

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

September 10, 1984

Charles D. Haughton  
City Attorney  
City of Beverly Hills  
450 North Crescent Drive  
Beverly Hills, CA 90210

Re: Your Request for Advice  
Our No. A-84-169

Dear Mr. Haughton:

Your two letters request advice on behalf of Beverly Hills City Councilmember Edward I. Brown regarding two pending decisions. Together with follow-up letters and telephone conversations with your staff and with Councilmember Brown, I have been provided the facts material to this agency for rendering such advice. The first decision regards a proposed amendment to the General Plan entitled "Hotel Overlay Zone" and the second regards a pending lawsuit brought by the City against the County of Los Angeles concerning the proposed construction of the Pacific Design Center which will include a 300 unit hotel, plus two large office buildings. He wishes our advice as to whether or not he is required to disqualify himself as to either of these matters. They will be discussed separately.

### CONCLUSION

#### The Hotel Overlay Zone Decision

Councilmember Brown may participate in this decision because the projected price range of hotel rooms created pursuant to the zoning change would be in a totally different market sector than that occupied by his hotel.

#### The Pacific Design Center Lawsuit

Councilmember Brown must disqualify himself from participating in this decision because it is reasonably foreseeable that the construction of the expansion to the

Pacific Design Center will have a material financial effect upon his hotel business and upon his real property interest nearby on Melrose Avenue, due to traffic congestion.

FACTS

Councilmember Brown's Financial Interests

Councilmember Brown is a partner in the ownership of a building at 8400 Sunset Boulevard in West Hollywood which is located approximately one mile east of the City of Beverly Hills in the County of Los Angeles. Councilmember Brown has a 5 percent ownership interest as a general partner and another 7-1/2 percent as a limited partner thus owning a total of 12-1/2 percent of the property and business. The building consists of a hotel containing 85 units and also is, in part, an office building. The hotel is known as the Sunset Plaza Hotel (see attached brochure - Exhibit "A"). It is a Best Western affiliate and is AAA rated at 3 diamonds by the Southern California Automobile Association. (See Exhibit "A".) The room rates of the hotel rooms are in the range of \$45/\$55 per night. The rate of occupancy in Councilmember Brown's hotel is approximately 75-85 percent while the office space is 100 percent occupied. The above-referenced property is worth approximately \$5,000,000 with an equity interest of \$1,500,000. On an annual basis, the gross income realized from the hotel is \$960,000 and from the offices \$96,000. Combining the incomes from both the hotel and offices the net income is approximately \$240,000 per year.

The costs for a hotel room in Beverly Hills or West Hollywood are approximately as follows:

<u>Beverly Hills</u>	<u>West Hollywood</u>
Average \$106.00	Average \$68.00
Lowest 49.95	Lowest 36.00
Highest 155.00	Highest 85.00

In Beverly Hills there are currently 1,794 hotel rooms, and in the immediately surrounding area (including West Hollywood) there are an additional 2,860 rooms, for a total of 4,654. See attached Exhibit "B".

In addition to his interest in the Sunset Plaza Hotel, Councilmember Brown also holds interests in real property at the following locations within a 2-mile radius of Beverly Hills:

281 So. Robertson Blvd., Beverly Hills -- Structure is rented to Steven Chin for use as a neighborhood grocery.

8320 Melrose Avenue, Los Angeles -- Building is leased out to various businesses including a bookstore, with offices above.

1639 So. La Cienega Blvd., Los Angeles -- Small structure is rented as a grocery-type store to Golden Temple Foods.

Councilmember Brown has a greater than 10 percent interest in each of these properties. Attached as Exhibit "C" is a copy of a map marking the locations of the four properties of Councilmember Brown.

#### Hotel Overlay Zone Amendment

The hotel overlay zone amendment which has been proposed before the City Council would amend the General Plan of the City to facilitate hotel development. More specifically, the proposed project would amend the General Plan to permit construction of hotels which exceed current zoning limitations. The amendment would substantially increase the floor area ratio in which would be permitted for any hotel development. The proposed hotel overlay zone would permit hotels to be developed to a maximum of 165 feet in height and a maximum floor to area ratio of 7.5, and would result in the opportunity for construction of an additional 600 units within Beverly Hills. Because of current cost features and the nature of the Beverly Hills market, the minimum room costs for these units are expected to be in excess of \$100 per night.<sup>1/</sup>

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<sup>1/</sup> We have been provided with a consultant's analysis which substantiates this fact. There the conclusion was as follows:

We have found, based on our analysis and the assumptions as set forth in this report, that existing zoning does not permit economically feasible hotels to be developed. Furthermore, within the overlay zones, only limited potential exists for the highest quality level hotels to be economically feasible, and that is only in unique circumstances....

