

MEMORANDUM OF LAW

DATE: May 12, 1998

TO: Patricia K. Hightman, Deputy Executive Director
Redevelopment Agency of The City of San Diego

FROM: City Attorney

SUBJECT: Potential Conflict of Interest of Members of the Barrio Logan
Redevelopment Project Area Committee in
Relation to the Mercado Trolley Station and Mercado Commercial
Projects

QUESTION PRESENTED

You have asked the City Attorney to determine whether a conflict of interest exists with regard to any of the members of the Barrio Logan Redevelopment Project Area Committee [PAC], for purposes of participating in discussion and votes on the Mercado Trolley Station Project and the Mercado Commercial Project [Projects].

SHORT ANSWER

From the facts presented, the following members have a legal conflict of interest which disqualifies them from participating in the PAC's discussions and votes on the Mercado Commercial Project: Marta Flores, Armida Sainz-Ramirez, and Armando Lozano. None of the PAC members has a legal conflict of interest which disqualifies them from participating in the PAC's activity on the Trolley Station Project.

BACKGROUND FACTS

Pursuant to provisions of the California Community Redevelopment Law (California Health & Safety Code sections 33000-33855), the PAC is responsible for, among other things, reviewing and advising the San Diego Redevelopment Agency [Agency] on development proposals for a project area. The PAC's Conflict of Interest Code requires that all PAC members file a Statement of Economic Interest [SEI] and disclose, among other things, any involvement in a business entity within the relevant project area, and contracts entered into with The City of San Diego or the Agency concerning activities in a project area.

The PAC is currently involved in discussing and voting on two projects in the Barrio Logan Redevelopment Project Area. The first project is the Mercado Trolley Station Site. This project is a 40,000 square foot development site next to a trolley station. Two proposals are being considered for the site. One of the proposals is for an entertainment complex which includes a nightclub. The other proposal for the Trolley Station site is a produce market with associated retail stores. The PAC will be voting on which proposal to recommend to the City Council at their May 13, 1998, meeting.

The second project that the PAC will be voting on at their May 13, 1998, meeting is the Mercado Commercial Project. The Commercial Project is a larger 120,000 square foot site. The two proposals being considered for the site are both proposals for a neighborhood shopping center with an anchor grocery store and other associated retail stores, such as a drug store, record store, food court, office space and other similar stores. Both the Trolley Station project and the Mercado Commercial project involve reuse of existing buildings with some space being added on. It is anticipated that the PAC's recommendations on both of the projects will be considered by the City Council on June 9, 1998.

ANALYSIS

Potential conflicts of interest of the kind described in this memorandum must be evaluated under two distinct statutory schemes: the Political Reform Act (California Government Code sections 87100 - 91014) [Act] and California Government Code sections 1090 -1097. These authorities only recognize effects on *financial interests* as disqualifying conflicts of interest. Other types of interests, such as political interests, do not disqualify public officials from participating in decisions under these statutes.

I. Political Reform Act of 1974

The Act was adopted by the people of the State of California in 1974 and specifies in pertinent part as follows: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Cal. Gov't Code 87100. The Fair Political Practices Commission [FPPC], the state agency that interprets and administers the Political Reform Act, has specifically determined that PAC members are "public officials" who are subject to the Act's disclosure and disqualification provisions. *In re Rotman*, 10 FPPC Ops. 1 (1987).

A public official has a "financial interest" in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the public official or on one or more financial interests set forth in California Government Code section 87103. Here the relevant financial interests that must be examined for the PAC members include direct economic impacts, and indirect effects on business investments, business positions, interests in real property, and other sources of income.

