

As we explain below, however, not every “financial interest” constitutes a prohibited interest that would prohibit a board member or the board from acting on a contract. That statute identifies exceptions that would allow board or board member participation based upon the type of interest held.

³² *Id.* at 215. [The court left unresolved whether Fraser’s financial interest might be deemed a *remote interest* under section 1091.]

³³ *People v. Watson* (1971) 15 Cal. App. 3d 28.

³⁴ Although Commissioner Watson’s wife was the putative owner of the engineering company that loaned Sutton the money for the license - he had transferred his interest in the company to her before his appointment to the Board of Harbor Commissioners – Sutton, nevertheless, delivered a check that was endorsed by Commissioner Watson.

³⁵ 15 Cal.App. 3d at 37.

³⁶ *Id.* at 37.

Exceptions.

Section 1091: Remote Interest.

Section 1091 defines the circumstances when a public board may take action despite the fact that one or more of its members holds a financial interest in a contract. These statutorily described circumstances are known as *remote* interests. Section 1091(a) states:

“An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member ... *if* the officer has only a remote interest in the contract and *if* the fact of the interest is disclosed to the body or board of which the officer is a member and noted in its official records, *and* thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose *without counting the vote of the officer or board member with the remote interest.*”³⁷ (Emphasis added)

Thus, even if a board member has what is considered a “remote interest,” the board may still enter into the contract so long as any member with a financial interest actively disqualifies him or herself from voting.³⁸ Section 1091(b) lists 14 types of interests which are statutorily defined as being “remote.” Examples of remote interests that might apply to neighborhood councils would include an officer or employee of a non-profit corporation or a landlord or tenant of a contracting party.

Section 1091(b) also sets forth the way that a council, commission, or board may vote to approve a contract without the participation of its financially interested member. Besides abstaining from any participation in the contracting process, the member with the financial interest must specifically disclose the nature of the conflict and have it noted in the official records if a vote is contemplated at a public meeting.

Applied to neighborhood councils, this would mean that a neighborhood council board is permitted, for example, to recommend approval of a contract with a non-profit corporation when one or more of its board members also serves as “an officer or employee of [the] nonprofit corporation” since the interest involved here is statutorily defined as a *remote* financial interest.³⁹ The only requirement in this instance is that the board member with the financial interest abstains from participation.

Section 1091.5: Noninterests.

Section 1091.5 defines the circumstances when a board member’s financial interest is statutorily deemed a “noninterest.” An example of a noninterest that might apply to neighborhood councils would include: “. . . a recipient of public services generally

³⁷ *Government Code* section 1091(a). [portion omitted].

³⁸ *Conflicts of Interests*, California Attorney General’s Office (pamp.) 2004, p. 82.

³⁹ *Government Code* section 1091(b)(1).

provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.”⁴⁰ If a neighborhood council member is found to hold a noninterest, the board member (as well as the entire board) may participate in making the contract.⁴¹

Remedies and Penalties.

Violations of the statute can potentially result in civil remedies and/or criminal penalties.

Civil Remedies: Government Code section 1092.

Contracts made in violation of any of the provisions of Section 1090 are “invalid” or void.⁴² Any payment made by the City on a void contract is recoverable and disbursements and future payments on the contract are not enforceable.⁴³

Criminal Penalties: Government Code Section 1097.

Violations of the provisions of Section 1090 are also “punishable by a fine of not more than one thousand dollars (\$1,000), or by *imprisonment in the state prison*,” and a person can be “*forever barred from holding any office in this state*.”⁴⁴ (Emphasis added)

Conclusion.

Invariably, it is necessary to evaluate the factual circumstances that pertain when a conflict of interest question arises. When answering such questions intuition will rarely suffice. Therefore, neighborhood council board members are encouraged to seek assistance from the City Attorney’s Office to avoid conflict of interest problems.

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⁴⁰ *Government Code* section 1091.5(a)(3).

⁴¹ *City of Vernon v. Central Basin Municipal Water District* (1999) 69 Cal. App. 4th 508, 515 (1986); 83 Ops.Cal.Atty.Gen. 246, 247 (2000); 78 Ops.Cal.Atty.Gen. Cal. 362, 369-370 (1995).

⁴² *Government Code* section 1092; *Millbrae Association for Residential Survival*, 262 Cal. App 2d at 236. *Accord, Thompson*, 38 Cal. 3d at 646.

⁴³ *Government Code* section 1095.

⁴⁴ *Government Code* section 1097.

