

DATE: September 29, 1989

TO: Mayor O'Connor and Councilmembers Henderson
and Wolfsheimer

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Pertaining to
Columbia Redevelopment Project Proposed
Negotiation Agreement with Koll-Davidson/Item 8
on Redevelopment Agency Agenda of October 3,
1989

At their August 8, 1989, meeting, the Mayor and Councilmembers sitting as the Redevelopment Agency were asked to vote on a resolution approving a proposed Negotiation Agreement with the Koll Company and Davidson Communities, Inc., (Koll-Davidson) for development of a residential condominium project at the corner of State Street and Broadway. At the August 8th meeting the Mayor and Councilmembers Henderson and Wolfsheimer asked the Office of the City Attorney to opine whether they each had a conflict of interest in the matter arising from ownership of real property near the proposed project, and the matter was continued to October 3rd. This memorandum is in response to that request.

BACKGROUND FACTS

The following facts were obtained from review of the Mayor's and Councilmembers' Statements of Economic Interests (S.E.I.) for calendar year 1988, as updated by their staffs, conversations with the Mayor's and Councilmembers' staffs and from conversations with Pam Hamilton, Executive Vice President of Centre City Development Corporation (CCDC). We also reviewed the background material contained in the memoranda dated August 2, July 17, and May 24, 1989, addressed to the Chair and Members of the Redevelopment Agency from Ms. Hamilton, as well as the Request for Proposals for hotel/residential development for the project issued on August 5, 1988. We also reviewed a block map, prepared and drawn to scale by CCDC, showing the location of the proposed redevelopment project in relation to the locations of the Councilmembers' property.

Description of Proposed Action:

A Request for Proposals (RFP) for a 33,321 + square foot site located at Broadway and State Streets and owned by the Redevelopment Agency was issued on August 5, 1988. Currently the Broadway and State Street site is used as a parking lot. The RFP requested proposals for hotel or residential, or combined

hotel/residential, development. Proposals were received on February 15, 1989. The CCDC Board recommends approval to the Redevelopment Agency of the project proposed by Koll-Davidson. If accepted, the Koll-Davidson project would result in a 500 foot tall high-end condominium building with approximately 198 units containing approximately 486,470 square feet of living space and 4,300 square feet of retail/commercial space. There will also be approximately 470 parking spaces located above and below ground (51 of which are reserved for use by neighboring Columbia Tower tenants).

Mayor's Property.

The Mayor is concerned about property her parents own at the corner of Island Street and Sixth Avenue. Formerly located at that site was a two-story structure which was severely burned in a fire approximately two years ago. Currently, the property is being developed into a 30-suite hotel, with a small retail or restaurant space included. Using the block map provided by CCDC, we have determined that the corner of Sixth and Island is approximately 3,000 feet from the boundaries of the proposed Koll-Davidson project.

Councilmember Henderson's Property.

Councilmember Henderson has a limited partnership interest of between \$1,000 and \$10,000 each in the Horton Grand and Grand Saddlery hotels (adjacent structures) located at Third Avenue and Island Street (hereafter "hotels"). Councilmember Henderson receives no income from these two (2) real properties.

According to the block map provided by CCDC, the hotels are located approximately 2,400 feet from the proposed Koll-Davidson project.

Councilmember Wolfsheimer's Property.

Councilmember Wolfsheimer owns a condominium valued at over \$100,000 located at 750 State Street, No. 406, in the Marina Park development. There are approximately 220 dwelling units in that development. The condominium is leased and earns an income of

between \$1,000 and \$10,000 annually. According to the block map provided by CCDC, the condominium is located approximately 750 feet from the proposed Koll-Davidson project. The boundaries of the Marina Park's common area, however, are within 300 feet of the proposed project.

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 8th memorandum is attached for your convenience. See pages 3-7 of

that memo for reference to the applicable law.

ANALYSIS OF THE ISSUES

Mayor's Property.

In the present case, the Mayor is concerned about property her parents own in the Gaslamp Quarter, not what she herself owns. The question is whether her parents' ownership of the property at Sixth and Island constitutes the type of economic interest that would trigger her disqualification from participating in or voting on the proposed Koll-Davidson project.

