FAIR POLITICAL PRACTICES COMMISSION
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April 25, 2012

Patrick Whitnell
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1400 K Street, Suite 400
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Re: Your Request for Advice
**Our File No. I-12-060**

Dear Mr. Whitnell:

This letter responds to your request for advice on behalf of the California League of Cities regarding applicability of the conflict-of-interest code and financial disclosure provisions of the Political Reform Act (the "Act")[1] to new local government agencies and officials holding positions in those agencies created by Assembly Bill 1X 26 ("AB 1X 26"), that was passed by the Legislature and signed into law in 2011. Because you have sought general guidance not limited to a particular public official or specific set of facts, we are treating your request as one for informal, rather than formal, assistance. (See Regulation 18329(b)(8)(B), (C) and (F).)[2]

## FACTS

Since the 1950's, California redevelopment agencies have functioned under the Community Redevelopment Law (Health and Saf. Code § 33000 et seq.). AB 1X 26 (Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 5) made extensive amendments to the Community Redevelopment Law. You have provided a summary of the provisions of the legislation that you think are relevant to your questions and we rely partially on this, as well as our own reading of the legislation, to summarize the pertinent provisions. However, given the length and complexity of the legislation and the possibility of further litigation on its provisions, we caution that our advice could change if there emerges a subsequent alternative interpretation or version of the legislation that affects applicability of the Act.

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[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

The legislation provides for the dissolution of redevelopment agencies and an administrative process to wind down agency activities and dispose of agency assets, including distribution of all unencumbered redevelopment agency assets to the cities, county and various special districts in the county entitled to receive property tax proceeds. (Health and Saf. Code § 34177(d).) It creates two new public entities: successor agencies and oversight boards.

Successor agencies are designated as the successor entities to the former redevelopment agencies. (Health and Saf. Code §§ 34171(j), 34173(a).) All authority, rights, duties, and obligations previously vested with the former redevelopment agency are now vested in the successor agency. (Health and Saf. Code Secs. 34173(b), 34177.) The entity that serves as the successor agency is determined in one of several ways:

1. The city, county, city and county, or entities forming the joint powers authority that created the redevelopment agency is, in your view, by implication under the statute, designated as the successor agency unless it adopts a resolution electing not to serve as the successor agency. (Health and Saf. Code Sec. 34173(d)(1).)

2. If an agency that created the redevelopment agency elects not to be the successor agency, then the local agency (defined as "any city, county, city and county, or special district in the county of the former redevelopment agency") in the county that first adopts a resolution electing to become the successor agency, and submits the resolution to the county auditor-controller, is deemed the successor agency. (Health and Saf. Code § 34173(d)(2).) Thus, for example and however unlikely, it is possible that a school district or another city in the county of a city that originally formed the redevelopment agency could become the successor agency for that redevelopment agency.

3. If no local agency elects to serve as successor agency, a public body referred to as a "designated local authority" is formed, and has all the powers and duties of a successor agency. The Governor appoints three residents of the county to serve as the governing board of the authority. (Health and Saf. Code § 34173(d)(3).)

Each successor agency has an oversight board composed of seven members. (Health and Saf. Code §§ 34171(f), 34179(a).) The oversight board directs staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities. (Health and Saf. Code §§ 34177(e), 34179(c), 34180, 34181.) The board members are selected as follows: 1. One member appointed by the county board of supervisors; 2. One member appointed by the mayor for the city that created the redevelopment agency; 3. One member appointed by the largest special district; 4. One member appointed by the county superintendent of education; 5. One member appointed by the Chancellor of the California Community Colleges; 6. One member of the public appointed by the county board of supervisors; 7. One member representing the employees of the former redevelopment agency appointed by the mayor or the chair of the board of supervisors. (Health and Saf. Code § 34179(a)(1-7).) The Governor may appoint individuals to fill oversight board member seats not filled by May 15, 2012, or that remain

vacant for more than 60 days. (Health and Saf. Code c 34179(b).) For purposes of the Act, the oversight board is deemed to be a local entity. (Health and Saf. Code §§ 34179(e).) Oversight board members do not receive compensation or reimbursement for expenses. (Health and Saf. Code §§ 34179(c).) Also, under Health and Safety Code, section 34179(j), commencing on and after July 1, 2016, all oversight boards existing in a county are consolidated under one oversight board whose members are appointed by various entities similar to those who appoint members to the original oversight boards.

