

PAUL P. SELVIN  
BERYL WEINER  
JEFFREY E. DONFELD  
JAMES S. TYRE  
LAWRENCE I. WASHOR  
BRIAN WALTON  
GUY C. NICHOLSON  
FREDRIC A. ROLLMAN  
WENDY J. PHILLIPPAY

OF COUNSEL  
STEVEN L. GUISE

LAW OFFICES  
**SELVIN AND WEINER**

A PROFESSIONAL CORPORATION  
SUITE 2400  
1900 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067

AREA CODE 213  
277-1555  
879-1555

APR 25 10 32 AM '85

A 85-065-2

April 24, 1985

Diane Maura Fishburn  
Staff Counsel, Legal Division  
California Fair Political Practices Commission  
1100 "K" Street  
Sacramento, California 95814

Re: City of Paramount and Gerald Mulrooney  
Your File No. A-85-065

Dear Ms. Fishburn:

We are in receipt of a letter of April 22, 1985 to you from Mr. Robert S. Bower. In this letter, Mr. Bower has yet again raised several issues which are irrelevant to your determination of whether or not Mayor Mulrooney is eligible to vote on the swap meet ordinance. As you have made clear, your decision will be based upon the facts presented to you by the City and by Mr. Mulrooney. Like his earlier submissions to the Commission, Mr. Bower's letter of April 22, 1985 is another brief in support of his position that the ordinance would be invalid. Such arguments are, of course, best directed to the Superior Court should the Paramount Swap Meet wish to challenge this ordinance after its adoption.

On pages 1 and 2 of his letter Mr. Bower asserts that "neither Mr. Mulrooney, nor anyone on his behalf, has disputed" four alleged facts. These "facts" are that Mr. Mulrooney has been part of a previous coalition which sought to ban the swap meet from the City of Paramount, that he has stated that he believes the competition from the swap meet caused financial difficulties to his family and other businesses, that he believes that the swap meet is currently hurting the City of Paramount, and that he has in the past campaigned for reelection on the issue of "cleaning up" the swap meet. These allegations have never been conceded by Mr. Mulrooney or any of his representatives to the Commission. The reason why Mr. Mulrooney has not disputed these allegations is that they are simply irrelevant to any determination which the Commission will make.


LAW OFFICES  
**SELVIN AND WEINER**  
A PROFESSIONAL CORPORATION

Diane Maura Fishburn  
Page Two  
April 24, 1985

The sole issue before the Commission is whether Mr. Mulrooney is disqualified from voting on the proposed swap meet ordinance because of an alleged financial interest in the outcome of the vote. As we have set forth at length in our earlier correspondence to the Commission, there is no such financial interest. What Mr. Bower is apparently alleging now is that a governmental official is disqualified from voting on an issue when that official has previously taken a stand on the issue. This contention is totally without foundation in law or logic. It would follow from Mr. Bower's argument, for example, that a city councilman who campaigned for office by pledging to institute rent control in his city, or who had earlier argued at length for the necessity of rent control, would be barred from voting on a rent control ordinance. Obviously, the councilman would not be barred from such a vote. Thus, even assuming Mr. Mulrooney campaigned for office by claiming that he would "clean up" the swap meet, a fact which is in no way admitted, he is still not barred from voting on the issue any more than a councilman who campaigned for office on a rent control platform would be barred from voting on a rent control ordinance.

We will not take the Commission's time by disputing legal arguments set forth in the remainder of Mr. Bower's letter. These arguments have already been discussed at length in our earlier submission to the Commission, and our position has not changed in light of his letter. In sum, we submit that based upon the facts presented to you by the City of Paramount and by Mr. Mulrooney, there is no basis whatsoever for finding that Mr. Mulrooney has a financial interest in the swap meet vote. If you require any additional information from us, please do not hesitate to contact us at any time.

Very truly yours,



BERYL WEINER

BW:1mt

cc: Robert S. Bower, Esq.  
William A. Holt  
Maurice O'Shea, Esq.  
Gerald A. Mulrooney

GERALD A. MULROONEY  
Mayor  
CHARLES R. WELDON  
Vice Mayor  
CASE BOOGAARD  
Councilmember  
ESTHER C. CALDWELL, Ed.D.  
Councilmember  
JOHN A. MIES  
Councilmember

APR 1 2 32 PM '85

## CITY OF PARAMOUNT

March 28, 1985

Diane Fishburn  
State of California  
Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Dear Ms. Fishburn:

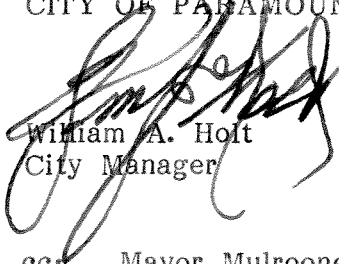
This letter is in confirmation of our telephone conversation of March 28, 1985. It is my understanding that this confirmation will be followed up by a written advice opinion.