OFFICE OF THE CITY ATTORNEY
NEIGHBORHOOD COUNCIL ADVICE DIVISION

CONFLICT OF INTEREST LAWS GOVERNING NEIGHBORHOOD COUNCILS

THE POLITICAL REFORM ACT

GOVERNMENT CODE § 1090

COMMON LAW BIAS

Board members of Neighborhood Councils who are given governmental decision-making authority, must be mindful of the following conflict of interest law: The Political Reform Act of 1974, as amended (Government Code § 8100, et seq.), Government Code § 1030 et seq, and the common-law conflict of interest rules. Because the City Council exempted the Neighborhood Councils from being required to adopt a conflict of interest code,¹ Neighborhood Council board members are not required to disclose their financial interests by filing a disclosure statement (Form 700) and are subject to the City's Governmental Ethics Ordinance (Los Angeles Municipal Code § 49.5.1 et seq.) However, compliance with state and common law conflict interest laws is still required. A brief explanation of these laws follows.

The Political Reform Act.

The Political Reform Act is a state law that sets up rules and regulations to ensure that governmental officials are free from bias caused by their own financial interests and act in an impartial matter.

Basic Prohibition. Under the Act, public officials are disqualified from participating in government decisions in which they have financial interest. There are four basic tests to ascertain whether a Neighborhood Council board member might have a financial interest under the Act.

Examples of a disqualifying interest:

- The Neighborhood Council board member makes, participates in making, or uses his or her official position to influence the making of a decision;
- the Neighborhood Council board member has a statutorily defined economic interests (his or her own finances or those of members of his or her immediate family, investment in a business, interest in real property, source of income or gifts, management position in a business) that may be affected by the decision;
- It is reasonably foreseeable that the decision will have a *material financial effect* on the Neighborhood Council board member's economic interest;
- The decision will affect the Neighborhood Council board member's economic interest in a way that is distinguishable from its effect on the public generally or a significant Segment on the public.

¹ Los Angeles Administrative Code § 2.20.1

A Neighborhood Council board member who is disqualified must abstain from making, participating in making or attempting to use his or her official position in any way to influence the government decision.

Persons Covered. The Act treats “members of local governmental agencies” as public officials. Public officials who make, participate in the making of, or influence or attempt to influence a governmental decision must comply with the Act’s provisions. Neighborhood Councils have been treated as “local governmental agencies” and board members as “public officials” for the purposes of the Act.²

Participation in decision-making. Neighborhood Councils are advisory bodies. Their role is to make recommendations to the various City decision-makers, including City boards, commissions, City Council Committees and the City Council. City Charter § 907. This role falls within the “make, participate in making, or attempting to influence a government decision” provision of the Act. Since the Neighborhood Councils have been delegated the authority to make “governmental decisions,” even the board member’s votes on “non-governmental” or purely advisory recommendations will be subject to the conflict of interest provisions.³

Economic interests covered. What is a financial interest is often complicated and fact-based, but there are basic types of economic interests that the Act covers:

- A business entity in which a Neighborhood Council board member, or his or her immediate family, owns an investment or in which the Neighborhood Council board member is an officer or director or holds a management position in that business entity;
- real property in which a Neighborhood Council board member or his or her, immediate family, owns interest;
- any person or entity that is a source of income or loans to the Neighborhood Council board member or spouse;
- any person or entity that has given the Neighborhood Council board member a gift within the last year; or
- a Neighborhood Council board member’s personal expenses, income, assets or liabilities, including those of his or her immediate family.

Business investments and business positions. An investment of **\$2000** or more in a business entity by a board member, his or her spouse or dependent children is considered an economic interest. If a board member is a director, officer, partner, trustee, employee or holds a position of management in a business entity that is also considered an economic interest.

² Making recommendations as to whether the City should not enter into a contract will also trigger the Act’s requirements. In this instance, this means making a recommendation about a specific contract which is coming before the City for action or recommending qualifications/specifications for a city contract. Merely advising the City as to whether, for example, the City should pave a certain street or install lighting, which decisions might ultimately result in the City entering into a contract for those services, would not trigger the Political Reform Act requirements for the Neighborhood Council providing this advice.

³ Thus, a board member who makes “governmental decisions” must also be aware of, and comply with, the disqualification rules even when making a purely advisory recommendation, for example, to a City Council Committee or Area Planning Commissions regarding a conditional use permit for a project located within the boundaries of that Neighborhood Council.

Real property. An investment of **\$2000** or more in real property by a board member, his or her spouse, or his or her dependent children or anyone acting on his or her behalf, is an economic interest.

Sources of income and gifts. The receipt by a board member of income of **\$500** or more from an individual or organization within 12 months prior to the decision in question is an economic interest. Gifts totaling **\$440** or more received from a single source within 12 months prior to the decision is an economic interest.⁴ This gift limit is valid through 2012.

Personal financial effects. Expenses, income, assets or liabilities of board members or immediate family are considered an economic interest if those expenses, income, assets or liabilities are likely to go up or down by **\$250** as a result of the decision at issue.

Once a board member determines that he or she has an economic interest, the next step is to determine whether the decision will have a direct or indirect impact upon the board member's interest and whether it is reasonably foreseeable that the decision will have a material effect on the board member's economic interest.