You state that the relationship of the successor agency to the city or county that created the redevelopment agency is "murky at best." With respect to the successor agency, various sections of AB 1X 26 imply that the city or county that created the redevelopment agency is the successor agency (unless they affirmatively elect not to be). (See, e.g., Health and Saf. Code §§ 34171(j), 34173(a), 34173(d)(1).) But, in your view, other sections of the legislation may indicate that a different interpretation is required. For example, Health and Safety Code section, 34190(c) provides that the successor agency is a public agency for purposes of the Meyers-Milias-Brown Act (MMBA) and Health and Safety Code Section 34190(d) provides that the successor agency shall become the employer of all employees of the redevelopment agency as of the date of the agency's dissolution. In your view, these sections seem to imply that the successor agency is a separate public agency. Further, proposed amendments to AB 1X 26 provide that a successor agency is a public entity separate from the entity or entities that authorized the creation of each redevelopment agency.

In contrast, you state that it appears clear from the legislation that the oversight board is a separate public agency from the city or county that created the redevelopment agency. As noted above, the oversight board is a local entity for purposes of the Act (as well as the Public Records Act (Sec. 6250 et seq. and the Brown Act (Sec. 54950 et seq.)). Further, the oversight board has a fiduciary duty to the taxing entities that benefit from the distributions of property tax, which would include cities and counties. (Health and Saf. Code § 34179(i).) This same section also provides that the provisions of Section 1090 apply to oversight boards. Thus, in your view, the legislation apparently makes clear that the oversight boards are separate legal entities from the cities and counties that created the redevelopment agencies.

## GENERAL SUMMARY OF THE ACT'S PROVISIONS APPLICABLE TO FINANCIAL DISCLOSURE BY PUBLIC OFFICIALS AND CONFLICT-OF-INTEREST CODES

The Act requires specified public officials of state and local government agencies to periodically file Statements of Economic Interests (FPPC Form 700) disclosing defined financial interests. These officials fall into two categories: (1) Officials holding positions specified in Section 87200, who are required to disclose the broadest range of financial interests (Sections 87200 – 87210); and (2) Officials holding agency positions that involve participation in government decisions that have financial impacts. These positions are designated in the agency's conflict-of-interest code and disclosure for each position is tailored to the scope of the official's job duties. (Sections 87300 – 87313.)

Each government agency is required, within certain timelines, to adopt a conflict-of-interest code (Section 87300) and amend it to reflect changes in the decision-making positions in the agency (Section 87306). It is the Act's stated policy that conflict-of-interest codes are formulated at the most decentralized level possible, with issues of what should be deemed an "agency" resolved by the code reviewing body. (Section 87301.) The code reviewing body is the government agency charged with reviewing and approving an agency's conflict-of-interest code. No code is effective unless approved by the code reviewing body. (Section 87303.)

Section 82011 details which agencies are code reviewing bodies. As is pertinent to your questions, the following are the code reviewing bodies for local government agencies: (1) The Fair Political Practices Commission (the "Commission") for any local government agency with jurisdiction in more than one county (Section 82011(a)); (2) The county board of supervisors for any county agency and any other local government agency with jurisdiction wholly within the county, other than the board itself, an agency of the judicial branch or a city agency (Section 82011(b)); and (3), the city council for any city agency except for the council itself (Section 82011(c)).

Section 87500 states where public officials are required to file their Statements of Economic Interests. As is generally pertinent to your question, officials in local government agencies file as follows: (1) With the county clerk, if the person holds the office of chief administrative officer, district attorney, county counsel, county treasurer, or member of the board of supervisors (Section 87500(e)); (2) With the city clerk, if the person holds the office of city manager or chief administrative officer, city councilmember, city treasurer, city attorney, or mayor (Section 87500(f)); (3) With his or her own agency, if the person is a planning commissioner (Section 87500(g), head of a local government agency, or member of a local board or commission for which the Commission is the code reviewing body (Section 87500(l); and (4) With his or her own agency or the agency's code reviewing body as designated by the code reviewing body, if the person is not otherwise covered under (1) – (3) above (Section 87500(p)).

## QUESTIONS AND CONCLUSIONS

1. **Who adopts the conflict-of-interest codes for the successor agency and the oversight board?**

**Conclusion:** Unless determined otherwise by their code reviewing body, the successor agency and the oversight board both adopt their own conflict-of-interest codes.

**Analysis:** As set forth in Section 87300, each agency is required to adopt its own conflict-of-interest code. Furthermore, the Act, in Section 87301, requires that each conflict-of-interest code be formulated at the most decentralized level possible, which indicates that it is desirable that an autonomous or semi-autonomous governmental entity be classified as an "agency" and adopt its own code because it is most familiar with the job duties of its officers and employees. However, Section 87301 ultimately leaves the determination of what constitutes an "agency," and thus the decision of which entity is obligated to adopt the code, to the code reviewing body.

