

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**  
1112 I Street Suite 100  
Sacramento, California 95814  
(916) 874-6458

August 5, 2009

TO: Sacramento Local Agency Formation Commission  
FROM: Peter Brundage, Executive Officer *PB*  
RE: Arden Arcade Incorporation Status Report (LAFC 03-07)

**RECOMMENDATION:**

Receive and File Status Report

**DISCUSSION**

On July 1, 2009, the Arden Arcade Incorporation Committee made the required payment to commence the Comprehensive Fiscal Analysis (CFA) and Environmental Impact Report (EIR) for the Proposed Arden Arcade Incorporation.

The consultants have been advised to resume work to prepare the Draft CFA and EIR.

The Fair Political Practices Commission (FPPC) has refused to provide an opinion as to when the incorporation proponents are required to disclose funding sources. The letter from the FPPC states that LAFCo does not have the ability to make the request without permission from the proponents. A copy of the FPPC letter is attached to this report.

**PROJECT SCHEDULE AND DEADLINES**

<u>Date</u>	<u>Task</u>
August 3, 2009	Mail notice to affected agencies and interested parties
August, 2009	Mail letter to affected agencies and interested parties to notify them that the EIR analysis is resuming and allow opportunity for additional comments related to environmental issues
August, 2009	Mail letter to County and Service Providers requesting financial information, costs and revenues related to provision of services within the proposed incorporation boundary

October/November 2009	Issue Draft EIR for public review and comment
January/February 2010	Issue Draft CFA for public review and comment
March, 2010	Commence Hearings on proposed incorporation
May, 2010	Conclude Public Hearings in order for Commission approve, modify or deny the proposal. If approved, commence the 30-day Reconsideration Period.
June, 2010	Act on any Reconsideration requests
June, 2010	Transmit LAFCo Resolution to Board of Supervisors requesting that the ballot measure be placed on the November 2010 Ballot. (Note: the Clerk of the Board must have the agenda materials at least 3 weeks prior to the Board meeting).
<b>June 30, 2010</b>	Transmit boundary and legal description to Registrar of Voters (125 days before November 2, 2010)
August 3, 2010	Board of Supervisors calls the election and transmits information to the Registrar of Voters
<b>August 6, 2010</b>	Registrar of Voters drop dead date set by statute. (88 days prior to the election date.
November 2, 2010	General Election

## CONCLUSION

**This project schedule is very aggressive and assumes that requests for data and information from affected agencies will be provided in a timely manner in order to issue the Draft CFA and EIR on schedule. Also, this schedule could be significantly impacted if an interested party makes a request that the Comprehensive Fiscal Analysis be reviewed by the State Controller's Office as provided in Government Code Section 56801. The State Controller's Office has 45-days to issue its findings.**

**Due to Cortese Knox Hertzberg statutory requirements this schedule has to be met, otherwise it will be necessary to update the Comprehensive Fiscal Analysis based on FY 2009-10 actual data and the November 2010 Election date will not be attainable.**



JUL 20 2009

FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • FAX (916) 322-0886

RECEIVED

July 14, 2009

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SACRAMENTO LOCAL AGENCY  
FORMATION COMMISSION

Nancy C. Miller  
Miller, Owen & Trost  
428 J Street, Suite 400  
Sacramento, California 95814-2394

**RE: Your Request for Advice  
Our File No. W-09-120**

Dear Ms. Miller:

This letter responds to your request for advice regarding the LAFCO filing provisions of the Political Reform Act (The "Act").<sup>1</sup> Generally, the Commission provides written advice to any person whose duties under the Act are in question or to that person's representative. However, pursuant to Regulation 18329 (2)(A) requests for written advice "will not be acted upon unless the following requirements are met:

"(A) The name, title, or position, and mailing address of the person whose duties are in question are provided. In addition, if the request is submitted by an authorized representative, it shall contain a specific statement that such authorization has been made."

In a recent telephone conversation with Daniel Calvert of your office, he indicated that you were not authorized to make the request on behalf of the Arden-Arcade Incorporation Committee (The "AAIC") as to whether or not the AAIC qualifies as a committee. Accordingly, we are withdrawing your request for advice.

We have however, enclosed a copy of the Commission's opinion in *In re Fontana*, 2 FPPC Ops. 25, which may be helpful with some of your questions

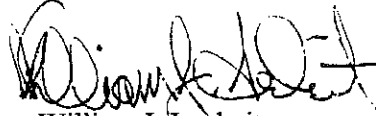
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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained 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.