Pacific Design Center Lawsuit

a) Construction of Hotel .

The City of Beverly Hills has filed suit against the County of Los Angeles contending that an environmental impact report prepared by the County concerning the expansion of the Pacific Design Center to include a 300-unit hotel and other structures was inadequate and did not meet the State requirements of the California Environmental Quality Act. More specifically, the City contends that the cumulative impact of all the proposed construction was not adequately analyzed in the Environmental Impact Report and that the issue of traffic congestion which would be created was not adequately addressed. If successful, the impact of the City's lawsuit would be to delay the construction of the Center, including the hotel.

The hotel, if constructed, would be located in the outskirts of Beverly Hills, approximately one mile from the site of the office/hotel building in which Councilmember Brown is a partner. The anticipated cost for rooms in this hotel, given the cost of the project, would probably be no lower than \$75 and might well exceed \$100.

b) Traffic Congestion

The litigation between the City of Beverly Hills and the County of Los Angeles focuses specifically on the increased traffic congestion which will result from the expansion of the Pacific Design Center complex. The pleadings filed by the City concentrate upon the traffic impacts on certain intersections, all located outside of Beverly Hills, in West Hollywood. Those intersections are as follows:

San Vicente Boulevard and Santa Monica Boulevard

San Vicente Boulevard and Melrose Avenue

San Vicente Boulevard and Beverly Boulevard

Melrose Avenue and La Cienega Boulevard

Melrose Avenue and Robertson Boulevard

Points and Authorities in  
Support of Writ of Mandate,  
p 26, 5/18/84.

These five intersections may be located on the attached map. Exhibit "C". Three of them are on Melrose Avenue, on which Councilmember Brown owns property. The Melrose/La Cienega intersection is approximately 3 blocks (roughly 1,000 feet) from his property at 8320 Melrose Avenue. The City's pleadings allege, inter alia, that the traffic congestion created at these 5 intersections, outside Beverly Hills, will adversely impact upon the residents of Beverly Hills.

c) Goals of the Expansion of the Center

The project proposes an expansion of the Pacific Design Center, which is an existing wholesale market place for the Contract, Interior Design and Home Furnishing Industry throughout Southern California and the western United States. The proposed expansion of the Pacific Design Center includes construction of a 12-story hotel (312 suites), an 11-story office building, and a 17-story office building and a 6-story parking structure. (P&As, supra, at pp 24-25.) The goal of the proposal is to meet the growth of this industry and the increasing demand to further centralize its activities and to accomplish this by creating and maintaining West Hollywood as the national market place of the industry. (P&As, supra at p 5.)

Possible Decisions Involving the City Council

a) Hotel Overlay Zone

The Council will have to consider the contents of the hotel overlay zone amendment and take action adopting or rejecting an ordinance for an amendment to the General Plan. Further, upon approval of the ordinance, the Council will decide whether or not to submit the ordinance for consideration to the voters of the City for approval by a majority.

b) Pacific Design Center

The decisions before the Council involve litigation strategy in pursuing the lawsuit. Decisions might include whether to continue the lawsuit, seek dismissal, or settle the case.

ANALYSIS

Hotel Overlay Zone Decision

Councilmember Brown clearly has a financial interest, within the meaning of Government Code Sections 87100 and 87103, in the hotel at 8400 Sunset Boulevard. Any effect of the overlay zone

decision upon that interest would be distinguishable from the decision's effect upon the public generally.<sup>2/</sup> Thus, if it is reasonably foreseeable that the effect on his hotel would be material, disqualification is required.

Based upon all of the facts provided, we cannot conclude that it is reasonably foreseeable that this decision will have a material financial effect upon the Councilmember's hotel. See the Thorner Opinion, 1 FPPC 198 (No. 75-089, Dec. 4, 1975).