II. Government Code Section 1090

Government Code section 1090 [Section 1090] precludes a public officer or employee from participating in the making of a contract in which he or she is financially interested. Although the term “financial interest” is not specifically defined in the statute, an examination of the case law and the statutory exceptions to the basic prohibition indicates that the term is to be liberally construed. *See Thompson v. Call*, 38 Cal. 3d 633, 645 (1985). Section 1090 has been held to apply to persons and advisory bodies who act in an advisory capacity to the contracting agency, such as PACs. *See City Council v. McKinley*, 80 Cal. App. 3d 204, 278 (1978). Therefore, it is the opinion of this office that PAC members are subject to the prohibitions of Section 1090. PAC members participate in the making of a contract for purposes of Section 1090 because they are involved in preliminary discussions, negotiations, compromises, planning, and solicitation of bids for government contracts. *Millbrae Ass’n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222 (1968).

Any contract that is entered into in violation of Section 1090 is void and unenforceable. Additionally, an official who violates Section 1090 may be subject to criminal, civil, and administrative penalties.

With the exception of Marta Flores, Armida Sainz-Ramirez, and Armando Lozano, whose issues are discussed individually in this memorandum, no other PAC members have a direct interest in a contract that requires an analysis under Section 1090.

III. Discussion: Barrio Logan PAC Members

Introduction

The facts upon which these determinations were based were provided by Byron Estes and Xavier Del Valle of the Redevelopment Agency, as well as by the PAC members themselves, some of whom were interviewed by City Attorney Investigator Nancy Donnelly. Additionally, these determinations were based upon the expert opinion of James Davies, who is a Project Manager for the Community and Economic Development Department. Mr. Davies was asked to render an opinion on the issue of whether the PAC’s decisions on the projects will have a material economic effect on some of the PAC members’ financial interests. Mr. Davies’s expertise in this subject includes a Master of Arts degree in Urban Planning, and over twelve years of experience in real estate and redevelopment, including six years as a real estate economic consultant.

1. Walter Barrett

Mr. Barrett and his wife are the owners of Barrett Engineered Pumps, which is located on National Avenue¹, more than 300 feet, but less than 2500 feet from both of the project sites. The business sells a variety of pumps at both the retail and wholesale level, and has customers throughout San Diego and Imperial County. Some of the business’s customers are in the Barrio

Logan area. The business's approximate annual revenue is \$5 million. Mr. Barrett owns the 14,000 square foot parcel that the business sits on, which has an assessed value of \$495,124. In this case, the relevant financial interests are Mr. Barrett's own direct financial interests, the financial interests of the business itself, and the potential effect of the projects on the value of the land that is owned by Mr. Barrett.

For there to be a material financial effect on Mr. Barrett as a direct result of the PAC decision, the decision must "result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250 in any 12-month period." Cal. Code Regs. tit. 2, 18702.1(a)(4). There are no facts present which indicate that Mr. Barrett's income, or other direct financial interests, will be affected by the PAC's decision on the projects.

Even when a PAC decision does not have a direct effect on a public official's financial interests, the official may have a conflict of interest if the decision has a financial effect on a business that is a "source of income" to the official of \$250 or more in the preceding twelve month period. Cal. Gov't Code 87103(c); Cal. Code Regs., tit. 2, 18702.1(a)(1). A decision has a material effect on a business that is a "source of income" to the official if the business is either "directly involved in a decision before the official's agency," or there is a "nexus . . . between the purpose for which the official receives income and the governmental decision." Because Barrett Engineered Pumps is not directly involved in the proposals before the PAC, and because there is no apparent nexus between the manufacturing and selling of pumps and the PAC decision on these retail center projects, there is no conflict created by the business as a source of income to Mr. Barrett.

As the owner of Barrett Engineered Pumps, Mr. Barrett also has a potential conflict based on the indirect effect of the project on the financial interests of the business itself. Cal. Gov't Code 87103(a). The standard of materiality for the effect of the decision on the business depends on whether the business is publicly or privately held, and its size and revenues. For most businesses that are not publicly held, the effect of a decision on the business is material if it results in: (1) an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more, or (2) the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more, or (3) an increase or decrease in the value of assets or liabilities of \$10,000 or more. Cal. Code Regs. tit. 2, 18702.2(g).

