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November 6, 2007

**HONORABLE CITY COUNCIL**  
Oakland, California

Re: AN ORDINANCE AMENDING THE CITY OF OAKLAND'S CONFLICT OF INTEREST CODE (ORDINANCE NUMBER 11562 C.M.S. ADOPTED MARCH 23, 1993, AS AMENDED, OAKLAND MUNICIPAL CODE CHAPTER 3.16) TO CHANGE THE DISCLOSURE OF THE CHILDRENFAIRYLAND, INC., BOARD OF TRUSTEES

Honorable President De La Fuente and Members of the City Council:

On September 20, 2007, Children's Fairyland, Inc., requested a modification of the City's Conflict of Interest Code. (The letter is attached as Exhibit 1.) At its September 18, 2007, meeting, the City Council requested that the City Attorney's Office analyze three options relating to the inclusion of the Children's Fairyland Inc., ("CFL, Inc.") Board of Trustees in the City's Conflict of Interest Code. We discuss the options below.

Under state law, government agencies, including cities, must adopt a Conflict of Interest Code. The Conflict of Interest Code lists all the officers, employees, and commission members that must annually file the Form 700 Statement of Economic Interest. The Conflict of Interest Code also specifies the extent of disclosure required of each position.

The FPPC explains that the scope of the disclosure depends on the extent of the official's decision making power -- the broader the authority, the broader the disclosure.

**Disclosure Categories**

A primary purpose of the code is to require disclosure of those types of investments, interests in real property, sources of income and business positions that designated positions may affect in their decision-making. For example, the manager of an agency should be assigned full disclosure (all investments, interests in real property, and sources of income and business positions) because the manager makes decisions that affect a wide range of interests. Alternatively, a purchasing agent whose decision-making is limited to the purchase of office supplies should only be assigned disclosure of investments, sources of income and business positions in entities that provide office supplies, equipment or merchandise of the type used by the agency.

(Adopting A Conflict of Interest Code, <http://www.fppc.ca.gov/index.html?id=228>, October 3, 2007.)

The City's Conflict of Interest Code currently has 18 disclosure categories. CFL, Inc., currently has the broadest disclosure category. Category 1: "All investments and business positions in business entities, sources of income" from entities that do business or plan to do business in the City of Oakland, or have done business within the jurisdiction at any time during the two years prior. Also disclosed are interests in real property" in the City of Oakland.

**OPTION A: Delete the Fairyland Trustees from the City's Conflict of Interest Code.**

The State of California, Fair Political Practices Commission has set forth four criteria to consider in determining whether a nonprofit organization is sufficiently connected to a City to warrant inclusion in a City's Conflict of Interest Code. They are:

- (1) Whether the impetus for formation of the entity originated with a government agency;
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency;
- (3) Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and
- (4) Whether the entity is treated as a public entity by other statutory provisions.

*(In re Siegel (1977) 3 FPPC Ops. 62.)*

We apply the criteria below and conclude that the CFL, Inc., Trustees should be included in the Code.

**(1) Whether the impetus for formation of the entity originated with a government agency.**

According to Resolution No. 70531 C.M.S., the impetus for the formation of CFL, Inc. was jointly by the Lake Merritt Breakfast Club, the Children's Fairyland Board of Trustees and the City of Oakland. The Breakfast Club and Trustees made a proposal to the City Council. On November 9, 1993, the City Council passed a resolution authorizing the formation of CFL, Inc. Since the City Council passed a resolution authorizing the formation, this criterion is met.

**(2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency.**

CFL, Inc. annually receives an \$83,000 "subsidy" from the City. This amount is consideration for services performed by CFL, Inc., in "managing, operating and improving the park . . . ." In addition, the City pays for utilities, a portion of the insurance premium, and tree trimming. CFL, Inc. keeps admission fees, which monies can only be used for park operations and improvements.

In addition, CFL, Inc., receives the City's Measure DD Bond money for improvements at the park. This criterion is met.