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

Sincerely,

Scott Hallabrin  
General Counsel

A handwritten signature in black ink, appearing to read "William J. Lenkeit". The signature is written in a cursive style with some loops and flourishes.

By: William J. Lenkeit  
Senior Counsel, Legal Division

WJL:jgl

Enclosure

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION,

In the Matter of:	)	
	)	No. 75-162
Opinion requested by	)	February 4, 1976
Mark Fontana, Treasurer of the	)	
Isla Vista Community Council	)	

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BY THE COMMISSION: We have been asked the following questions by Mark Fontana, Treasurer of the Isla Vista Community Council:

The Isla Vista Community Council (hereinafter sometimes referred to as "IVCC") supports a proposal for incorporation of Isla Vista.

(1) If the incorporation proposal is not placed on the ballot, must expenditures in support of the proposal be reported?

(2) If the incorporation proposal is placed on the ballot, must expenditures made before the question was placed on the ballot be reported?

CONCLUSION

The incorporation proposal does not become a "measure" within the meaning of Government Code Section 82043 until the Board of Supervisors of Santa Barbara County orders the proposal placed on the ballot. Consequently, IVCC's reporting obligations relative to contributions received and expenditures made in support of the incorporation proposal do not commence until after that action by the Board of Supervisors. Our conclusion is the same whether or not the proposal ultimately is placed on the ballot. Moreover, IVCC is not a proponent of a measure and, therefore, has no reporting obligations under Government Code Section 84202.

ANALYSIS

The Knox-Nisbet Act, Government Code Sections 54773, et seq.,<sup>1/</sup> established a system of local agency formation commissions in order to promote the "discouragement of urban sprawl and the encouragement of the orderly formation and development of local governmental agencies" in ways that are responsive to local conditions and circumstances. Section 54774. Among its powers, each commission has the authority "to review and approve or disapprove with or without amendment, wholly, partially or conditionally proposals for...the incorporation of cities...." Section 54790.

The District Reorganization Act of 1965, Sections 56000, et seq., supplements the Knox-Nisbet Act and provides the "sole and exclusive authority and procedure for the initiation, conduct and completion of changes of organization and reorganization." Section 56001.<sup>2/</sup>

The IVCC supports a proposal to incorporate Isla Vista as a city. Pursuant to applicable provisions of the District Reorganization Act, IVCC circulated petitions and obtained the signatures of more than five percent of the registered voters of Isla Vista. After obtaining more than the required 450 signatures, IVCC submitted its petitions to the Local Agency Formation Commission (hereinafter sometimes referred to as "LAFCO"). On October 6, 1975, LAFCO certified that the petitions were sufficient and scheduled hearings on the incorporation proposal for early December, 1975.

If the incorporation proposal is approved by LAFCO, the Board of Supervisors of Santa Barbara County must initiate proceedings in compliance with LAFCO's resolution and hold a hearing on the proposed reorganization. Sections 56430, et seq. After conclusion of the hearing, the Board of Supervisors must either disapprove the proposed reorganization, order the reorganization subject to confirmation of the voters or, in certain circumstances, order the reorganization without an election. Section 56439. If approved by the Board of Supervisors, it is anticipated that the Isla Vista incorporation proposal will appear on the June, 1976 ballot.

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> Sections 34300, et seq., provide procedures for incorporating cities which are similar to those contained in the District Reorganization Act. The analysis contained in this opinion will apply equally to incorporations under Sections 34300, et seq.

It is apparent from the foregoing discussion that there are three crucial steps in the process by which a reorganization qualifies to be placed on the ballot. The first is certification of the petitions by LAFCO; the second is approval of the proposal by LAFCO; and the third is the decision of the Board of Supervisors to place the proposal on the ballot. We have been asked to determine when during this procedure the incorporation proposal becomes a "measure" within the meaning of the Political Reform Act, Sections 81000, et seq.

Under the Political Reform Act, a proposal can become a measure in two different ways. First, "measure" includes any proposition "which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot." Section 82043. This definition includes not only each initiative, referendum or recall that is actually submitted to the voters but also applies to each such proposal that is intended to be submitted to a popular vote whether or not it qualifies for the ballot. Accordingly, an initiative, referendum or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the measure for the ballot. However, the Isla Vista incorporation proposal does not come within this definition because it is not an "initiative, referendum or recall."<sup>3/</sup>

"Measure" also means "any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body." Section 82043. Because the Isla Vista incorporation proposal will be submitted to a popular vote by the action of the Board of Supervisors of Santa Barbara County, it falls within this part of the definition.<sup>4/</sup> However, unlike an initiative, referendum or recall,

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<sup>3/</sup> An initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them. Cal. Const. Art. 4, Sec. 22. The referendum is the power of the electors to approve or reject statutes or parts of statutes. Cal. Const. Art. 4, Sec. 23. The initiative and referendum powers may be exercised by the electors of each city and county under procedures that the Legislature provides. Cal. Const. Art. 4, Sec. 25. Recall is the power of the electors to remove an elective officer. Cal. Const. Art. 23, Sec. 1.