According to James Davies, it is not reasonably foreseeable that any of the above-listed material effects would occur to Barrett's business as a result of the PAC's decision on the Mercado projects. This is because the business is involved in manufacturing, as opposed to commercial/retail activities, and does not provide any apparent complementary service to the proposed retail centers.

Finally, Mr. Barrett has a potential conflict based on his ownership of the real property that his business is located on. Cal. Gov't Code 87103(b). For a business that is more than 300 feet but less than 2,500 feet from a project boundary, the effect of a decision is material if the decision has a reasonably foreseeable financial effect of: (1) \$10,000 or more on the fair market value of the real property; or (2) effect of \$1,000 or more on the rental value of the property in a

12-month period. Cal. Code Regs. tit. 2, 18702.3(a)(3). Here, it is James Davies' opinion that the property will not be materially affected under that standard. It is zoned for industrial/commercial uses, is surrounded by a variety of land use types, and is a distance from the projects. It would therefore be unlikely to capture any benefits from its proximity to the projects.

Conclusion: Based on the facts provided, Mr. Barrett is not disqualified under the Act from participating in the PAC's votes on the two projects.

2. Brad Bittner

Mr. Bittner is the President of Fryer-Knowles, Inc., a corporation owned by his father, which is located on National Avenue, approximately 1/4 block east of the Commercial Center site, and just over 300 feet from the Trolley Station site. The business is a subcontractor of the Navy, specializing in pipe insulation. Its approximate annual revenue is \$3 million.

Brad Bittner receives a salary from the business, and earned over \$250 in the last twelve months from the business, but has no ownership interest in the business or the land that the business is located on. The land is owned by Bittner's father, who leases it to the corporation. The assessed value of the land is \$229,461. Although the business is in an area zoned commercial/residential mixed use, it is allowed a legally non-conforming use of light manufacturing, which was "grandfathered" in, according to James Davies.

Brad Bittner also owns a product development business called Mill-Spec Corporation, which is located at the same address as Fryer-Knowles. Mill-Spec has not had a job in eight or nine years, and has had no revenue in the last 12 months. Mill-Spec has no ownership interest in Fryer-Knowles. Mr. Bittner keeps Mill-Spec incorporated, although it is currently inactive, so that he does not have to pay to incorporate again in the future.

There are no facts presented that indicate that Mr. Bittner or a member of his immediate family² will foreseeably have any direct financial effect of \$250 or more based on these projects. Additionally, neither Fryer-Knowles or Mill-Spec are directly involved in the proposals being considered, and neither business has any apparent nexus with the projects that the PAC is considering.

Mr. Bittner has a potential conflict of interest if Fryer-Knowles, as his employer, is indirectly financially affected by the PAC's decisions on the projects. Cal. Gov't Code 87103(c), 87103(d). The standard for materiality of effects on Fryer-Knowles as a business entity is the same as cited for Mr. Barrett above. Because the business does not provide a service that will be complementary to the type of businesses that will be included in the new projects, Mr. Davies does not expect the revenues, expenses, assets, or liabilities of the business to change materially based on the projects. Mr. Davies does believe that it is foreseeable that the value of the land will increase by \$10,000 or more as a result of the projects, because of the mixed commercial/residential zoning available to the property. However, this potential increase in value (as well as the fact that the land is located within 300 feet of the Mercado Commercial Center site) is not relevant to the financial interests of the business because the land is not an

asset of the business. Mr. Bittner's father, not Fryer-Knowles Inc., is owner of the property, and because he is not considered immediate family under the Act, the father's interests are not relevant for purposes of this analysis.

Conclusion: Based on the facts provided, Mr. Bittner is not disqualified under the Act from participating in the PAC's votes on the two projects.