- (3) **Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.**

CFL, Inc. operates and improves the park. Since the time the Breakfast Club gave the park as a gift to the City, the City officially has not operated the park. However, prior to the creation of the nonprofit, the park was operated by a board of trustees. The City's Park and Recreation Advisory Commission sat ex officio as the board of trustees, so effectively the City did manage the park. The park properties and animals are owned by the City. These factors point to the conclusion that this criterion is met.

- (4) **Whether the entity is treated as a public entity by other statutory provisions.**

Compliance with open meetings laws weighs in favor of meeting this criterion. (FPPC Stark Advice Letter, No. A-03-015.) CFL, Inc., is now complying with the state Brown Act, because of advice by the City Attorney's Office. The City Attorney's Office arrived at this conclusion under Government Code section 54952(c)(1)(A) because it is a "private corporation" "created" by the City Council with Resolution 70531 C.M.S.

Based on application of the FPPC's criteria, the CFL, Inc., Board of Trustees should be included in the City's Conflict of Interest Code. As the FPPC is the final say on this issue, the City Council may request an analysis from the FPPC.

**OPTION B: Place the Fairyland Trustees Into a New Disclosure Category.**

This option is in the City Council's discretion.<sup>1</sup> To give the City Council a sense of the type of disclosure other nonprofits in other jurisdictions have, below are examples of disclosure categories.

**San Francisco Asian Art Museum Commissioners**

Disclosure of all investments in, income from, and business positions in any business entity involved in the buying or selling of works of Asian art or in the business of installing or maintaining security systems, that do business in the city, or that have done business in city in the past two years, or which may foreseeably do business in the city in the future.

**San Francisco War Memorial and Performing Arts Center Trustees**

Disclosure of all investments in, income from, or any management or business position in connection with real estate uses for the performing arts in San Francisco, with entities that book

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<sup>1</sup> As stated in our October 2, 2007, letter to the City Council, the City Attorney's Office cannot recommend modification of the disclosure category.

the performing arts or individual performers, with architectural and construction firms or consultants, food, beverage, catering, program, souvenir, or ticketing concession firms, and building maintenance and theatrical equipment and supply firms or consultants.

The state Fair Political Practices Commission provides the following model disclosure category language for officials with contracting authority:

All investments, business positions and income, including gifts, loans and travel payments, from sources that provide leased facilities, goods, equipment, vehicles, machinery or services, including training or consulting services, of the type utilized by the (employee's department or area of authority).

As can be seen from the two San Francisco examples, it is very difficult to create a disclosure category that covers all nonprofits because the disclosure category ideally is based on the scope of what a specific nonprofit does. However, if the City Council wishes to create a disclosure category that could apply to any nonprofit that is the equivalent to a government entity, then the following based on the FPPC's model language may be adopted:

All investments, business positions and income, including gifts, loans and travel payments, from sources that provide goods, equipment, vehicles, machinery or services, including training or consulting services, of the type utilized by the nonprofit organization.

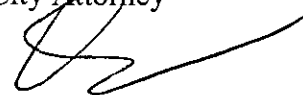
**OPTION C: That A Separate Board That Is Not Involved In the Operation of City Assets At Fairyland Be Created And That Receives No Funds From the City.**

Some Councilmembers suggested that CFL, Inc. creates a separate board that is not involved in the operation of City assets at Fairyland and that receives no funds from the City. Such an entity would not meet the four-part FPPC test discussed above, and therefore would not be required to included in the City's Conflict of Interest Code.

This option requires no City Council action because only CFL, Inc can implement this option.

Very truly yours,

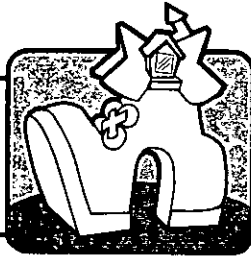
John A. Russo  
City Attorney



By:  
Kathleen Salem-Boyd  
Deputy City Attorney

Attorney Assigned:  
Mark. Morodomi

**Children's**  
create, imagine, play and learn



**FAIRYLAND**

www.fairyland.org

September 20, 2007

Re: Conflict of Interest Code Amendments and Children's Fairyland Board of Directors

Dear President De La Fuente and Members of the Oakland City Council:

As stated in our previous letter to you on this subject, Children's Fairyland stands to lose valuable board members if they are required to document each and every one of their financial holdings—something that is physically impossible for some of them to do. We continue to believe that our bylaws include language consistent with state law that effectively protects against board members profiting from their association with Children's Fairyland.