<sup>4/</sup> It is clear that the Board of Supervisors is a legislative body. Walker v. County of Los Angeles, 55 Cal.2d 626 (1961).

the incorporation proposal does not become a measure when the proponents begin to circulate petitions. Instead, it becomes a measure when the legislative body takes the action necessary to submit the proposition to the voters. Accordingly, the incorporation proposal does not become a "measure" until the Board of Supervisors orders the proposal placed on the ballot, even though signature petitions in support of the proposal were circulated for several months prior to action by the Board of Supervisors.

IVCC's obligations to report expenditures in support of incorporation begin when the proposal becomes a measure, that is, when the Board of Supervisors orders the proposal placed on the ballot. Before that date, IVCC has no reporting obligations because it has not incurred expenditures in support of a "measure." After the Board of Supervisors has placed the proposal on the ballot, IVCC must keep records of expenditures and will become a committee after collecting contributions of \$500 or more or making expenditures of \$500 or more in support of the measure.<sup>5/</sup> Section 82013. As a committee supporting a measure, IVCC must file campaign statements not later than thirty-five days prior to the election, not later than seven days prior to the election and not later than seventy days after the election. Section 84203. Similarly, those who collect or spend \$500 or more in opposition to the measure are committees and must file campaign reports on the same dates.

IVCC's opinion request also presents the question of whether IVCC is a "proponent" of a measure within the meaning of the Political Reform Act. We conclude that it is not and that IVCC, therefore, does not have to comply with Section 84202.

Section 84202 requires the "proponent" of a ballot measure to file a campaign statement "not later than sixty-five days after a measure has been qualified for the ballot" or, if the measure does not qualify for the ballot, "within sixty-five days after the final deadline for circulating the

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<sup>5/</sup> Although IVCC does not have reporting obligations until after the proposal is placed on the ballot, this does not mean that its first campaign statement will include only contributions received and expenditures made after that action is taken by the Board of Supervisors. IVCC's initial campaign statement must include contributions received and expenditures made in anticipation of the measure being placed on the ballot, even if such contributions and expenditures were made before the Board of Supervisors actually placed the proposal on the ballot.



petition." Although IVCC supports the incorporation proposal and has sponsored and promoted that proposal through the signature gathering and LAFCO review process, we do not believe that IVCC can properly be termed a "proponent" within the meaning of the Political Reform Act.<sup>6/</sup>

The term "proponent" is not defined in the Act but is defined in the Elections Code. Elections Code Section 29210 provides:

..."proponent or proponents of an initiative or referendum measure" means the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

In addition, Elections Code Section 29211 states that:

..."proponent or proponents of a recall petition" means the person or persons who have charge or control of the circulation of, or obtaining signatures to, such petitions.


After considering these definitions, we conclude that Section 84202 applies only to those measures which are initiatives, referenda and recalls. When so interpreted, the statutory scheme becomes clear because an initiative, referendum or recall qualifies for the ballot on the basis of signature gathering and petition circulation. Thus, the filing requirements of Section 84202 are triggered either when sufficient signatures have been obtained to place the measure on the ballot or when the deadline for collecting signatures has passed without qualifying the measure. As described above, the IVCC proposal is not an initiative, referendum or recall. Circulating petitions and gathering signatures were merely preliminary steps in determining whether the incorporation proposal would actually be placed on the ballot by the Board

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<sup>6/</sup> The term "proponent" is defined in the Knox-Nisbet Act to mean "any person intending to circulate or cause the circulation of any petition," Section 54775, but that definition is not applicable to this discussion. Although IVCC is the proponent of the Isla Vista incorporation proposal within the meaning of Section 54775, it is not the proponent of a ballot measure as that term is used in the Political Reform Act.

of Supervisors. Therefore, we conclude that the IVCC is not the proponent of a measure and has no filing requirements under Section 84202.

Approved by the Commission on February 4, 1976.  
Concurring: Brosnahan, Carpenter, Lowenstein, Miller and Waters.

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Daniel H. Lowenstein  
Chairman