Our conclusion is based primarily upon the fact that the hotel rooms which may be constructed if the overlay zone is approved will not be in competition with Councilmember Brown's Sunset Plaza Hotel.<sup>3/</sup> The estimated room rates for any newly constructed hotel rooms in downtown Beverly Hills (\$75-\$100 or more) will place those units in a different market sector than the Sunset Plaza Hotel (\$45-\$55). Furthermore, the Sunset Plaza Hotel does not generally take referrals from Beverly Hills hotels, only from the Hyatt on Sunset, directly across the street.

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<sup>2/</sup> Councilmember Brown has an investment in Sunset Plaza Hotel (actually Sunset Plaza Towers West Ltd.) in excess of \$1,000. He also has an interest in real property in excess of \$1,000. He is a partner in the business entity and it is a source of income to him. Government Code Section 87103. Councilmember Brown has an investment interest in a related business, Equity Hotel Supply Co. However, he has advised us that this partnership has "dissolved" and only furnishes supplies and furnishings to Sunset Plaza Hotel and other apartment and hotel operations in which he and his partners are involved, none of which are located in the vicinity of Beverly Hills or West Hollywood.

<sup>3/</sup> Of course if Councilmember Brown, because of his involvement in the hotel industry (he is involved in other hotel partnerships outside of the relevant area) has reason to believe that the Hotel Overlay Zone decision will affect his interests materially (either positively or negatively) despite the different price ranges for his own and the proposed hotel, he must disqualify himself.

The Pacific Design Center Lawsuit

Councilmember Brown holds a real property interest which is approximately 1/2 mile from the Pacific Design Center and located on the same street (Melrose Avenue) as the Pacific Design Center. That property (8320 Melrose) is located just 3 blocks (approximately 1,000 feet) from one of the intersections which the lawsuit alleges will be severely impacted by the construction of the Pacific Design Center expansion.

If the traffic impacts upon Beverly Hills are believed to be so grave that litigation to prevent expansion of the Pacific Design Center is warranted, then the effects upon properties located along Melrose, such as Councilmember Brown's, are likely to be significant.

In addition, the purpose of the addition to the Pacific Design Center is to make West Hollywood the center for the interior design industry, bringing increased visitors to West Hollywood. While the expansion will include a hotel with 312 suites, which will be in a different price bracket than Sunset Plaza Hotel, it is apparent that the on-site hotel will not accomodate all of the increased volume of visitors. The Sunset Plaza Hotel is therefore likely to be affected by the presence of the expanded Pacific Design Center, located less than 1.4 miles away -- a 3-minute drive by car. We note that, applying the Commission's guidelines on materiality, with the hotel's annualized gross income of approximately \$1,000,000, an increase of \$10,000 would be material. 2 Cal. Adm. Code Section 18702(b)(1). At an average of \$50/night, it would take only one additional patron per night for 200 nights out of 365 to reach the level of materiality.

Taking these two sets of economic interests into account, we conclude that it is reasonably foreseeable that decisions involving the Pacific Design center lawsuit, which may determine whether the proposed expansion of the Center will occur, will have a reasonably foreseeable material financial effect upon Councilmember Brown's interests.<sup>4/</sup> Clearly, such an effect will be distinguishable from the effect upon the public generally. Consequently, Councilmember Brown should disqualify himself from any participation in these decisions.

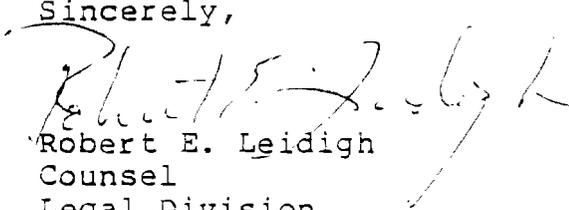
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<sup>4/</sup> See, Oglesby Opinion, 1 FPFC pinions 71 (No. 75-083, July 2, 1975).

Charles D. Haughton  
September 10, 1984  
Page 8

Should you have questions regarding the advice contained herein, please call me at (916) 322-5901.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:plh



IN THE  
HEART OF THE  
FABULOUS SUNSET STRIP

## Sunset Plaza Hotel

- 84 Luxuriously spacious air conditioned rooms
- King Size Beds
- Kitchenettes and One Bedroom Suites
- Special Weekly Rates
- Complimentary Coffee
- Direct Dial Telephones with Message Indicator Lights
- Color T.V. in Every Room
- Refrigerators in Every Room
- Bath/Shower Combinations in Every Room
- Laundry Facilities
- Valet Service
- Large Heated Pool
- Free Covered Parking
- Coffee Shops and Restaurants within Steps of the Hotel
- Gray Line Bus Tours and Public Bus Line Stop at Our Doorstep
- AAA ♦♦♦ Auto Club Approved
- Credit Cards Honored

AMERICAN EXPRESS  
BANKAMERICARD  
MASTER CARD  
VISA  
DINERS CLUB  
CARTE BLANCHE



LOS ANGELES — 2,966,800 See also ARCADIA, GLENDALE, MONROVIA & PASADENA

Establishments in Los Angeles are divided into Downtown, Northern Region and Southern Region.