Direct v. indirect interest. Whether a particular impact is material or not also depends upon whether the economic interest is directly or indirectly affected by the decision. A direct interest is generally one that is the subject of the decision; an indirect interest is one that may be impacted because of some connection or relation to the decision.⁵ A direct interest is more likely to create a greater risk of conflict of interest than an economic interest that is indirectly involved in the decision.

Foreseeability and materiality. To have a conflict of interest the effect on the board member's economic interest must be foreseeable (in other words, likely to occur) and be considered "material." In other words, a conflict of interest results if a board member can reasonably predict that his or her decision on a particular matter will have some economic impact (positively or negatively) on his or her economic interest. The Act sets up some basic thresholds to determine whether an economic interest is material:

Business investments and business positions. As a *general* rule, if a decision directly involves a business entity in which the Neighborhood Council board member has an interest, the board member must disqualify himself or herself. However, if the only interest in the company is less than **\$25,000** in stock, the board member may still be able to participate in the decision after a detailed examination of the state's regulations.

If the decision indirectly involves a business entity in which the board member has an interest, a decision's impact would be material if, for large companies such as Fortune 500 companies, the impact on the interest would result in an increase or decrease of the business' gross revenue

⁴ Note: The gift limit is adjusted for inflation every two years. Gov't Code § 89503 (f).

⁵ For example, if a Neighborhood Council board member owns a business that is subject to a permit or approval about which the Neighborhood Council is making a recommendation that is a *direct* impact of that economic interest. If a Neighborhood Council board member owns a business that is located more than 500 feet away from a piece of property that is seeking, for example, to obtain conditional use approval to sell alcoholic beverages about which the Neighborhood Council is making a recommendation, the decision potentially has an indirect impact on the economic interest, i.e., the business of the board member.

of **\$10,000,000** or more in a fiscal year; or results in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of **\$2,500,000**; or results in an increase or decrease in the value of the business entity's assets or liabilities of **\$10,000,000** or more.

At the other extreme, for smaller companies the impact is material if the decision would result in an increase or decrease in revenues of **\$20,000** or more or increase or reduce expenses by **\$5000** or more in a fiscal year, or result in an increase or decrease in the value of its assets or liabilities by \$20,000 or more.⁶

Real property. If the decision affects a board member's property which is located **within 500 feet** of the boundaries of the property subject to the decision, disqualification from acting is generally required *unless* the decision will have no financial impact on the property. If the board member's property is located **more than 500 feet**, there is a presumption that the decision will not have a material financial effect. However, that presumption can be rebutted by proof that there are specific circumstances that would make it reasonably foreseeable that a financial effect will result from the presumption. Leasehold interests may also implicate the conflict of interest rules and have to be evaluated on a case-by-case basis.

Sources of Income. If the decision will have **any** financial effect upon an individual who is a source of income for the board member and that source is directly involved in the decision, the effect is determined to be material. The most common source is the employer of the board member or spouse. If a board member or his or her spouse owns 10% or more of a business, clients of that business may also be sources of income.

However, if the source of income is indirectly involved in the decision, application of the state's regulations on the particular facts of this source is required to determine if the board member has to recuse him or herself from acting on the matter.

Distinguishable from the public. Even if a board member's economic interest is foreseeable and material, he or she does not have a legal conflict of interest unless the decision's impact on his or her economic interest is *different* from the general public. In other words, if a board member is participating in a decision on an issue that will affect the general public's financial interests in the same manner as his or her own interests, even though the decision will have a material economic impact on the board member's financial interest, it does not create a conflict of interest. Under this rule, the decision must affect the board member's interest in *substantially the same manner* as the interests of the public.

An example of this would be if the City is embarking upon a plan amendment and zone change for a community plan area and a board member's property is subject to a zone change as is every other property within the community plan area. Although the board member's property is directly affected by the zone change, the property is impacted in substantially the same manner as other members of the public since all are being rezoned, so there is no conflict of interest requiring recusal. The state has developed specific percentage and numerical thresholds for determining when a group of people constitute a significant number to make a determination whether a decision affects the public in the same manner.

⁶ The Political Reform Act also describes the impacts of other businesses that fall *between* these parameters, which are not discussed here.

Decisions related to contracts - Government Code § 1090, et seq.

In addition to the requirements of the Political Reform Act, state law contains special rules governing conflicts of interest relating to government contracts. A Neighborhood Council board member may not be *financially interested* in *any City contract* that he or she is involved in making. Thus, any participation by a board member in the process by which a contract is developed, negotiated or approved, *including making a recommendation on the contract*, is a violation of Government Code § 1090 if the board member has a financial interest in that contract. **Also, if the board member has a financial interest in a contract, the entire Neighborhood Council board might not be able act on the matter.**

However, there are some interests called "remote interests" which would disqualify a board member but not the entire Neighborhood Council board. Gov't Code §1090 prohibitions apply to oral as well as written contracts. Financial relationships in a contract. would include, but are not limited to: employee of a contracting party, attorney, agent or broker of a contracting party, supplier of goods or services to a contracting party; landlord or tenant to a contracting party; officer, employee or board member of a nonprofit corporation of a contracting party. This topic is discussed in greater detail in a later section of this Manual.