For example, assume that a city elects to be the successor agency for either its own or another entity's redevelopment agency. Based on the conclusions and analysis in Questions 2 and 3 below, the city council would therefore be the code reviewing body for both the successor agency and its oversight board and, under Section 87301, could: (1) determine that the successor agency or oversight board, or both, are new "agencies" and require them to adopt new conflict-of-interest codes; or (2) determine that the city itself is the "agency" and amend its own conflict-of-interest code to cover designated employees in the successor agency and oversight board.

2. **Who are the code reviewing bodies for the successor agency and the oversight board?**

**Conclusion:** The code reviewing body for a successor agency and its oversight board (except for consolidated oversight boards formed pursuant to Health and Safety Code Sec. 34179(j), see below) are as follows:

If a city, or subdivision thereof, serves as a successor agency, the code reviewing body of the successor agency and its oversight board is the city council. (Section 82011(c).)

If a county, city and county, "designated local authority" or other local government agency with jurisdiction wholly within a county, or subdivision thereof, serves as a successor agency, the code reviewing body of the successor agency and its oversight board is the county, or city and county, board of supervisors. (Section 82011(b).)

If a "designated local authority" or other local government agency with jurisdiction in more than one county, or subdivision thereof, serves as a successor agency, the code reviewing body of the successor agency and its oversight board is the Commission. (Section 82011(a).)

The code reviewing body of an oversight board formed on or after July 1, 2016 pursuant to Health and Safety Code Section 34179(j) is the county board of supervisors.

**Analysis:** At the outset, we think that a successor agency and oversight board should have the same code reviewing body. One of the purposes of the Act is to require public officials to disclose information about their financial interests that can be materially affected by their official actions and to disqualify them from acting when they have conflicts of interest. (Section 81002(c).) As the agency with the primary duty of administering and implementing the Act (Section 83111), we are charged to liberally interpret its provisions to accomplish its purposes (Section 81003). While we recognize that under AB 1X 26, successor agencies and their oversight boards are governed by different authorities and may at times have conflicting goals and interests, they also have control and oversight over the same obligations, assets and property. Therefore, it is logical and also serves the Act's desire for accurate financial disclosure that the same code reviewing body assesses how these obligations, assets and property can be affected by decisions in both agencies.

Under AB 1X 26, there appear to be, for purposes of the Act, five general types of entities that can become successor agencies. These are a city, county, city and county, other non-

city local government agency (such as a joint powers authority), and a "designated local authority." (Health and Saf. Code Sec. 34173(d); also see Health and Saf. Code Sec. 34173(c).)

As described above, subdivisions (a), (b) and (c) of Section 82011 are very explicit as to which agency is the code reviewing body for four of these entities, namely, a city, county, city and county, and other non-city local government agency. Thus, in our view, it is clear that if one of these entities becomes a successor agency, the code reviewing body for the successor agency is the code reviewing body for that entity set forth in Section 82011(a), (b), or (c). In addition, as discussed, we think it proper under the Act that the oversight board's code reviewing body be the same.

A slightly more difficult question arises in relation to "designated local authorities." These entities are created pursuant to Health and Safety Code, section 34173(d) when no other local government agency elects to serve as the successor agency. In that case, the "'designated local authority' shall be immediately formed . . . in the county and shall be vested with all the powers and duties of a successor agency . . . ." (Health and Saf. Code § 34173(d).) The "designated local authority," is formed when the Governor appoints three residents of the county to serve as the successor agency. (*Ibid.*) Since this entity is formed in a county and is run by three gubernatorial appointees who are required to be from that county, it seems apparent that a "designated local authority" is a type of local government agency operating in a county that is not under the control of a city. Accordingly, we conclude that the code reviewing body for a "designated local authority," and its oversight board, would be the board of supervisors of that county pursuant to Section 82011(b) or, if the entity operates in more than one county, the Commission pursuant to Section 82011(a).

Finally, as mentioned above, we must craft a special rule for oversight boards formed on or after July 1, 2016 pursuant to Health and Safety Code Section 34179(j). These boards represent a consolidation of all oversight boards existing in a county having more than one oversight board as of that date. These boards are clearly non-city local government agencies operating within a county and thus, under Section 82011(b), their code reviewing body is the county board of supervisors.