Airport Accommodations—See listings in Los Angeles (Southern Region):

- Airport Century Inn, 1 mi e of airport
- AMFAC Hotel, 2 mi nw of airport
- Hacienda Hotel-L.A. Airport, 1 1/2 mi e of terminal
- Holiday Inn-International Airport, 1 1/4 mi e of airport
- Hyatt at Los Angeles Airport, across from entrance
- LAX Motel, 1 1/4 mi s of airport
- Los Angeles Airport Hilton, 3/4 mi e of airport
- Marriott Hotel, 1/2 mi e of airport
- Quality Inn-Airport, 1 1/4 mi e of airport
- Sheraton Plaza La Reina Hotel, 1/4 mi e of airport
- Viscount Hotel-Los Angeles, 3/4 mi e of airport

LOS ANGELES (DOWNTOWN) — (See spotting map page A154; See Index)

Best Western Dragon Gate Inn	IP	45.00	2P/1B	48.00	2P/2B	53.00	XP 5	F
50 units. 3/4 mi n of US 101 in Chinatown area. 818 N Hill St. (90012) A/C; C/TV; radios; phones; comb or shower baths. Garage. No pets. Assry deposit required. AE, CB, DI, MC, VI. • Restaurant; 11 am-9 pm; \$4-8. (D) (213) 817-3077								
Best Western Inn-Towns Motor Hotel	IP	43.00	2P/1B	49.00	2P/2B	53.00	59.00	XP 4
170 units. Downtown, 1 blk e of I-110, 9th St exit; 1/2 blk n of Olympic Blvd. 925 S Figueroa St. (90013) 2 refrigerators; A/C; C/TV; radios; phones. Suites. Coin laundry. Pool. No pets. AE, CB, DI, MC, VI. • Dining rm & colleshop; 8 am-11 pm; \$8.50-\$14; cocktails. (See ad p A153) (D) (213) 828-2222								

Index of Establishments on the LOS ANGELES (DOWNTOWN) Area Spotting Map

• Best Western Dragon Gate Inn	(17)	• The Biltmore Hotel	(11)
• Best Western Inn-Towns Motor Hotel	(2)	• Holiday Inn-Convention Center	(9)
• Best Western Kent Inn Motel	(3)	• Holiday Inn-Downtown	(8)

LOS ANGELES (DOWNTOWN) (Continued) (See map)

• Hyatt Regency Los Angeles	(10)	• The Westin Bonaventure	(12)
• Los Angeles Hilton Hotel	(9)	<b>RESTAURANTS</b>	
• Mayflower Hotel	(12)	Bernard's	(1)
• The New Otani Hotel	(13)	Cook's Steak House	(1)
• Oasis Motel	(8)	Francis	(1)
• Olympian Hotel	(9)	Los Flores Tavern	(1)
• Royal Viking Motel	(9)	Little Joe's	(1)
• Sheraton Grande Hotel	(10)	Pavan	(1)
• University Hilton	(10)	Perino's Oval Room	(1)
• Vagabond Inn-Figueroa	(11)	The Tower	(1)
• Vagabond Inn-Olympic	(11)		

Best Western Kent Inn Motel	IP	41.00	2P/1B	45.00	2P/2B	Motor Inn	48.00	XP 5
81 units. Downtown, 1 blk e of I-110, 9th St exit; 1/2 blk n of Olympic Blvd. 920 S Figueroa St. (90015) OPEN ALL YEAR. Refrigerators; A/C; C/TV; radios; phones; shower or comb baths. 4 2-bedrm units. Hid pool, sauna. Assry deposit required. AE, CB, DI, MC, VI. • Restaurant; 11 am-2 & 5-10 pm; closed Sun; \$4.50-\$8.50; cocktails. (See ad below) (D) (213) 828-8701								