We appreciate the responsiveness of the General Counsel and yourself to the timing of our request and our desire to having your response by our April 2, 1985 City Council meeting. Your sensitivity will expedite the public business in Paramount.

It is my understanding that, based upon the Fair Political Practices Commission's review of the statement of facts contained in City Attorney Maurice O'Shea's letters of March 12, 1985 and March 15, 1985, you conclude that the Paramount Bike Shop, through the Mulrooney Family Trust, is a source of income to Mayor Mulrooney. However, it is also your opinion that under Government Code Sections 87100 and 87103, action by the City Council, with Councilman Mulrooney's participation, in regard to the proposed increase of business license taxes at the Paramount Swap Meet would not have a material financial affect on that source of income.

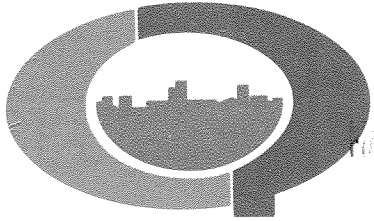
Since, under the facts, the license fee would not have a significant affect upon either the Paramount Bike Shop business or Mayor Mulrooney's source of income through the trust, Mayor Mulrooney is not disqualified by a conflict of interest from voting on the proposed business license tax ordinance.

CITY OF PARAMOUNT



William A. Holt  
City Manager

cc: Mayor Mulrooney  
Maurice O'Shea, City Attorney



MAR 23 6 45 AM '85

GERALD A. MULROONEY  
Mayor  
CHARLES R. WELDON  
Vice Mayor  
CASE BOOGAARD  
Councilmember  
ESTHER C. CALDWELL, Ed.D.  
Councilmember  
JOHN A. MIES  
Councilmember

## CITY OF PARAMOUNT

March 15, 1985

State of California  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804

Attention: Diana Fishburn

Dear Ms. Fishburn:

Per your request, please find the draft of the proposed Ordinance enclosed herewith.

Also, as a note on the financial aspect of Councilman Mulrooney. As previously stated, his dealership business in another City sells bicycles to the store leased by the family trust, which property is across the street from the swap-meet. Mr. Mulrooney advises that the dealership business with the lessee resulted in a net profit of less than \$250.00 in the last 18 months. (Add on to fact 8. in my previous letter.)

Thank you for your attention to this matter.

Very truly yours,

MAURICE F. O'SHEA  
City Attorney  
City of Paramount

MFO/jb

Enclosure

CITY OF PARAMOUNT  
LOS ANGELES COUNTY, CALIFORNIA

ORDINANCE NO. 598

MAR 23 8 45 AM '85

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PARAMOUNT AMENDING CHAPTER 26 OF THE PARAMOUNT MUNICIPAL CODE, LICENSES, BY AMENDING SECTION 26-1 AND SECTION 26-55, AND ADOPTING SECTION 26-56 DEALING WITH SWAP MEETS, OUTDOOR MARKETS, AND FLEA MARKETS.

The City Council of the City of Paramount does ordain as follows:

Section 1. Section 26-1 of the Paramount Municipal Code is hereby amended by the deletion of the following paragraphs:

Swap meet. The act or practice of carrying on, on a single location or premises, the exchange, barter, trade, sale or purchase of personal property among or between twenty-five or more persons, not otherwise licensed to do business in the city, less frequently than six times per week.

Swap meet average participant. The total number of participants or vendors in a swap meet per half-year, divided by the twenty-six weeks of such period.

Swap meet participant. A person who exchanges, barter, trades or sells personal property in or at a swap meet more frequently than three times per quarter.

Swap meet operator. Any person who conducts a swap meet.

Swap meet vendor. Any person who rents or is allotted a space from the swap meet operator, and conducts the business of selling, buying or trading therein, more frequently than three times per quarter.

Swap meet vendor space. Ground space, occupied for one day or a fraction thereof, by a swap meet vendor, and consisting of a maximum of three hundred fifty square feet.

Section 2. Section 26-55 of the Paramount Municipal Code is hereby amended by the deletion of the following paragraphs:

Swap meet operator. The license fee for operating a swap meet shall be one thousand dollars semi-annually, to be paid in advance. This fee shall entitle the operator to conduct a swap meet at the location specified in the license.