3. **Should entities that adopted separate conflict-of-interest codes for their redevelopment agencies repeal those codes?**

**Conclusion and Analysis:** If an entity that adopted a conflict-of-interest code for its redevelopment agency does not become a successor agency for the redevelopment agency, we suggest that it repeal the code once the redevelopment agency is dissolved. However, if the entity becomes a successor agency for the redevelopment agency and assumes the responsibility of adopting a conflict-of-interest code for the successor agency, it may: (1) repeal the redevelopment agency's code and either adopt a new code or amend its own code to cover designated employees of the successor agency; or (2) amend the redevelopment agency's code to apply, as appropriate, to the activities of the successor agency. (See Sections 82011, 87300, 87301, 87303 and 87306.)

As for the oversight boards, the code reviewing bodies may either add the oversight board to an existing conflict-of-interest code of the agency or adopt a new conflict-of-interest code for the oversight board. Since Section 87301 states that conflict-of-interest codes shall be formulated at the most decentralized level possible and that questions relating to the formation of a code are resolved by the code reviewing body, each code reviewing body makes this determination, not the Commission. (Also see Regulation 18329.5.)

Please note that, since Section 87302.6 requires members of new boards and commissions to file Statements of Economic Interests in the same manner as individuals who file under Section 87200, members of these boards, subject to certain exceptions (see Section 87202(a), must generally file assuming office Statements of Economic Interests within 30 days of assuming office and continue to file as if 87200 filers until the oversight board's conflict-of-interest code is in place. The timeline for adopting a new code or amending a code to reflect the addition of the oversight board is provided in Sections 87303 and 87306.

Regulation 18732.5 provides direction on the filing, processing and retention of Statements of Economic Interests for agencies that are to be dissolved. Statements filed for designated employees of the redevelopment agencies must be maintained for seven years.

4. **Do 87200 filers appointed to the oversight board have to file an assuming office Statement of Economic Interests with the oversight board? If not, will they be required to file an amendment to their Statement of Economic Interests to include the board position?**

**Conclusion and Analysis:** If the agency for which the official files a Statement of Economic Interests under Section 87200 shares the same, or is wholly located within the same, geographical jurisdiction as the oversight board, the official does not have to file a Statement of Economic Interests with the oversight board. (Regulation 18754(a)(3)(A).) For example, a city councilmember serving on an oversight board for the city's former redevelopment agency would not have to file a Statement of Economic Interests with the city in connection with her service on the oversight board because the city and the oversight board share the same jurisdiction.

However, if this is not the case, the official must file Statements of Economic Interests with both agencies, although the official can expand his or her statements to cover reportable interests in both jurisdictions and file copies in both jurisdictions (so long as each filed statement is signed and verified by the official as if it were the original statement) if the oversight board adopts a conflict-of-interest code incorporating the provisions of Regulation 18730(b)(3), footnote 1. (See Regulation 18730(a).)

5. **Do designated employees employed by the successor agency or appointed to the oversight board have to file an assuming office statement? If not, will they be required to file an amendment to include their employment or their board position? What is the timing of any required filing or amendment?**

**Conclusion and Analysis:**

Successor Agencies:

If the successor agency is the entity that formed the redevelopment agency and the entity adopts a new conflict-of-interest code for the successor agency, the designated employees of the successor agency must file assuming office Statements of Economic Interests because the successor agency would be considered a new agency.[3] (Sections 87300 and 87303.) Pending the effective date of the code, employees who make or participate in making agency decisions that may foreseeably have a material effect on any financial interest must file Statements of Economic Interests pursuant to Regulation 18734, and that regulation also governs treatment of these filings in relation to the filing requirements once the code becomes effective (see Regulation 18734(e)).

If the successor agency is the entity that formed the redevelopment agency and the entity instead amends the code of the former redevelopment agency to apply, as appropriate, to the activities of the successor agency (see Question 3 above), existing designated employees would file Statements of Economic Interests pursuant to the provisions of Regulation 18735 and employees in newly created positions would file pursuant to Regulation 18734.

If the successor agency is not the entity that formed the redevelopment agency, it must adopt a new conflict-of-interest code for that agency or incorporate designated employees in the successor agency into its existing conflict-of-interest code. In that case, until the new code or amendments become effective, employees who make or participate in making agency decisions that may foreseeably have a material effect on any financial interest must file Statements of Economic Interests pursuant to Regulation 18734 and, as mentioned above, that regulation also governs treatment of these filings in relation to the filing requirements once the code becomes effective (see Regulation 18734(e)).