The Biltmore Hotel	IP	85.00	2P/1B	105.00	2P/2B	105.00	145.00	XP 13
1022 units. Downtown, 515 S Olive St at 5th St. (90013) A long established hotel. Beautifully decorated lobby & pool, sauna, whirlpool, health club. Pay valet garage. Airport transp. No pets. AE, CB, DI, MC, VI. • Restaurant; hid & colleshop; 8 am-11:15 pm; \$8-\$17; cocktails; entertainment. Also, Bernard's, see separate listing. (D) (213) 624-1011								

Holiday Inn-Convention Center	IP	50.00	2P/1B	55.00	2P/2B	55.00	66.00	XP 7
192 units. Downtown, 1020 S Figueroa St at Olympic Blvd. (90015) A/C, C/TV, radios, phones. Suites. Coin laundry. Small pool. Limited garage & parking lot. Pets. AE, CB, DI, MC, VI. • Dining rm. 8 am-10 pm; \$7-\$14 cocktails. (D) (213) 748-1291								

Holiday Inn-Downtown	IP	47.00	2P/1B	49.00	2P/2B	53.00	55.00	XP 7
204 units. 1 blk w of I-110, 750 Garland Av at 8th St. (90017) A/C, C/TV, radios, phones. Suites. Coin laundry. Pool. Parking ramp. Airport transp. Pets. AE, CB, DI, MC, VI. • Dining rm. 6 am-2 & 5-10 pm; \$7-\$14. cocktails. (D) (213) 628-5242								

(Continued)

SPECIAL  RATES AT THE  
**Sunset Plaza Hotel**

3    RATED LUXURY FOR \$43

ALL RATES GUARANTEED

One or Two People/1 Bed	\$43	• King Beds	• In Room Coffee
Two People/2 Beds	\$49-\$52	• Direct Dial Phones	• Ice Machine (Free)
Kitchens, Fully Equipped	add \$ 8	• Color TV	• Free Parking
1 Bedroom Suite		• Heated Pool	• Meeting Rooms
w/Kitchen (2 People)	\$68	• Refrigerators	• Air Conditioning

Rates Effective from April 1 through June 15  
and September 10 through March 31

THE HEART OF THE SUNSET STRIP  
8400 Sunset Boulevard • Los Angeles, California 90069

Call Best Western Toll-Free Reservations  
1-800-528-1234 (United States)  
1-800-268-8993 (Canada)



\*No other agency commissions or discounts allowed on these rates.  
Rates may vary for holidays, conventions or special events

In the center of new downtown Los Angeles

 **InnTowne Hotel**

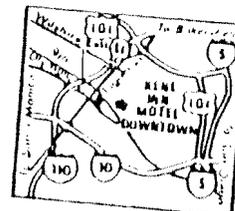
- 170 Newly remodeled rooms • Pool & gardens • Walk to Convention Center, major hotels and shopping
- Free courtesy transportation in the downtown area • Regular stop for the airport bus and sightseeing tours • Free Children 12 & under in parents' room • Free parking

Harbor Freeway/9th St. Exit at 925 S. Figueroa St.  
For reservations call collect 213-628-2222, or make reservations at any Best Western or call toll-free 1-800-528-1234.



 **In new downtown L.A. Hotel Luxury At Motel Rates**

- Restaurant/lounge • Direct-dial phone
- Color TV • Heated pool & sauna • Free parking
- Spacious rooms w/queen & king-sized beds
- Refrigerators • Free continental breakfast



**Best Western Kent Inn Motel**  
920 S. Figueroa • Los Angeles

Below is a listing of all the major hotels in that area.

	NAME AND ADDRESS <u>PHONE NUMBER</u>	<u># OF ROOMS</u>	<u>SINGLE RATES</u>	
			LOW	HIGH
1.	BEL AIR ** 701 Stone Canyon Road 472-1211	92	160	250
2.	BEL AIR SANDS ** 11461 Sunset Boulevard 476-6571	163	90	105
3.	HOLIDAY INN * 9360 Wilshire Boulevard 273-1400	110	80	90
4.	RAMADA INN ** 1150 South Beverly Drive 553-6261	260	82	88
5.	BEVERLY HILLS HOTEL * 9641 Sunset Boulevard 276-2251	325	135	195
6.	CENTURA PLAZA ** 2025 Avenue of the Stars 277-2000	1072	118	138
7.	BEVERLY WILSHIRE * 9500 Wilshire Boulevard 275-4282	448	143	263
8.	HYATT ON SUNSET ** 8401 Sunset Boulevard 656-5101	262	75	95
9.	DEL FLORES * 509 North Crescent 274-5115	38	20	32
10.	BEVERLY HILTON * 9876 Wilshire Boulevard 274-7777	603	93	132
11.	L'ERMITAGE * 9291 Burton Way 278-3344	116	195	950