According to Government Code section 87103, a public official has a financial interest in a decision within the meaning of the Political Reform Act (Act) "if it is reasonably foreseeable that the decision will have a material financial effect . . . on the official or a member of his or her immediate family or on:

(a) . . .

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more."

For purposes of analysing the Mayor's question, it is necessary to determine whether a vote on the Koll-Davidson project will result in a material financial effect on either: 1) The Mayor herself; 2) her immediate family; or, 3) any real property she directly or indirectly owns. These three questions are addressed below.

There is nothing in the facts to show that there will be a direct financial effect on the Mayor herself resulting from the Koll-Davidson vote.

The next question is whether there will be a reasonably foreseeable financial impact on her "immediate family" resulting from the decision. The term "immediate family" is defined to mean the spouse and dependent children of a public official. Government Code section 82029. The term does not include the parents of an elected official. Therefore, there will be no financial impact on the Mayor's "immediate family" within the meaning of the Act.

The last question is whether there will be a foreseeable financial effect on real property that the Mayor owns either directly or indirectly.

It is clear from the facts that the Mayor does not directly own the Sixth and Island property. At most she has an indirect interest, if that, by virtue of her parents' ownership of the land at Sixth and Island.

Government Code section 87103 defines "indirect interest" to mean an "interest owned by the spouse or dependent child of a public official, or by an agent on behalf of a public official,

or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly or beneficially a ten percent (10) percent interest or greater."

We conclude that under this definition the Mayor does not have an "indirect interest" in the Sixth and Island property, because it is her parents, not she, nor her spouse, nor dependent children, nor her agents, nor a trust in which she has a 10 percent or greater interest, who own the property in question.

Therefore, we conclude that the Mayor does not have a disqualifying financial conflict of interest arising from her parents' ownership of real property at Sixth Avenue and Island Street which would preclude her from participating in or voting on the Koll-Davidson matter.

Because we have reached this conclusion there is no reason to analyze whether there will be a material financial effect on the Sixth and Island property and, hence, no reason to analyze the effect the distance between the proposed Koll-Davidson site and the Mayor's parents' property will have on materiality. Councilmember Henderson's Property.

It is clear from the facts that Councilmember Henderson has an economic interest within the meaning of the Act by virtue of

his limited partnership interest in the hotels at Third and Island.

Therefore, the question posed by Councilmember Henderson's interest in the hotels is whether they will be materially financially affected by the vote on the proposed Koll-Davidson project. Since the hotels are approximately 2,400 feet from the site of the proposed project, FPPC Regulation 18702.3(a)(3) will apply to determine materiality. Under this rule, if the impact of the Koll-Davidson vote will be to increase or decrease the fair market value of the hotels by \$10,000 or more, then there will be a material financial effect on the hotels as a result of the Koll-Davidson decision. This determination is a factual one and it must be made in light of the factors set forth in FPPC Regulation 18702.3(d).

We consulted City Manager John Lockwood on September 28th for the determination of change in value in light of the factors in Regulation 18702.3(d). Mr. Lockwood determined that there would not be a \$10,000 or more change in fair market value of the hotels resulting from the decision on the Koll-Davidson project for the following reasons. First, although the change in use from parking lot to high-end residential condominium will be great, the change in development potential or income producing potential of the hotels will be de minimis. Second, the change

from parking lot to residential use some 2,400 feet from the hotel will have little or no impact on traffic levels, views, privacy, intensity of use, noise levels, or air emissions in the vicinity of the hotels. For these reasons Mr. Lockwood found that there will not be a \$10,000 change in fair market value to the hotels as a result of the Koll-Davidson vote. Therefore, we conclude that Mr. Henderson does not have a disqualifying financial interest that would preclude him from voting on the proposed Koll-Davidson project.

Councilmember Wolfsheimer's Property.

By virtue of her ownership of the condominium at 750 State Street, it is clear that Councilmember Wolfsheimer has an economic interest that will potentially be affected by the Koll-Davidson vote.