3. Raul Jaquez

Mr. Jaquez is the sole owner of Centre City Towing, a vehicle towing and auto service business located on National Avenue, which is more than 300 feet and less than 2500 feet from the two project sites. The business's annual revenue is approximately \$250,000. Mr. Jaquez leases the 17,490 square feet of property that the business is located on, with an option to buy the property. The property has an assessed value of \$234,625. According to Mr. Jaquez, his leasehold interest is worth \$1,000 or more.

Mr. Jaquez has no apparent conflict based on direct financial effects. There are no facts that indicate he will benefit directly from the projects. His business is not directly involved in the proposals being considered, and as a towing business, it does not appear to have a "nexus" to the PAC decisions on the projects.

One financial interest which poses a potential conflict is Mr. Jaquez's ownership of the towing business. Cal. Gov't Code 87103(a). The standard of materiality for effects of the PAC decisions on the business is the same as cited above for Walter Barrett's business, pursuant to title 2, section 18702.2(g) of the California Code of Regulations. It is Mr. Davies's opinion that the PAC's decisions on the projects would not materially affect the towing business under that standard. Even assuming that some additional towing business would occur due to the projects, it would be from a small portion of the large area that the business services, and it is unlikely that it would be sufficient additional business to result in increased revenues of \$10,000 or more in a year.

Another interest which poses a potential conflict for Mr. Jaquez is his leasehold interest in the land that his business is located on. Cal. Gov't Code 87103(b). A leasehold interest is materially affected by a decision if any of the following is true: (1) the decision will change the allowable use of the leased property, and the lessee has a right to sublease the property; (2) it is reasonably foreseeable that the lessee will change the actual use of the property as a result of the decision; (3) it is reasonably foreseeable that the decision will result in a change in the use of property within 300 feet of the leased property which will significantly enhance or decrease the use or enjoyment of the leased property; (4) the decision will result in the increase or decrease of the rent for the leased property by \$250 or 5 percent, whichever is greater, for a 12-month period; or (5) the decision will result in a change to the termination date of the lease.

Mr. Jaquez has stated that he does not expect any of the above effects to take place as a result of the PAC's decisions on the two projects. James Davies concurred that it appears unlikely that any of these effects will result from the PAC's decisions.

Conclusion: Based on the facts and opinions stated, Mr. Jaquez is not disqualified under the Act from participating in the PAC's votes on the two projects.

4. Rachael Ortiz

Ms. Ortiz is the Executive Director of the Barrio Station, a non-profit community organization that provides community services to the Barrio Logan area, such as karate classes, computer classes, day care, youth counseling and gang prevention programs. Barrio Station is located on Newton Avenue, on land owned by the City of San Diego. Ms. Ortiz has earned a salary of more than \$250 in the last 12 months from her position. Ms. Ortiz expects no direct financial impact on herself, her immediate family, or her employer as a result of the two Mercado projects.

There are no facts presented that indicate Ms. Ortiz or her immediate family will experience a direct financial effect of \$250 or more based on the PAC's decisions on the projects. The organization that she works for is not directly involved in the proposals being considered, and does not appear to have a "nexus" to the PAC decisions on the projects.

Ms. Ortiz has a potential conflict of interest, however, if the nonprofit entity which is a source of income to her, Barrio Station, is materially financially affected by the PAC votes on the projects. Cal. Gov't Code 87103(c). As with business entities, the materiality standard for the effect of a decision on a nonprofit entity depends on the gross annual receipts of the organization. At the very least, to be a material effect on a nonprofit entity, the decision must result in one of the following: (1) increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$10,000 or more; (2) increase or decrease in expenses in the amount of \$2,500 or more; or (3) increase or decrease in the value of assets or liabilities of \$10,000 or more. Cal. Code. Regs. tit. 2, 18702.4(f). According to James Davies, there are no facts which indicate that the proposed projects will have any financial effect on Barrio Station.

Conclusion: Based on the facts and opinions stated, Ms. Ortiz is not disqualified under the Act from participating in the PAC's votes on the two projects.