EXHIBIT "B"

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MAP 28

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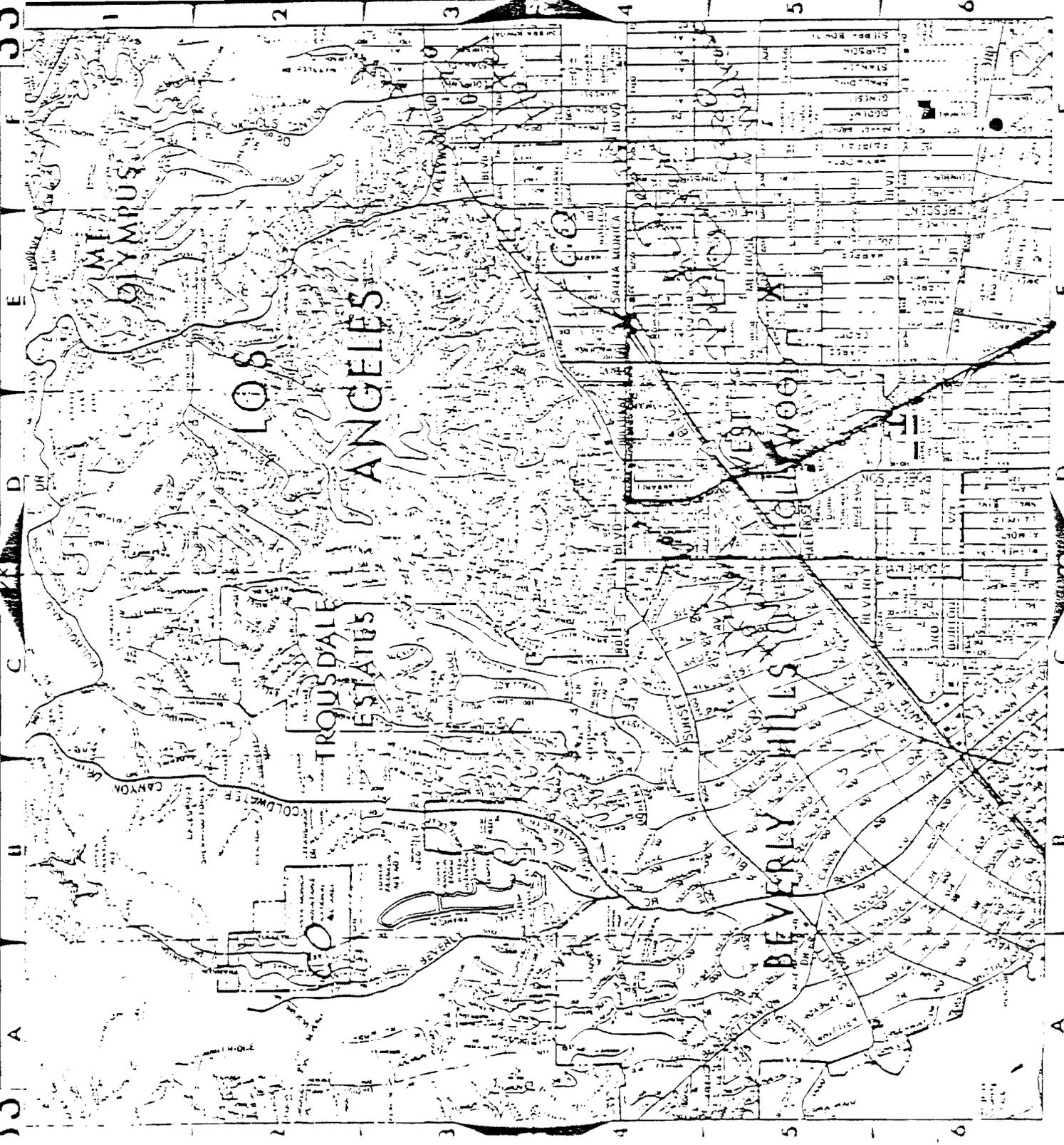
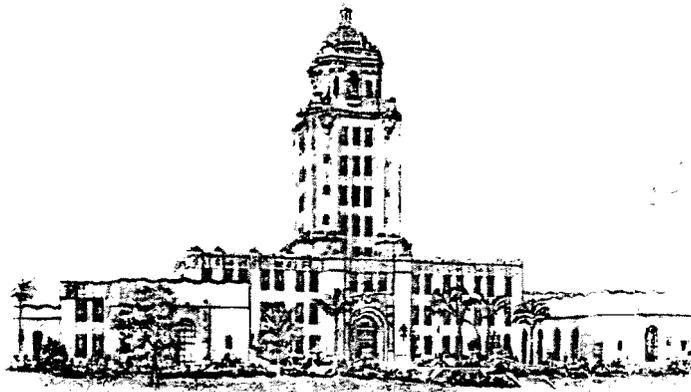


