MEMORANDUM OF LAW

DATE: April 11, 1991

TO: Jim LoBue, Economic Development Division,
Property Department

FROM: City Attorney

SUBJECT: Potential Conflict of Interest for City Heights
Project Area Committee

I am in receipt of your memorandum of April 3, 1991, in which you ask several questions regarding potential conflicts of interest for City Heights Project Area Committee ("PAC") members as they proceed to make recommendations to the Redevelopment Agency of The City of San Diego (the "Agency") regarding the use of eminent domain in the proposed City Heights Redevelopment Plan. Your memorandum follows a prior meeting held with Deputy City Attorney Cristie McGuire and Keith Scott of the Property Department.

According to your memorandum, the PAC is considering five basic options for eminent domain. In order to answer specific questions regarding any potential conflicts, we would need more information. I can address general concerns and principles as to each of the five options. Following that, I will list the type of information that would be needed from the PAC members to answer more specific questions. I will assume for purposes of this memorandum that you and the PAC members are familiar with the Outline and Guide to the Political Reform Act (Financial Conflicts of Interest) for City Officers, Employees, and Members of City Boards, Committees in Commissions, prepared by this office and previously given to the PAC. The Outline and Guide contains basic information regarding the Fair Political Practices Act (the "Act," codified in California Government Code as Section 81000 et seq.) and guidelines to analyze whether a conflict of interest may exist. I am also attaching a copy of the Rotman opinion, 10 FPPC Ops. 1 (No. 86-001; May 12, 1987), as Exhibit A, which opines that members of redevelopment PACs are "public officials" for purposes of the Act and are required to follow its provisions.

Options for Eminent Domain

1. Blanket eminent domain authorization or no eminent domain authorization.

As both these options treat everyone within the proposed redevelopment project area the same, they can be considered at the same time. It would appear that conflict-of-interest issues would probably not arise.

As you and the PAC members know, if a decision or action by a public official basically has the same effect on the official as the public generally, a conflict arguably does not exist. Regulation 18703 of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, defines "Effect on the Public Generally," in pertinent part as follows:

> A material financial effect of a governmental decision on an official's interests, as described in Government Code section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Emphasis added.)

As stated previously, either of these options would have the same effect on the PAC members financial interests as all other persons in the project area.

2. Eminent domain authorization in commercially zoned areas but not in residentially zoned areas; blanket eminent domain authorization with the exception of property which is owner occupied at the time of considered acquisitions; or eminent domain authorization in the major transportation corridors.

With any of these options, there is the potential that a decision could have a reasonably foreseeable, material financial effect on a PAC member's economic interest as defined in the Act that is distinguishable from the public at large.

Assuming for the moment that the PAC is dealing primarily with real property interests (which includes certain leasehold interests), the following general rules apply:

a. First, it must be determined if the PAC member has a direct or indirect interest in real property worth $1,000 or more or a leasehold interest worth $1,000 or more. (Under 2 Cal. Code of Regs. 18233.2, a month-to-month lease or rental arrangement does not count as a leasehold interest).

b. If a PAC member had a real property interest located within 300 feet of an area being considered for eminent domain, it would be presumed by the Fair Political Practices Commission (the "FPPC") that there would be a material

financial effect on that person's real property interest. The burden would be on the PAC member to show otherwise. 2 Cal. Code of Regs. 18702.3(a)(1).

c. If a PAC member had a real property interest between 300 and 2500 feet of the area being considered for eminent domain, the result of the decision would be deemed material if it is reasonably foreseeable that the possibility of eminent domain would create an increase or decrease of $10,000 in market value of the PAC member's real property interest. See 2 Cal. Code of Regs. 18702.3(a)(3).

PAC members should refer to the Outline and Guide for a more in-depth analysis.

Information Required

In order to begin the analysis as to whether a potential conflict of interest may exist for any particular PAC member (and who on the PAC can vote for what), we would need the following information:

1. A map showing the specific areas under consideration for eminent domain authorization.

2. As is required for City Council members, the map would also have to show the location of each PAC member's real property interest (worth $1,000 or more) within the project area. Furthermore, in an abundance of caution, it would also be helpful to know if PAC members have a business or investment interest in the area and where that business is located. As an example, it is possible that one would own a business but be renting storefront space on a month-to-month lease.

3. Finally, the map would have to show the measured distances of 300 to 2500 feet around each of the interests identified.

Conclusion

I end this memorandum with an acknowledgment that the Act puts the PAC members in a somewhat anomalous situation. The California Community Development Law requires that PAC members have a substantial interest in a project area (Health and Safety Code section 33385(b)(6)), and yet the Act appears to penalize them by requiring that PAC members disqualify themselves for having an interest. Nonetheless, this is the situation we must deal with for the time being. To this end, I am attaching as Exhibit B, a recent FPPC advisal letter concerning the "public generally exception" and how it applies to PAC members. As you can see, PACs are dealing with this anomaly in the law throughout the state.

Please let me know how you wish to proceed.

Tb (

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Deputy City Attorney

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