5. Marta Flores

Marta Flores is the Program Manager for the Logan Heights Family Health Center [LHFHC], a public health clinic which is a nonprofit entity. It is located on National Avenue, just over 300 feet from both project sites. Ms. Flores receives an income from the LHFHC, and has made over \$250 from that income in the last 12 months.

Conflicting facts have been presented regarding the LHFHC's interest in renting a space in the Mercado Commercial Center for a child care facility under one of the two proposals, called the "Landgrant/Mercado Associates" proposal. According to Fran Butler of the LHFHC, that possibility is speculative at this time. Ms. Butler told me over the telephone that the LHFHC has no firm intention of renting space in the Commercial Center, and Ms. Butler is unaware of any reason why either of the proposals that are being considered for the Commercial Center would be more or less beneficial for the LHFHC from a financial standpoint. However, in the

Landgrant/Mercado Associates written proposal [Landgrant Proposal], LHFHC is listed as a “Confirmed Tenant” for all 8,000 square feet of second floor space. (See Exhibit A, excerpt from Landgrant Proposal). The proposal lists the rental value of the space at \$1.10 per square foot, or \$8,800 per month. (See Exhibit B, excerpt from Landgrant Proposal).

In an abundance of caution, based on this conflicting information, the most problematic situation must be assumed, which is that the LHFHC is a “Confirmed Tenant” under the Landgrant Proposal for the Mercado Commercial Center. This situation presents a conflict for Ms. Flores based on the fact that LHFHC, which is a source of income to Ms. Flores, appears to be directly involved in the decision before the PAC regarding the Commercial Center. Cal. Code Regs. tit. 2, 18702.1(a)(1). Additionally, it could be argued under this situation that there is a “nexus” between the purpose for which the official receives income and the decision, that is, that the official receives income to achieve a goal that would be “achieved, defeated, aided, or hindered by the decision.” Cal. Code Regs. tit. 2, 18702.1(d). The goals of the LHFHC would certainly be aided by selection of the proposal which lists LHFHC as a tenant for an 8,000 square foot space.

Because the conflict of interest described above deals specifically with the Commercial Center project, the PAC’s decision on the Trolley Station project, and its effect on Ms. Flores’ financial interests, must be examined separately. It does not appear that Ms. Flores or her immediate family will have a direct financial gain or loss of \$250 or more based on the PAC’s decisions on the project. The organization that she works for is not directly involved in the proposals being considered for the Trolley project, and does not appear to have a “nexus” to the PAC decisions on that project.

Additionally, it does not appear that the Trolley project will have a material effect on the LHFHC itself as Ms. Flores’s employer. There are no facts presented that indicate that the project, a wholly retail project, will have any significant effect on the annual receipts, expenses, or value of the assets or liabilities of the LHFHC.

Although Ms. Flores has a conflict of interest under the Act with regard to the Commercial Center, she does not have a financial interest which would trigger disqualification under Government Code Section 1090. For purposes of Section 1090, a person who is a tenant of a contracting party is treated as having a “remote interest,” rather than a direct interest in the contract, and is not disqualified from participating in the decision. Cal. Gov’t Code 1091(b)(5). Here, Ms. Flores’s employer is a potential tenant of a contracting party, a more attenuated relationship than an existing tenancy, which is a “remote interest” pursuant to section 1091(b)(5). Therefore, she does not have a conflict of interest under Section 1090.

Conclusion: In an abundance of caution, Ms. Flores should be disqualified from participating in the PAC’s activity regarding the Mercado Commercial Project, based on the statement in the Landgrant/Mercado Associates written proposal that Ms. Flores’s employer, LHFHC, is directly involved in the proposal as a “confirmed tenant.” Although she does not have a conflict of interest under Section 1090, because tenancy is treated as a “remote” interest under that statute, her participation under these circumstances would nonetheless be a violation of the Act. Because her employer has no similar interest associated with the Trolley project, Ms.

Flores is not disqualified from participating in PAC activity regarding that project under either Section 1090 or the Act.