Oversight Boards: As stated above, the oversight boards are new agencies and thus members of the boards must file assuming office and other Statements of Economic Interests pursuant to Section 87302.6 until the board or its code reviewing body adopts or amends a code to reflect addition of the oversight board.

[3] In this instance, since the code reviewing body considers the successor agency a new agency, the designated employees of the former redevelopment agency must file leaving office Statements of Economic Interests in connection with their employment with the former redevelopment agency. (Section 87302(b).)

6. **Who is the filing officer? If only an amendment is required, is the filing officer the agency in which the board member filed the original statement? Who is the filing officer for statements filed by the governing board of a "designated local authority?"**

**Conclusions and Analysis:**

Successor Agencies:

The filing officer for the head of a successor agency, including the head of a "designated local authority," and members of the board of a "designated local authority" is the Commission if the Commission is the successor agency's or authority's code reviewing body. (Section 87500(l).)

Otherwise, the filing officer for a successor agency's, including a "designated local authority's," designated employees and board members, if any, is the successor agency or the successor agency's code reviewing body as designated by the code reviewing body. (Section 87500(p).) For example, if a city becomes a successor agency and the city council is the successor agency's code reviewing body, the city council must determine which city official or subdivision is the filing officer for the successor agency. (*Ibid.*)

Oversight Boards:

The filing officer for the head, or board member, of an oversight board is the Commission if the Commission is the oversight board's code reviewing body. (Section 87500(l).)

Otherwise, the filing officer for the oversight board's designated employees, including its board members, is the oversight board or the board's code reviewing body as designated by the code reviewing body. (Section 87500(p).)

See Question 2 above to determine which agency is a successor agency's or oversight board's code reviewing body.

7. **Do members of the public appointed to a "designated local authority" or an oversight board have an obligation to file a Statement of Economic Interests? If so, who is deemed the filing officer?**

**Conclusion and Analysis:** Since the Act requires that conflict-of-interest codes be formulated at the most decentralized level possible (Section 87301), we normally defer to the judgment of the agency and its code reviewing body in determining which agency officials are required to be included in the code and, thus, file Statements of Economic Interests. Therefore, we decline to answer this question, although we note that, under AB 1X 26, all the board members of "designated local authorities" and oversight boards certainly appear to be making or participating in making agency decisions that may foreseeably affect financial interests.

8. **What is the assuming office date for oversight board members?**

**Conclusion and Analysis:** For purposes of this question and pursuant to Regulation 18722, an oversight board member assumes office on the earlier of the date he or she either is authorized to serve in the position, such as by being sworn in (Regulation 18722(a)(1)(A), or begins to perform the duties of the position such as by making, participating in making, or using his or her official position to influence a government decision (Regulation 18722(a)(1)(B).

9. **What is the jurisdiction of a successor agency or oversight board?**

**Conclusions:**

Except for oversight boards formed pursuant to Health and Safety Code Section 34179(j) (see Question 2 above and discussion below), the jurisdiction of a successor agency and its oversight board is the same.

If the successor agency is any type of local government agency other than a "designated local authority," the jurisdiction of the successor agency and its oversight board is the same as that local government agency and includes any real property owned by the former redevelopment agency.

If the successor agency is a "designated local authority," the jurisdiction of the successor agency and its oversight board is the county in which the successor agency operates and includes any real property owned by the former redevelopment agency.

**Analysis:** As previously discussed, successor agencies and their oversight boards are local government agencies under the Act. Section 82035 states that the jurisdiction of a local government agency is "the region, county, city, district or other geographical area in which it has jurisdiction" as well as, with respect to real property, any part of the property located within or not more than two miles outside the jurisdiction or within two miles of any land owned or used by the local government agency.

Thus, the jurisdiction of a successor agency is the jurisdiction, including the real property owned by the former redevelopment agency, of any local government agency that becomes the jurisdiction of the successor agency and, logically, the successor agency's oversight board. However, while it is relatively easy to determine the jurisdiction of an existing government agency such as a city or county, more explanation is required for newly formed "designated local authorities." As discussed above, we think a "designated local authority" is a non-city local government agency whose code reviewing body is the county, pursuant to Section 82011(b). Accordingly, for the sake of consistency, we think the proper jurisdiction of a "designated local authority" and its oversight board should be the county in which it is located plus any real property owned by the former redevelopment agency.

Finally, in the case of an oversight board formed on or after July 1, 2016 pursuant to Health and Safety Code Section 34179(j), since its authority extends over any successor agency in a county, we conclude that its jurisdiction is the county in which it is located plus any real

property owned by the successor agencies for which it has oversight (also see discussion under Question 2 above).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

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