Nonetheless, we would be willing to accept the following modification to the Conflict of Interest Code, believing that it will accomplish the Council's objective while not making the financial disclosure process overly onerous to our board members:

**"Children's Fairyland board members are required to disclose investments and business positions in, and income from business entities which within the last 12 months have contracted or done business with Children's Fairyland or the City of Oakland or which are currently seeking to contract or do business with Children's Fairyland or the City of Oakland."**

Thank you for your consideration of this matter.

Sincerely,

C.J. Hirschfield  
Executive Director

✓CC: Mark Morodomi, Office of the City Attorney

Fairyland is a 501 (c)(3) non-profit corporation. Federal ID #94-3209054

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

INTRODUCED BY COUNCILMEMBER

2007 OCT 25 PM 6:37

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY

ORDINANCE No. \_\_\_\_\_ C.M.S.

## OPTION A

AN ORDINANCE AMENDING THE CITY OF OAKLAND'S CONFLICT OF INTEREST CODE (ORDINANCE NUMBER 11562 C.M.S. ADOPTED MARCH 23, 1993, AS AMENDED, OAKLAND MUNICIPAL CODE CHAPTER 3.16) TO CHANGE THE DISCLOSURE OF THE CHILDRENFAIRYLAND, INC., BOARD OF TRUSTEES

**WHEREAS**, pursuant to the State of California Political Reform Act, the City of Oakland enacted Ordinance Number 11562 C.M.S. on March 23, 1993, enacting a conflict of interest code for City of Oakland employees, members of boards and commissions, and consultant positions;

**WHEREAS**, the City Council has considered the types of decisions the Children Fairyland, Inc., Board of Trustees makes and the types of investments, interests in real property, sources of income and business positions that may affect in their decision-making.

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1.

Appendix B, LIST OF DESIGNATED POSITIONS, Boards and Commissions, to the Conflict of Interest Code is amended as follows, deletions are indicated by ~~strike-through type~~; portions not cited or not shown in underscoring or strike-through type are not changed.

**JOB TITLE**  
**CATEGORY**

**DISCLOSURE**

~~Children's Fairyland Board of Trustees \_\_\_\_\_ 1~~  
~~The Board of Trustees~~

CITY COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007.

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, REID, QUAN AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

**LATONDA SIMMONS**  
**City Clerk and Clerk of the**  
**Council of the City of**  
**Oakland, California**

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2007 OCT 25 PM 6:37

APPROVED AS TO FORM AND LEGALITY

*Kathleen Helen Boyd*

CITY ATTORNEY

ORDINANCE No. \_\_\_\_\_ C.M.S.

**OPTION B**

AN ORDINANCE AMENDING THE CITY OF OAKLAND'S CONFLICT OF INTEREST CODE (ORDINANCE NUMBER 11562 C.M.S. ADOPTED MARCH 23, 1993, AS AMENDED, OAKLAND MUNICIPAL CODE CHAPTER 3.16) TO CHANGE THE DISCLOSURE OF THE CHILDRENFairyland, INC., BOARD OF TRUSTEES

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**JOB TITLE**

**DISCLOSURE CATEGORY**

Children's Fairyland Board of Trustees

4-19



Section 2.

Appendix B, Disclosure Categories, to the Conflict of Interest Code is amended to add Category 19 as attached, additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of not cited or not shown in underscoring or strike-through type are not changed:

CITY COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007.

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, REID, QUAN AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

**LATONDA SIMMONS**  
City Clerk and Clerk of the  
Council of the City of  
Oakland, California