6. Carlos Quintana, Sr.

According to Byron Estes, Program Manager for the Barrio Logan Redevelopment Project, Mr. Quintana, Sr. has resigned from the PAC as of May 8, 1998.

7. Armida Sainz-Ramirez

Ms. Sainz-Ramirez owns a single family home on Newton Avenue, about 3/4 block from the Commercial Center site, and just beyond the 300-foot boundary from both project sites, in an area zoned residential. The property has an assessed value of \$64,815.

Because Ms. Sainz-Ramirez' property is between 300 and 2500 feet from both of the project boundaries, the standard for materiality of any effect of the projects on the property's value is the same as cited above for Mr. Barrett. Cal. Code Regs. tit. 2, 18702.3(a)(3). Under that standard, according to James Davies, it is reasonably foreseeable that the property will increase in fair market value \$10,000 or more as a result of the PAC's decision on the Mercado Commercial Center project. The Mercado Commercial development will make the area of Ms. Sainz-Ramirez' property more attractive to live in, because the project will add many neighborhood services and retail services within walking distance of the property. Additionally, current economic conditions in San Diego have resulted in single family homes rising in price according to demand.

The same conclusion is not true for the effect of the Trolley Station project on the value of Ms. Sainz-Ramirez' property. The development of a 40,000 square foot site with an entertainment center or a neighborhood produce store, in comparison with the 6 acre Mercado Commercial shopping center, will not likely change the fair market value of the property by \$10,000 or more, or change the rental value of the property by \$1,000 in a 12-month period.

Under Government Code Section 1090 "financial interest" is not specifically defined, but has been liberally interpreted. *Thompson v. Call*, 38 Cal. 3d 633, 645 (1985). Therefore, it is arguable that with regard to the Mercado Commercial Center, Ms. Sainz-Ramirez' interest in her property is a disqualifying "financial interest" in a contract. However, because Mr. Davies has opined that the value of the property is not likely to change due to the smaller Trolley Station project, she would have no "financial interest" in the Trolley Station project, and therefore would not be disqualified from participating in PAC activity on that project pursuant to Section 1090.

Conclusion: Based on the above facts and opinions, Ms. Sainz-Ramirez is disqualified from participating in the PAC activity regarding the Mercado Commercial Center under both the Act and Section 1090, but is not disqualified under either authority from participating in the discussion and vote on the Trolley Station Project.

8. Armando Lozano

Mr. Lozano owns two contiguous lots which contain multiple residential units on Newton Avenue. Mr. Lozano resides at the Newton Avenue property. These lots are adjacent to Ms. Sainz-Ramirez's property described above, and are also just outside the 300-foot boundary from both project sites. The assessed value of Mr. Lozano's lots is \$144,990.

Because the character of Mr. Lozano's property is residential, and because of its close proximity to Ms. Sainz-Ramirez's property, Mr. Davies's conclusions regarding the effect of the two projects on the value of Mr. Lozano's property are the same as set forth for Ms. Sainz-Ramirez above.

Conclusion: Based on the above facts and opinions, Mr. Lozano is disqualified from participating in the PAC activity regarding the Mercado Commercial Center under both the Act and Section 1090, but is not disqualified from participating in the votes under either authority on the Trolley Station Project.

9. Glenna Schmidt

In November 1997, this office performed a conflict of interest analysis for Ms. Schmidt for the purpose of determining whether she could participate in the PAC discussions and votes of the same two Mercado projects which are at issue in this memorandum. Based on the representation that her factual situation has not changed since that analysis was done, our conclusion remains that Ms. Schmidt does not have a conflict of interest which disqualifies her from participating in the PAC meeting on these two projects.

10. Reina Uribe

Ms. Uribe is the sole owner of a personal residence and a beauty shop business which are on adjoining lots on Logan Avenue. These lots are near the 2500 foot boundary from the two project sites at issue. The approximate annual revenue of the business is \$45,000. Ms. Uribe owns both lots, which have an assessed value of \$209,487.