EXHIBIT "C"



Office of the City Attorney

CHARLES D. HAUGHTON  
City Attorney



Assistant City Attorneys

JACK ALLEN  
JOHN J. O'CONNOR

Deputy City Attorneys

TINA POST  
SETH WEISBORD

## CITY OF BEVERLY HILLS

450 NORTH CRESCENT DRIVE  
BEVERLY HILLS, CALIFORNIA 90210

(213) 550-4877

June 22, 1984

Mr. Dan Stanford, Chairman  
Fair Political Practices Commission  
110 "K" Street  
Sacramento, California 95814

Re: Possible Conflict of Interest - Councilmember Edward I. Brown

Dear Commissioner Stanford:

On behalf of Councilmember Edward I. Brown this office wishes to request an opinion from the Fair Political Practices Commission as to whether or not Councilmember Brown has a conflict of interest if he votes or participates in the decision-making process on any matters concerning two projects currently before the Council: The first is a proposed amendment to the General Plan entitled "Hotel Overlay Zone" and the second is a pending lawsuit brought by the City against the County of Los Angeles concerning the proposed construction of the Pacific Design Center.

Before describing the above-referenced projects, we will detail the facts which are known to this office which give rise to a concern as to whether a conflict of interest exists if Councilmember Brown participates in any decisions regarding the above-referenced projects. Specifically, Councilmember Brown is a partner in the ownership of a building located at 8400 Sunset Boulevard which is not located within the City of Beverly Hills but is approximately one (1) mile east of the City in the County of Los Angeles. Councilmember Brown's ownership consists of status as a general partner of five percent (5%) and as a limited partner he controls another seven and one-half percent (7 1/2%). The building consists of a motel consisting of 85 units and also is, in part, an office building. The above-referenced property is worth approximately \$5,000,000 with an equity interest of \$1,500,000. On an annual basis, the gross income realized from the motel is \$960,000 and from the offices \$96,000. Combining the incomes from both the motel and offices the net income is approximately \$240,000 per year. The

11.1.38

rates for occupancy of the motel rooms are in the range of \$45.00/\$ 55.00 per night.

#### Description of Hotel Overlay Zone Amendment.

The hotel overlay zone amendment which has been proposed before the City Council would amend the General Plan of the City to facilitate hotel development. More specifically, the proposed project would amend the General Plan to permit construction of hotels which exceed current zoning limitations. The amendment would substantially increase the floor area ratio which would be permitted for any hotel development. The proposed hotel overlay zone would permit hotels to be developed to a maximum of 165 feet in height and a maximum floor to area ratio of 7.5.

#### Pacific Design Center Lawsuit

The City of Beverly Hills has filed suit against the County of Los Angeles contending that an environmental impact report prepared by the County concerning the construction of a project which included a 300-unit hotel was inadequate and did not meet the State requirements of the California Environmental Quality Act. More specifically, the City has contended that the cumulative impacts of the construction of the Pacific Design Center which includes the hotel was not adequately analyzed in the Environmental Impact Report and therefore the report is deficient. If successful the obvious impact of the City's lawsuit would be to delay the construction of a large hotel on the outskirts of Beverly Hills and approximately one mile from the site of the office/motel of which Councilmember Brown is a partner.