As in Councilmember Henderson's case, the question here is whether there will be a material financial affect on Councilmember Wolfsheimer's economic interest resulting from the Koll-Davidson vote. Again, FPPC Regulation 18702.3 will apply to determine materiality because Councilmember Wolfsheimer's property is only indirectly affected by the vote.

In the present case, the condominium itself is located approximately 750 feet from the proposed Koll-Davidson site, while the common area boundaries are within 300 feet of the site. These two situations will be analyzed separately.

Condominium.

Since the condominium is more than 300 feet, but less than 2,500 feet, from the proposed Koll-Davidson site, FPPC Regulation 18702.3(a)(3) will apply to determine whether the value of condominium will be materially affected by the Koll-Davidson project. This requires a factual determination of whether the fair market value of the condominium itself will increase or decrease by \$10,000 or more, or whether its rental value will increase or decrease by \$1,000 or more in a one year period, as a result of the project. We again asked Mr. Lockwood on September 28th for the determination as to change in value of Councilmember Wolfsheimer's condominium in light of the factors set forth in FPPC Regulation 18702.3(d).

For the reasons articulated below, Mr. Lockwood found that although there will be a great change in use from parking lot to residential condominiums if the Koll-Davidson project is adopted, the change in fair market value to Councilmember Wolfsheimer's condominium will not reach \$10,000 and the rental value will not change by \$1,000 or more in one year. He pointed out that although the new development will enhance the property value of

the surrounding area, the new condominiums will be in direct price competition with those in Marina Park. (FPPC Regulation 18702.3(d)(2).)

Mr. Lockwood also found that there will be no meaningful effect on the individual condominium's income producing or development potential as a result of the Koll-Davidson project. (FPPC Regulation 18702.3(d)(2).) He also found there will be little effect on the Councilmember's individual condominium with respect to traffic, view, privacy, noise and air emissions as a result of the proposed Koll-Davidson project. (FPPC Regulation 18702.3(d)(3).) The condominium is already in the midst of a heavily urbanized area. The new project will have no substantial impact on those factors given the existing surrounding development.

Common Areas.

Aside from the determination of materiality with respect to the condominium itself, we must consider whether Councilmember Wolfsheimer's interest in the Marina Park common areas will be materially affected within the meaning of the law. If the Marina Park condominium development is typical of other condominium developments, Councilmember Wolfsheimer shares an undivided interest in the common area with the approximately 220 other condominium owners in the Park. Since the common areas are

within 300 feet of the proposed Koll-Davidson site, the applicable regulation for determining materiality is Regulation 18702.3(a)(1), which reads as follows:

18702.3. Material Financial Effect:

Ownership Interest in Real Property Indirectly Involved in the Decision.

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest. (Emphasis added.)

....

It is not clear from the facts whether Councilmember

Wolfsheimer holds a greater than \$1,000 interest in the common areas associated with Marina Park. Assuming for purposes of deciding the question that she does, then Councilmember Wolfsheimer's interest in that common area will be materially affected by the proposed Koll-Davidson properties unless it can be shown that there will be no financial effect on that common area. Again, we turned to Mr. Lockwood for that determination.

He found that there will be some financial effect on the Marina Park common areas resulting from the Koll-Davidson project. We conclude, therefore, under FPPC Regulation 18702.3(a), that the Koll-Davidson project will have a material financial effect on real property in which Councilmember Wolfsheimer has an interest.

She may not be disqualified from participating in or voting on the proposed Koll-Davidson project, however, if the change in value to the Marina Park common area is the same as or substantially similar to that enjoyed by others in like circumstances (FPPC Regulation 18703 - "Public Generally" exception). Again we turned to Mr. Lockwood for this

determination. Mr. Lockwood found that although the value of the Marina Park common area will be enhanced somewhat by the Koll-Davidson project, the same or substantially similar enhanced value will be enjoyed by all properties in the surrounding area. Hence, we conclude that the "public generally" exception applies and Councilmember Wolfsheimer does not have a disqualifying conflict of interest in the proposed Koll Davidson project. Therefore Councilmember Wolfsheimer is not precluded from participating in or voting on the project.

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By

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Enclosure

cc Pamela M. Hamilton

Executive Vice President, CCDC

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