Common law conflict of interest rules.

Basic principles of bias and conflict of interest rules that the courts have developed over time (common law) also apply to Neighborhood Council decisions even if the statutory rules may allow a board member to participate in an action.⁷ As the Attorney General has concluded, "[t]he common law doctrine against conflicts of interest . . . prohibit public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." 64 Ops. Cal. Atty Gen 795. As stated by the court of appeal, "[a] public officer is impliedly bound to exercise the powers conferred on him with diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51.

This doctrine applies in situations involving both financial *and* nonfinancial interests. This means that simply having a personal relation to the matter could be construed as tainting a board member's decision-making because he or she is perceived to be biased or making the decision based on his or her personal interest, rather than for the good of the public.⁸

However, having general personal views and opinions about a matter is generally not sufficient to show bias. *Andrews v. Agricultural Labor Relations Board* (1981) 28 Cal. 3d 781. The mere appearance of bias is generally not sufficient for disqualification; but a disqualifying bias may be found if a showing can be made that a public officer has a specific prejudice against a person affected by a decision or a showing that a public officer's decision making ability is so impaired such that s/he cannot render a decision based on appropriate grounds. *Id.* at 792. Thus, Neighborhood Council board members should always be alert to whether their private interests, whether financial or otherwise, would be enhanced by any particular action they take on an item

⁷ Although Los Angeles City Charter § 222, contains its own conflict of interest provisions based on an "appearance standard" these standards for disqualification are not applicable to Neighborhood Council board members. However, Neighborhood Councils are free to develop their own appearance standard and ethics rules in their bylaws.

⁸ Even without a financial interest, the public officer must have some personal advantage or disadvantage at stake. See, e.g., *Clark v. City of Hermosa Beach* (1996) 48 Cal. App 4th 1152;88 Op. Atty.Gen Cal 32 (2005).

before them. Although not legally required, Neighborhood Council members should avoid even the appearance of bias to avoid allegations that might cause the integrity of the neighborhood council and its members to be questioned.

Penalties.

Violations of the Political Reform Act and Government Code § 1090 can carry significant penalties.⁹

Violations of the Political Reform Act can result in civil actions, criminal prosecution and/or administrative sanctions, injunctive relief or in some cases, prohibition against holding future elective office, depending upon the nature of the violation and the jurisdiction of the enforcement agency.

Violations of Gov't Code § 1090 are prosecuted as a felony and a conviction could, in addition to the imposition of a criminal fines and potential imprisonment, result in a lifetime ban from holding any public office in the State of California. In addition, contracts that are entered into in violation of this statute are void as a matter of law.

Finally, any person can file suit in civil court alleging violations of the Act.

Identifying conflicts and disqualification.

Because severe penalties may apply to a Neighborhood Council board member for violations of the conflict of interest laws, it is important that board members identify their economic interests that may pose potential conflicts. The eight part test set forth earlier should help board members identify what type of economic interests they have.

If a board member has either an economic interest in a decision that requires disqualification or is disqualified due to the application of the "common law doctrine" of a conflict of interest, the board member must disclose the interest which is the subject of the conflict as well as the fact that he or she is disqualifying himself or herself from any participation in the decision. The board member also may not do anything to influence the decision.

If a board member is disqualified from acting on a meeting agenda item and he or she is present at the meeting, he or she should make a public announcement identifying the economic interest which is the subject of the conflict and the fact that he or she is disqualified from any participation. After announcing the recusal from participation, the board member should excuse himself or herself and leave the room while that item is pending.

Summary.

⁹ Note: The City Attorney's Office cannot defend or indemnify a board member who is charged, either civilly or criminally, with a violation of either the Political Reform Act of Gov't Code § 1090. In addition, regarding the attorney-client privilege the privilege applies to confidential communications between the attorney and the client. Although the City Attorney is the legal advisor to the Neighborhood Council board, the City's client is the municipal corporation, the City Attorney's Office is willing and able to assist individual Neighborhood Council board members with legal advice, the advice given may be disclosed to the Neighborhood Council board and to any other City entity.