#### Possible Decisions Involving the City Council

The following are potential decisions the City Council will have to make involving the hotel overlay zone amendment and the Pacific Design Center lawsuit which Councilmember Brown would or would not participate in depending upon whether he has a conflict of interest. Concerning the hotel overlay zone amendment, the Council would have to consider the contents of the amendment and take action adopting or rejecting the ordinance for an amendment to the General Plan. Further, upon approval of the ordinance, the Council will decide whether or not to submit the ordinance for consideration to the voters of the City for approval by a majority.

#### Pacific Design Center

Concerning the above-referenced project, the decision before the Council would involve any litigation strategy which would be incurred in pursuing the lawsuit. Decisions might include whether to continue the lawsuit, seek dismissal of the case or settle the case.

## Potential Conflict of Interest

Government Code § 87100 provides:

"No public official at any level of state or local government shall make, participate in the making, or in any way attempt to use his official position to influence a government decision which he knows or has reason to know he has a financial interest."

The motel/office building is clearly a source of income to Councilmember Brown since his income from the building is in excess of \$250.00 per year. The issue then would appear to be whether any participation by Councilmember Brown would have a significant effect on the "source of income."

The obvious problem is the meaning of the term "financial interest" as used in § 87100. Title 2 of the California Administrative Code § 18702(a) specifies that the financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property, or source of income in question. Sections 18702(b)(1) and (2) specifies the criteria which would cause a material financial interest regarding an interest in real property or a business entity.

We are aware that there is no direct financial gain realized by Councilmember Brown since he has no financial interest in any hotel which would be built in connection with the Pacific Design Center project or any hotels which might be constructed as a consequence of the hotel overlay zone. However, inasmuch as Councilmember Brown has a financial interest in a motel/office building which is located on the borders outside of the City, it is theoretically possible that the gain or loss of revenues which may be realized from that property might be affected by a change in market competition resulting from the construction of a 300-room hotel located approximately one mile away from the subject property. Likewise, if the hotel overlay zone is approved, this could lead to the construction of additional hotel rooms within the City which would be located within two miles of the subject property.

Currently, there exists within the City of Beverly Hills 2,096 hotel and motel units.<sup>1</sup> The surrounding area of West

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1. The City does not readily have available statistics concerning the number of hotel or motel units within the area surrounding the City. However, we could compile an estimate of the number of units located within a two-mile radius of the City if such figures would appear to be necessary to arrive at a determination. Since the staff time involved in obtaining such information would be immense, we will await hearing from you concerning the necessity of these figures.

Hollywood where the Pacific Design Center Hotel would be constructed currently has numerous hotel units available. Since it is theoretically possible that the actions of the City Council could indirectly affect the incomeproducing potential of the property in which Councilmember Brown is a partner we have submitted this issue for an opinion from this office.

It is the first impression of this office that any pecuniary loss or gain which could be affected by the construction of additional hotels within the City or surrounding areas is so speculative or remote in nature that no conflict would arise which would serve to bar the Councilmember's participation. In view of the existence of a substantial number of hotel units within the City and the surrounding areas, there would appear to be little, if any, likelihood that any decision on either of the subject projects would have a significant impact on the already existing market competition in the area in which the subject property is located. This is further evidenced by the fact that occupancy rates for the motel units are in a range (\$45/\$55) which are decidedly lower than those rates anticipated for the Pacific Design Center hotel which, given the cost of the project, will probably hover in the range of no lower than \$75.00 and may well exceed \$100.00. Thus, it could safely be assumed that the subject property would attract substantially different sectors of the public market reducing even further the theoretical notion of competition between the subject property and hotel project.

Therefore, any determination as to whether a decision by the Council on the above two projects would impact on the gain or loss of gross revenues concerning the subject property would be extremely speculative. This is because it is difficult if not impossible to isolate the financial impact on the subject property of the construction or non-construction of hotel units within the surrounding area. Moreover, the loss or gain or revenues realized by the Councilmember in connection with the subject property could depend on a multitude of variables, only one of which would be the development or non-development of surrounding hotels which would result from a decision of the City Council. Therefore, it is extremely difficult to arrive at a determination as to whether a conflict of interest would arise under the criteria provided by the FPPC regulations set forth in Section 17800, which appear to be geared toward situations where the impact of a decision may be ascertained in precise monetary figures. For this reason, we have requested guidance from the Commission and extend our appreciation. Should additional information be needed to render an opinion please contact our office.

Very truly yours,



CHARLES D. HAUGHTON  
City Attorney