There are no facts presented which indicate that Ms. Uribe or her immediate family will have a direct financial effect of \$250 or more based on the PAC's decisions on the projects. Additionally her business is not directly involved in the proposals being considered, and does not appear to have a "nexus" to the PAC decisions on the projects.

One financial interest which poses a potential conflict is Ms. Uribe's ownership of the business. Cal. Gov't Code 87103(a). The standard of materiality for effects of the PAC decisions on the business is the same as cited above for Walter Barrett's business pursuant to title 2, section 18702.2(g) of the California Code of Regulations. It is Mr. Davies's opinion that Ms. Uribe's business will not be materially financially affected by the projects under that standard for the following reasons. First, the property is located at the far south end of Logan Avenue, an area which has not been the subject of redevelopment, and which is a distance from the Mercado Commercial and Trolley station project sites. The routes that most potential customers will take

to the two project sites, Interstate-5 or Harbor Drive, will not take them into the area of Ms. Uribe's business. Additionally, this type of business is less likely than other types of retail businesses to have increased revenue because of the presence of casual shoppers. Finally, although a hair salon is a possible tenant under one of the Commercial Center proposals, it is unlikely that the presence of this additional hair salon would cause a material decrease in business at Ms. Uribe's shop of \$10,000 or more, which would be a change of nearly 25 percent from her current annual revenue.

For the same reasons as stated above, Mr. Davies believes that the PAC's decisions on the two projects will not foreseeably have a material effect on the value of the property owned by Ms. Uribe, under the materiality standard of section 18702.3(a)(3).

Conclusion: Based on the facts presented, Ms. Uribe is not disqualified under the Act from participating in the PAC activity on both the Commercial Center and Trolley Station projects.

11. Maria Osorio

Maria Osorio is a month to month tenant of the Mercado Apartments, and also works as a paid receptionist for the Apartments. Her employer is Cuatro Corporation, a property management company which manages the apartments.

Ms. Osorio has no apparent conflicts based on direct financial effects. There are no facts that indicate that her direct financial interests, or those of her immediate family, will be affected by \$250 or more in a 12-month period as a direct result of the projects. The business that she works for, Cuatro, is not directly involved in the proposals being considered, and as a property management company, does not appear to have a "nexus" to the PAC decisions on the projects. According to Ms. Osorio, the PAC decisions on the projects will not result in her having to move from the Mercado Apartments.

A month to month tenancy is not treated as a financial interest for purposes of a conflict of interest analysis under the Political Reform Act. Cal. Code Regs. tit. 2, 18233. However, Ms. Osorio has a potential conflict of interest if Cuatro, as her employer, is materially financially affected by the PAC's decisions on the projects. Government Code 87103(c), 87103(d). The standard for materiality of effects on Cuatro as a business entity is the same as cited for Mr. Barrett above. According to James Davies, because Cuatro is a property management company, it is not foreseeable that the PAC decisions on the two projects will have a material effect on the revenues, expenses or value of assets or liabilities of Cuatro.

Conclusion: Based on the facts presented, Ms. Osorio is not disqualified under the Act from participating in the PAC discussions and votes on the Mercado Trolley and Commercial projects.

12. Steve Zapoticzny

Mr. Zapoticzny is the Director of Environmental Safety and Health for Nutra Sweet

Kelco Company. He has no ownership interest in the company. He earned an income of more than \$250 from the company in the last 12 months. The company is a manufacturing business which harvests, manufactures, and processes seaweed into a water stabilizing agent which is used in a number of products such as beer, salad dressing, cleaners, textiles, and paper. It is located on Harbor Drive, just outside the 300 foot boundary from the Commercial Center project, and within the 300 foot boundary for the Trolley Station project. The business owns some of the land that it is located on, and leases some of the land from the Port District. The business is publicly held, and listed on the New York Stock Exchange.