Any time any City business is before a Neighborhood Council board member that involves:

- a business in which he or she or a member of his or her family has an investment;
- an entity of which he or she is an officer or director or holds some position of management;
- real property in which he or she or a member of his or her family has an interest;
- a source of income to him or her or a member of his or her immediate family;
- a source of gifts to him or her; or
- any person or entity with which he or she has a relationship other than in his or her capacity as a City official (e.g, a friend, person with whom he or she has a business relationship or an organization in which he or she holds some position of importance),

board members should contact the City Attorney assigned to his or her Neighborhood Council for advice. ¹⁰

You may also seek advice from the Fair Political Practices Commission (FPPC) at their toll free help line at 1-866-ASK-FPPC, or may ask for a formal written opinion.¹¹

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¹⁰ The City Attorney's office generally will not provide information relating to allegations of conflict of interest matters relating to third persons (persons other than those making the inquiry); only the board member who is concerned about his/her own economic interest should contact the City Attorney's Office. The one exception is that any board member can and should inquire about the ability of its board to enter into a contract that might implicate Gov't Code § 1090.

¹¹ Formal written opinions take a minimum of 21 days but *only* written advice from the FPPC provides immunity from prosecution if acting with that advice.

OFFICE OF THE CITY ATTORNEY
NEIGHBORHOOD COUNCIL ADVICE DIVISION

HOW TO CONDUCT A PUBLIC MEETING

As a Neighborhood Council which operates in a representative capacity and is subject to the open meeting laws of the state of California (The “Brown Act”) it is important to conduct your meetings efficiently and in a manner that is fair and inclusive and leaves one with the impression that everyone was treated fairly and objectively. Since the bulk of your Neighborhood Council work is accomplished at regular, and sometimes, special meetings of your entire board, or committees, it is important to know how to effectively conduct a public meeting.

Professionalism.

It is important that members of the public, your stakeholders and fellow board members respect the process. For them to do that, your meetings should be conducted in a professional manner to demonstrate that the board members are taking their roles as Neighborhood Council leaders seriously. Your Neighborhood Council President is the leader chosen to guide your Neighborhood Council and the tone of your Neighborhood Council will be delivered from the leadership of the person you elect or select as President. Your President, however, has no greater authority than granted by the board and your board rules and every board member has an equal vote on matters that come before them.

If your President is new to conducting meetings, he or she should take advantage of the online training programs that are available on the Department of Neighborhood Empowerment website. Professional courtesy to one another and to members of the public and stakeholders is a must. The President or Chair must ensure that such courtesies during public meetings take place. While it is appropriate for your members to disagree and indeed, heartily debate issues, those debates should not devolve into a shouting match or worse, as the productiveness of your meetings will soon deteriorate.

At every Neighborhood Council meeting, individual board members should be prepared for the meeting, and the President should provide an opportunity for each board member to weigh in on the issue at hand. Members of the public and your stakeholders should be able to understand what is going on at the meeting and the decision making process.

While not required, if your Neighborhood Council has developed specific rules about how meetings are to be conducted, those should be explained in the beginning of the meeting, after it has been called to order by the Chair or President. Those “ground rules” might include an explanation of the order of agenda items, if there are any speaker time limits, how time limits will operate, and in the case of a presentation of a matter, the order of the presenters, etc. This should be done at the beginning of every meeting to ensure that people know and understand these ground rules and as a reminder to others.

Routine items, such as the approval of Minutes, may be handled by a “consent” motion (no formal vote need be taken) unless there are corrections to be made to the minutes.

Knowledge.

It is important that all of your board members understand the rules under which your Neighborhood Council operates. Thus, all board members should be familiar with and have their own personal copies of your Neighborhood Council’s bylaws and any other standing or procedural rules.¹ A *basic* understanding of parliamentary rules is also helpful in conducting your meetings, but keep in mind that not all parliamentary rules of procedure will necessarily apply to your Neighborhood Council, because as a City entity, meetings are conducted differently than those in general assemblies.² The Department has informational pamphlets about parliamentary procedures that can assist your board members. Your public meeting will be governed by the Brown Act. Gov’t Code § 54950 et seq. All Neighborhood Council board members should review the materials that the Department and the City Attorney have provided, should attend the training classes offered and have a working knowledge of the Act to avoid inadvertent violations of the law. Your board should have a mechanism to educate new board members to their Neighborhood Council positions and ensure that they have been provided training materials.

Conflicts of interest.

Be alert to potential conflicts of interests on upcoming agendas that might affect your ability to participate in the discussion and action of a particular item. Not being able to vote on an item also may affect the quorum necessary for the board to act on the item. Should you be required to recuse (not participate or vote on an item) yourself from an item because of a conflict, you should notify your Board President or Secretary as soon as possible. At the meeting, if there is an item that you may not participate in due to a conflict of interest, you must make a brief public announcement identifying either the economic interest or the personal interest under the common law rules that require your recusal, and leave the room while the matter is pending. You may return to the meeting and fully participate in the meeting after the item has been dispensed with.

