

DATE: September 25, 1989

TO: Mayor Maureen O'Connor  
FROM: City Attorney  
SUBJECT: Potential Conflict of Interest Arising from  
Ownership of Property in La Jolla Shores  
Planned District/Council Docket of September  
25, 1989

Your memorandum of September 19, 1989 to City Attorney John Witt has been referred to me for response. You ask whether your ownership of property at 2182 Avenida de la Playa will raise a conflict of interest for you with respect to a proposed ordinance to amend Chapter 10, Article 3, Division 3, (pertaining to the La Jolla Shores Planned District) of the San Diego Municipal Code by adding section 103.0307, which is proposed for action on September 25, 1989.

#### BACKGROUND

In addition to the facts contained in your memorandum, we obtained further relevant facts from Rudy Cervantes, Rules Committee Consultant, Jerry Hittleman, Senior Planner in the Planning Department, and Cal Chong, Senior Civil Engineer with the Engineering and Development Department.

If adopted, the proposed ordinance adding section 103.0807 will require a developer of any property in the La Jolla Shores Planned District contemplating a development that will be located below the water table to take certain actions with respect to water removal and disposal.

You state that you own the fee of the La Playa property through La Jolla Shores Properties, Inc. as shown on your Statement of Economic Interest (S.E.I.) for the calendar year 1988. As shown on your S.E.I., this property is valued at over \$100,000, and it earned rental income (mixed with loan payment and partners' capital contributions) of over \$10,000 last year from Gustaf Anders Associates. The property has been in the past

operated as a restaurant; currently it is vacant. There are no immediate plans for development.

We obtained further facts about the effect of the ordinance from Jerry Hittleman and Cal Chong. Both have worked on the proposed ordinance.

Mr. Hittleman informs us that the La Playa property is located within the La Jolla Shores Planned District. This was confirmed by personal review of maps in the Planning Department. Mr. Hittleman further informs us that the La Playa property is developed for restaurant use in a small commercial strip in an

area zoned for commercial use in the Planned District.

According to both Mr. Hittleman and Mr. Chong, the proposed ordinance will primarily affect property owners near the shoreline, in particular, those persons who intend to develop their property with underground structures (e.g. a garage). Mr. Hittleman estimates that 25 percent of the properties in the La Jolla Shores Planned District will be affected by this ordinance because they are near the shoreline. Of that 25 percent, approximately 30 percent is zoned commercial and another 35 percent is zoned multi-family residential. (Another 35 percent is zoned single-family residential.) In Mr. Hittleman's opinion, primarily commercial and multi-family residential properties are the most likely to be affected by the ordinance because they are the most likely to be developed with underground garages. Hence, approximately 16 percent (65 percent of 25 percent) of all properties in the La Jolla Shores Planned District will be most affected by this proposed ordinance, because this ordinance imposes burdens on the developers of certain underground structures.

#### APPLICABLE LAW

The applicable law was set forth in a Memorandum of Law dated September 8, 1989 addressed to the Mayor and other Councilmembers pertaining to the Chinese Museum matter. In lieu of repeating the applicable law, a copy of the September 8 memorandum is attached for your convenience. See pages 3-7 of that memo for reference to the applicable law.

#### ANALYSIS OF THE ISSUES

It is clear in the present instance that you have an economic interest in the La Playa property within the meaning of the Political Reform Act (the "Act").

It is also clear that it is reasonably foreseeable that the proposed ordinance may have some financial impact on your La Playa property, because the ordinance would especially affect development of all commercial properties within the La Jolla Shores Planned District that are on or near the shoreline. The Playa property is both commercial and fairly near the shoreline, therefore, there may be some financial impact on the property because of the increased demands placed on developers of this type of property under certain circumstances.

The real questions posed by the facts presented are whether there will be a material financial effect on the La Playa property as a result of the ordinance; and, if so, whether the "public generally" exception will apply to permit you to participate in discussion and vote on the ordinance despite the finding of materiality.

Because the La Playa property is within the existing La Jolla Shores Planned District, whose development standards are being amended by this ordinance, the property will be directly affected by the proposed action. Therefore, Fair Political Practices Commission (FPPC) regulation 18702.1 will apply. This rule states in relevant part:

(a) The effect of a decision is material if any of the following applies:

...

(3) Interest in Real

Property-(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(E) For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the subject property, but shall not refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses

permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category. Emphasis added.

In the present case the proposed ordinance essentially changes applicable development standards for an existing planned district. Therefore, FPPC regulation 18702.1(a)(3)(E) applies. Under this rule, the proposed ordinance will not result in a material financial effect on the La Playa property if the ordinance applies to all other properties designated in that category.

Although on the surface the ordinance applies to all properties in the La Jolla Shores Planned District equally, in fact the ordinance will affect only about 16 percent of the properties in the planned district according to Mr. Hittleman. Given that fact, we conclude that under Regulation 18702.1(a)(3)(E) adoption of the proposed ordinance will result in a material financial effect on the La Playa property.

Since we have found there will be a material financial effect on one of your economic interests resulting from the proposed ordinance, the next and last inquiry is whether the decision to adopt the ordinance or not will affect the La Playa property in substantially the same manner as it will affect a significant segment of the public. FPPC Regulation 18703. If the La Playa property meets this test, then you are not precluded from voting on the ordinance.

Analysis of the facts under Regulation 18703 requires almost the same analysis as that required for determining "materiality" under FPPC Regulation 18702.1(a)(3) above. Again, since the ordinance will affect only 16 percent of the property owners in the La Jolla Shores Planned District area (the commercial and multi-family property owners on and near the shoreline) and the La Playa property is among the 16 percent so affected, we conclude that the La Playa property will not be treated in substantially the same manner as the public generally. Therefore, the "public generally" exception will not apply to permit you to participate in and vote on the ordinance.

We conclude that the proposed ordinance will result in a reasonably foreseeable material financial effect on the La Playa property, and that the "public generally" exception does not apply. Therefore, we recommend that you abstain from participating or voting on this matter.

JOHN W. WITT, City Attorney

By

Cristie C, McGuire  
Deputy City Attorney

CCM:jrl:048(x043.2)

Enclosure

cc Jerry Hittleman, Planning Department

Cal Chong, Engineering and

Development Department

ML-89-93