Mr. Zapoticzny has no apparent conflicts based on direct financial effects. There are no facts that indicate that his direct financial interests, or those of his immediate family, will be affected by \$250 or more in a 12-month period as a direct result of the projects. The business that he works for, Nutra Sweet Kelco, is not directly involved in the proposals being considered, and does not appear to have a “nexus” to the PAC decisions on the projects.

Mr. Zapoticzny has a potential conflict of interest if Nutra Sweet Kelco, as his employer, is materially financially affected by the PAC’s decisions on the projects. Cal. Gov’t Code 87103(c), 87103(d). The standard for materiality of effects on Nutra Sweet Kelco is much higher than for the businesses previously discussed, because it is listed on the New York Stock Exchange. Therefore, in order for a decision to have a material effect on Nutra Sweet Kelco, it would have to result in one of the following: (1) an increase or decrease to the gross revenue for a fiscal year of \$250,000 or more; or (2) increased or decreased expenses for a fiscal year of \$100,000 or more; or (3) increase or decrease in the value of assets or liabilities of \$250,000 or more. Cal. Code Regs. tit. 2, 18702.2(a).

According to James Davies, it is not foreseeable that the PAC’s decisions on the two projects will result in any changes of the magnitude necessary for a material effect on Nutra Sweet Kelco’s financial interests under the standard cited above. Although the business is near to the project sites, it is on the other side of Harbor Drive from the sites, in an area dominated by marine and industrial businesses. It is a manufacturing business, as opposed to retail commercial, which would not provide any type of complementary service to the proposed projects.

Conclusion: Mr. Zapoticzny is not disqualified under the Act from participating in the PAC’s activity on the Commercial Center project or the Trolley Station project.

13. Rosa Maria Gallegos

Ms. Gallegos is a month to month tenant of the Mercado Apartments. A month to month tenancy is not treated as a financial interest for purposes of the Political Reform Act. Cal. Code Regs. tit. 2, 18233. Therefore, Ms. Gallegos is not disqualified from participating in the PAC discussions and votes on the Mercado Trolley and Commercial projects based on her tenancy.

An issue has been raised regarding Ms. Gallegos’s involvement in supporting various community groups and causes, including El Centro Comunitario del las Artes, a group which has been allowed use of the future Trolley Station site, which is interested in continuing their use of the site. Our office has been asked whether that involvement would create a conflict of interest

which would disqualify Ms. Gallegos from participating in the PAC meeting about the Trolley Station project. From the information provided, it appears that Ms. Gallegos does not have any *financial* interest in any of these groups. For that reason, her community involvement would not create a conflict of interest under the Act, which only recognizes financial conflicts of interest.

14. Sonia Rodriguez

Like Ms. Gallegos, Ms. Rodriguez is a month to month tenant of the Mercado Apartments and as such has no financial interest that would disqualify her from participating in the PAC meeting about the Mercado projects.

Council Policy 000-4

San Diego City Council Policy 000-4 states in pertinent part:

No . . . appointee . . . of The City of San Diego shall engage in any business or transaction or shall have a financial *or other personal interest*, direct or indirect, which is incompatible with the proper discharge of his official duties or would tend to impair his independence or judgment or action in the performance of such duties (emphasis added).

Under this policy, it is each PAC members' responsibility to determine whether he or she has any interest, financial or not, which is "incompatible with the proper discharge of official duties" as a member of the PAC considering a project or projects. If a PAC member determines that he or she cannot be objective about a project because of a financial or personal interest, the member may choose to abstain from participating in PAC discussions and votes on the particular project. It should be emphasized, however, that this is a policy, not a law, and does not have the force and effect of law.

CONCLUSION

Based on the information presented, the following PAC members are disqualified from participating in PAC activity related to the Mercado Commercial Project: Marta Flores, Armida Sainz-Ramirez, and Armando Lozano. None of the PAC members is disqualified from participating in the PAC activity related to the Trolley Station Project. If you have any further questions, please feel free to contact me.

CASEY GWINN, City Attorney

By

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