¹ If your Neighborhood Council has not yet adopted procedural rules of order, you may wish to consider doing so as these rules can help guide your board as you conduct your public meetings. Rules of Order generally set forth information, including but not limited to, election of officers, meeting days and time, who presides over the meeting in absence of the President, the usual order of business that will take place at meetings, how special meetings are called, how committees are created, how votes are taken, whether Neighborhood Council board members may “abstain” from voting, how public comment is taken, etc.

² For example, while Robert’s Rules of Order would allow a member of an assembly to make a motion from the floor, Neighborhood Councils are governed by a board which takes action on items, and thus make the motions that move an item forward.

Preparation.

Be familiar with the issues that are coming up at your meeting so you can make an informed decision and avoid “voting with the pack.” Your meetings will run more smoothly and your Neighborhood Council will be considered an effective advocate for your community by both the public and the City decision makers that you are advising, if your board members understand the issues at hand and are able to engage and debate the issues at the meetings. If materials are disseminated before your meetings, it is essential that all Board members review them before the meeting so that you are ready to engage in discussion on the item.

Meeting space and setup.

Be familiar with your meeting space needs so that you can comfortably accommodate all members of the public who wish to attend your meetings. If you need special equipment (video, audio, speakers, translation devices) make sure you contact Department staff early enough so that they can accommodate your request. Make sure your meeting space complies with the Americans with Disabilities Act and is accessible to the disabled. If in doubt, contact the Department who can seek assistance from the City’s Department of Disability. For safety purposes, know where the emergency exits are at your meeting facilities and inform your local law enforcement agency of your meeting locations. If need be, if you anticipate problems at any particular meetings, you should request a member of the Los Angeles Police Department to be present, which may deter unruly conduct.

Regular and special meetings.

Under the Brown Act, you can have regular or special meetings. Special meetings may be called and the agenda must be posted within 24 hours of the meeting. Notice of the special meeting must be delivered to each Neighborhood Council board member and the notice must contain the description of the topics that will be discussed and acted upon at the meeting. Special meetings should be called for a specific purpose, and no other business other than that for which the special meeting was called, may be acted upon.³ The standard meeting procedures discussed below may apply to either a special or regular meeting.

Standard meeting procedures.

Under the Plan and Regulations governing the citywide system of Neighborhood Councils, the governing body (“NC board”) makes its decisions at regular and special meetings of the Neighborhood Council. Thus, the public perception of the effectiveness of your

³ Special meetings are generally those meetings “held at a time different from that of any regular meeting, and convened only to consider one or more items of business specified in the call of the meeting.” See, Robert’s Rules of Order, 10th Ed. § 9, p. 89; See also, Gov’t Code 54956.

Neighborhood Council is based, in large part, on the Neighborhood Council's conduct at meetings. At a minimum, it is important to treat everyone fairly and objectively and each meeting should be run for the benefit of the person who has never before attended one of your meetings. The following is a standard meeting format, followed by many city commissions:

Opening the meeting.

1. The President calls the meeting to order.⁴
2. The Secretary will call the roll and identify whether there is a quorum present
3. The President or Secretary reviews the NC board's procedures at the beginning of each meeting (This may include use of speaker cards, time limits for public comment, how public comment will be taken, etc.)
4. The President announces any changes to the agenda (whether items will be taken out of order/continued etc.)

Conducting the meeting.

1. Follow the agenda. Under the Brown Act, the board can only "*discuss, deliberate or take action*" on items that are listed on the agenda. Your President should ensure that discussion on each item by your board does not stray too far afield from the topic that is listed on the agenda. The President should announce and describe each item that is being discussed and acted upon. For each item, the President should invite questions from the Board, open the item for public comment, close the public comment period, and then open the item for discussion by the board. All board members should be given the *opportunity* to weigh in on the issue. The President should govern the flow of discussion and invite the board members to comment.

2. Public hearings. On occasion, your board may wish to hold a public hearing on a particular development project, or other matter in which there are proponents and opponents who wish to present their position on the matter for your board's consideration and/or formal recommendation to the City's decision makers. These may include hearings that may in the future be delegated to you by the City Council pursuant to City Charter § 908. Minimum rules of due process may apply to assure that individual rights to be heard are not implicated. Again, your Neighborhood Council may wish to adopt Rules of Order to determine how your public hearings will be conducted, how time limits (if any) are to be established, the order of testimony, etc. An example of a format where a developer

⁴ Some Neighborhood Councils open with a Pledge of Allegiance or Invocation. These are optional. However, be aware that the use of Invocations may not be sectarian. See, *Rubin v. City of Burbank* (2002) 101 Cal. App. 4th 1194 (rev. den. 2002 Cal Lexis 8622).

