MEMORANDUM OF LAW

DATE: May 27, 1992

TO: Tim O'Connell, Assistant to the Mayor

FROM: City Attorney

SUBJECT: Applicability of State Conflict of Interest Law to Community Planning Groups Recognized by City

By undated memorandum you asked whether the Fair Political Practice Commission's ("FPPC") conflict of interest rules adopted pursuant to the Political Reform Act ("the Act") apply to community planning groups recognized by the City. The question arises with respect to the Carmel Valley Community Planning Board, which was formerly known as the North City West Community Planning Board, and which has been formally recognized by the City under Council Policy 600-24. We understand your question to pertain to the disqualification, as opposed to financial disclosure, provisions of the Act. Therefore, this memorandum addresses only the disqualification aspects of the Act as pertains to community planning groups.

ANALYSIS

The FPPC is the state administrative agency charged with interpreting and enforcing the Act, which is codified at Government Code section 81000 et seq. For purposes of disqualification under the Act, only "public officials" are potentially prohibited from taking part in governmental decisionmaking. Government Code section 87100. For purposes of the Act, "public officials" are defined to include "every member, officer, employee or consultant of a . . . local government agency." Government Code section 82048. The term "local government agency" is defined to include a "city . . . or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing." Government Code section 82041.

The question is whether community planning groups are "agencies" of the City within the above definitions. The answer is "no."

The term "agency" is defined in Black's Law Dictionary (5th ed. 1979) to mean "relation in which one person acts for or represents another by latter's authority, either in the

relationship of principal and agent, master and servant, or employer or proprietor and independent contractor." Citing the Second Restatement on Agency, Section 1, Black's Dictionary goes on to define "agency" as follows: "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

The common element in the above two variations on the definition of "agency" is the notion that one body is authorized to speak or act on behalf of another. In the current case, the question is whether community planning groups are authorized to act or speak on behalf of the City, because, if so, their members would possibly be "public officials" and therefore subject to the disqualification provisions of the Act.

The answer lies in Council Policy 600-24. Under this policy, the City merely "recognizes" one group of individuals over others for purposes of receiving community input on certain land use matters. These groups are not appointed by the Mayor, Council or Manager and, critically, under this policy, community planning groups are not authorized to speak on behalf of the City. There is no "agency" relationship established between the City and a particular community planning group by the City's mere recognition of a group. If anything, a community planning group is an agent of a particular community, but not of the City as a whole.

I write this opinion with full awareness of the FPPC Opinion of In Re Rotman, 10 FPPC Op. 4 (1986), which held that redevelopment agency project area committees ("PAC's) are "public officials" under the Act and therefore subject to the disqualification provisions of the Act. Examination of the structure, source and powers of these two types of groups shows that redevelopment agency PAC's and community planning groups are different in critical respects.

First, redevelopment agency PAC's are required by state law to be elected and their members' eligibility is set by statute. In contrast, community planning groups are formed voluntarily out of community interest, not because a state or local law requires them to form. Second, and even more important, by state law, redevelopment agency PAC's have extraordinary powers of recommendation in certain land use decisions. Some of their recommendations require a two-thirds vote of the legislative body to overrule their recommendations. California Health and Safety Code sections 33366 and 33385.5. In contrast, community planning groups have no similar powers. Therefore, community planning groups are clearly distinguishable from redevelopment agency PAC's; and the Rotman opinion and holding do not apply to the

City's community planning groups to require them to abide by the Act's disqualification provisions.

In summary, for the reasons set forth above, I conclude that community planning groups are not subject to the disqualification provisions of the Act or FPPC rules.

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By
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Deputy City Attorney

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cc Fred Conrad, Chief
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