("applicant") is proposing a project includes the following steps:

1. The President announces the matter and opens the public hearing and identifies the order in which "testimony" will occur and any applicable time limits.
2. The "applicant" makes a presentation on the project.
3. NC board members may ask questions of the "applicant."
4. Identified "opponents" of the project may speak; if none, public comments may be taken on the project.
5. "Applicant" is allowed to present a rebuttal, if any, to comments.
6. The President closes the public hearing on the item.
7. The President invites discussion from the board and by motion and a second to that motion, a "vote" or "recommendation" regarding the project, if sought, is taken.
8. After the vote or recommendation, the President announces the results. (Ex: "The motion [carried/failed]. The recommendation of the board will be to_____the project.")

3. Making decisions. Your actions should be done publicly at the meeting pursuant to the Brown Act. Oral or hand votes can be taken from all the NC board members and your Secretary or President should announce the results orally after the motion is acted upon. Your board Rules of Order should determine whether board members may abstain or not from voting on motions coming before it.

Maximizing the meeting potential.

Holding an effective meeting will help your Neighborhood Council reach its potential and effectively utilize your volunteer board resources. In effective meetings, members of the board focus on the subject under consideration in an effort to reach a conclusion--either through consensus or by majority vote. The President must be able to keep fellow board members from focusing on personalities, or issues that have nothing to do with the item before it. The President should ensure that there is an open dialogue and opportunity to be heard by all the parties: applicants, opponents, stakeholders, members of the public and fellow Neighborhood Council board members. The following are guideposts ⁵ that will

⁵ These ideas were presented in the League of California Cities, Planning Commissioner's Handbook, 2000.

help any Chair or President run an effective meeting and maximize the potential of your Neighborhood Council:

1. Start the meeting on time.

2. State the reasons for the meeting (Opening statement of the NC meeting and that there are items for consideration/action). Inform the attendees of any time restraints

3. Helpful Hints:

- Ask for clarification and restraint when someone rambles or deviates the discussion.
- Ask to hold off new topics while another is under discussion.
- Constructively evaluate an idea not yet accepted before totally dismissing it.
- Get back to people when you have asked them to wait.
- Keep the public informed of the place on the agenda and what stage it is at.
- Prevent people from talking at the same time.
- Protect fellow board members and the public from verbal attacks by others.
- Keep comments directed to the Chair, not between members, stakeholders or members of the public.
- Restate motions before they are voted upon.
- Keep an eye on the clock and signal, in advance, that the meeting deadline is about to end.
- Keep on the schedule, be tactful.
- Call for a break during long meetings and reconvene on time.

4. Facilitate discussion by:

- Asking for suggestions from the group as a whole.
- Checking whether a suggestion is acceptable to those who expressed concerns.
- Encouraging incomplete or tentative ideas.
- Attempting to obtain consensus.
- Keeping the discussion focused.
- Intervening when members disagree.
- Not using powers of the chair unfairly.
- Remaining impartial during heated debate.
- Probing for the concern behind a question.

5. At the close of the meeting:

- Summarize the results or decisions of the meeting.
- Indicate follow-up actions to be taken and by whom.
- Indicate when the next meeting will take place.
- Thank the members and the public for their attendance.

Conclusion.

While there is no one way to conduct any particular meeting, we hope this guide will establish some basis parameters and suggestions to help you more effectively conduct your meeting.

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COMPETITIVE BIDDING AND GENERAL REQUIREMENTS OF CITY CONTRACTS

Office of the City Attorney – Neighborhood Council Advice Division

AB 1234 ETHICS TRAINING

Basic Overview

Neighborhood councils have been given the authority to engage in financial transactions by making expenditures of \$1000 or less per transaction via their “shared value card.” However, neighborhood councils have not been given the authority to enter (“execute”) contracts for certain types of vendor contracts, leases or personal services agreements. Those should be executed on behalf by the General Manager of the Department of Neighborhood Empowerment (“DONE”) for the benefit of neighborhood councils (as in the case of neighborhood council leases, via the Neighborhood Council Leasing program) and in compliance with the rules and regulations on City contracts as provided for in the City Charter, the Los Angeles Administrative Code or other authorities.

Nonetheless, neighborhood councils should have a basic understanding of the City’s contract rules to understand how they should expend their funds and when they should seek assistance from the DONE. The following represents a *brief* summary of selected City Charter (“CC”) and Administrative Code (“LAAC”) sections regarding competitive bidding and general requirements of City contracts. These rules are very complex and this summary touches upon only the basic components of the City’s rules.

General City Contracting Rules

The City’s contracting rules basically apply to any contract over \$1000. City contracts over \$1,000 must be in writing and must be approved by the City Attorney as to form. CC § 370; LAAC § 10.2. They must be signed on behalf of the City by the Mayor, board, or the officer/employee *authorized* to enter into the contract, or for contracts authorized by the Council, by the person authorized by the Council. CC § 370; LAAC § 10.2. As noted above, neighborhood council board members are *not* authorized to execute contracts on their own, and should request assistance of the DONE for any contract that they wish to enter into amounts over \$1000.¹

¹ Expenditures over \$1000 for certain types of services could be provided by the use of a “Letter Agreement” or simple invoice. Neighborhood councils should consult with the DONE before utilizing these types of agreements to determine the appropriateness of this vehicle.

City Not Bound

Compliance with the City's rules is important because the City is not bound by any contract unless it complies with the requirements of the Charter and the City's Administrative Code. CC § 370; LAAC § 10.2. Thus, the City is not bound by a contract entered into for over \$1000 that is not a) in writing, b) signed by the General Manager of the DONE on a neighborhood council's behalf² and c) approved as to form by the City Attorney. There are also certain standard contractual provisions that must accompany every City contract, depending upon its length and/or monetary amount.

Contracts Longer Than Three Years

There are additional rules for lengthy contracts. In addition to the requirements of the contract needing to be in writing, signed, and approved as to form by the City Attorney, City contracts for longer than three years, including renewal options, must also be approved by the City Council. CC § 373; LAAC § 10.5.

Competitive Bidding Requirements

Although there are several exceptions, certain types of City contracts are subject to competitive bidding requirements or must be awarded based on competitive proposals. CC §§ 371 and 372; LAAC §§ 10.15 and 10.17. City contracts subject to competitive bidding requirements are awarded to the lowest responsive and responsible bidder furnishing satisfactory security for performance. CC § 371 (a). City contracts subject to competitive proposals are awarded following the review and evaluation of competitive proposals submitted by prospective contractors. Price is not the only factor used in the evaluation of competitive proposals.

Exceptions to Competitive Bidding Requirements

There are some City contracts that are allowed to be executed without complying with the formal competitive bidding requirements. Many neighborhood council contracts may fall within those categories; however, you should contact your DONE Advocate to determine whether your proposed contract meets these requirements, and satisfies all other City rules before attempting to finalize an agreement with a contracting party. The following categories are the type of contracts that are allowed to be executed without complying with the competitive bidding rules:

Contract less than \$25,000. City contracts for less than \$25,000 or contracts for the purchase of materials, supplies, equipment, or the rental, repair or

² However, a board representative of the neighborhood councils may also be a signatory on a contract made on behalf of a neighborhood council, along with the signature of the General Manager of DONE, as is the process for neighborhood council leases.

maintenance of same for an amount not to exceed \$100,000. CC § 371 (e)(1); LAAC § 10.15 (a)(1).

Professional Expertise. City contracts for professional, scientific, expert, technical, or other special services of a temporary and occasional character where competitive bidding is not practical or advantageous. CC § 371 (e)(2); LAAC § 10.15 (a)(2).

United States Patent. City contracts for the furnishing of articles covered by a United States patent. CC § 371 (e)(3); LAAC § 10.15 (a)(3).

Leasing. City contracts for leasing (where City is the lessee) or the purchase of real property when approved by majority vote of the City Council. CC § 371 (e)(4); LAAC § (a)(4). As noted, the City has developed a special program for neighborhood council leases. If your neighborhood council is interested in leasing office space, you should contact your DONE Advocate for assistance. A standard lease has been designed just for neighborhood council office space.

Urgent Necessity. City contracts for repairs, alterations, work or improvements declared to be of urgent necessity for the preservation of life, health or property. CC § 371 (e)(5); LAAC § 10.15 (a)(5).

Declaration of War. City contracts entered during declared war or declared federal, state or local emergency where the City Council has suspended the competitive bidding requirements. CC § 371 (e)(6); LAAC § 10.15 (a)(6).

Exclusivity. City contracts for repair or parts obtained from the manufacturer or its exclusive agent. CC § 371 (e)(7); LAAC § 10.15 (a)(7).

Cooperative Arrangement. City contracts for cooperative arrangement with other governmental entities for the utilization of the purchasing or professional service contracts of those agencies. CC § 371 (e)(8); LAAC § 10.15 (a)(8).

Competitive Bidding Impractical. City contracts for services where competitive bidding would be undesirable, impractical or impossible or otherwise permitted by law. CC § 371 (e)(10); LAAC § 10.15 (a)(10).

Competitive Bidding/Proposals Preferred.

Notwithstanding the above exceptions, where competitive bids are not required for a City contract, the City's policy is that competitive proposals or bids shall be obtained as far as reasonably practicable and compatible with the City's interest. CC § 372; LAAC § 10.17. Other provisions of the City's contracting program require the City to seek Requests for Proposals (also known as "RFP's") before entering into certain agreements.

Practice Tip:

Because of the complexities of the City's contracting process, if your neighborhood council is contemplating spending funds in ways other than using the stored value card, you should contact, as early as possible, your DONE Advocate or the DONE Funding Program Director to determine whether a contract needs to be executed and how to comply with the City's contracting rules.