Swap meet vendor. This license fee shall be paid semi-annually by the operator of the swap meet, based on occupancy of vendor spaces for that period. The fee shall be six dollars semi-annually per average participant. This fee shall be in lieu of the standard business license. The operator will report total admissions of all vendors to the business license supervisor. This fee shall entitle the vendor to conduct the business of selling, buying or trading at the licensee's swap meet.

Section 3. Section 26-56 is hereby adopted and shall read as follows:

Section 26-56. Business License Fees and Taxes for Swap Meets, Outdoor Markets, and Flea Markets.

(A) Definitions.

As used in this section, the following words, terms, or phrases shall have the meanings hereinafter set forth:

1. Swap Meet, Outdoor Market, or Flea Market.  
Means any event:

- a. At which two or more persons offer tangible personal property for sale or exchange; and
- b. At which a fee is charged for the privilege of offering or displaying tangible personal property for sale or exchange; or

- c. At which a fee is charged to prospective buyers for admission to the area where tangible personal property is offered or displayed for sale or exchange; or
  - d. Regardless of the number of persons offering or displaying personal property or the absence of fees, at which tangible personal property is offered or displayed for sale or exchange if such event is held more than six times in any 12-month period.
- 2. Exhibitor. Any person, association, partnership, or corporation exhibiting, displaying, selling, exchanging, offering for sale, or offering for exchange any identifiable, tangible personal property at a swap meet, outdoor market, or flea market.
  - 3. Operator. Any person, association, partnership, or corporation conducting, operating, or managing the business of a swap meet, outdoor market, or flea market within the city limits.
  - 4. Exhibitor Stall. Designated ground space, assigned to, or rented, or occupied for one day or fraction thereof, by an exhibitor.

(B) Operator Tax and Exhibitor Tax.

The following taxes, collection process, and record keeping requirements shall apply to this section:

- 1. Operator Tax. Every swap meet, outdoor market, and flea market operator engaged in the operation of a swap meet, outdoor market, or flea market shall pay a semi-annual business tax of \$1,000 every six months. The tax shall be paid at the time of application.
- 2. Exhibitor Tax. Every exhibitor shall pay a daily business tax as outlined in the following schedule regardless of whether the exhibitor is charged a fee for the privilege of exhibiting, selling, exchanging, or displaying identifiable, tangible personal

property. Where two or more exhibitors share a single stall, each such exhibitor shall pay a separate daily business tax.

- a. Exhibiting on Monday, Wednesday, Thursday, and Friday.

The exhibitor business tax shall be \$2.50 per day per exhibitor.

- b. Exhibiting on Tuesday, Saturday, and Sunday.

The exhibitor business tax shall be \$5.00 per day per exhibitor.

- c. Exhibiting on Days Between Thanksgiving and Christmas.

The exhibitor business tax shall be \$5.00 per day per exhibitor regardless of the day of the week.

3. Tax Collection and Record Keeping.

- a. The exhibitor shall pay the applicable business tax to the operator on the day the exhibitor participates in the swap meet, outdoor market, or flea market. The operator shall collect the applicable business tax either at the time an exhibitor stall location is assigned to the exhibitor or the exhibitor is admitted to the swap meet, outdoor market, or flea market. No exhibitor shall be allowed to participate in the swap meet, outdoor market, or flea market until the exhibitor has paid the applicable exhibitor business tax.
- b. The operator shall issue receipts for the receipt of exhibitor business taxes on pre-numbered receipts; the amount of tax shall be separately stated from any other money collected by the operator. Each



receipt issued shall contain the stall number assigned, date for which stall was assigned, rented, or occupied, and the amount of exhibitor business tax paid. The original receipt shall be furnished to the exhibitor and is to be displayed at the exhibitor stall. The first copy shall be filed with the City Treasurer along with the tax collected. The second copy shall be retained by the operator for a period of three years for audit purposes.

- c. The operator shall be held responsible for the safe keeping of all taxes collected under this section until such taxes are turned over to the City Treasurer. The full amount of the tax collected each day, the appropriate copies of the receipts issued for the day, and an accounting for all receipts voided shall be submitted to the City Treasurer by 12:00 noon on the following work day.
- d. The operator shall be required to keep accurate daily records of all taxes collected and shall retain these records for a period of three years. Duly authorized representatives of the City Treasurer shall have the right to inspect, check, and audit such records, books of account, cashier procedures, and all other procedures, documents, or records relating to the collection and documentation of the exhibitor tax at any time during regular business hours.

The duly authorized representatives of the City Treasurer shall also have the right to inspect any exhibitor stall for a valid receipt for payment of an exhibitor business tax.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, firm, corporation or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof. The City Council of the City of Paramount hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 5. This Ordinance is an ordinance relating to taxes and is for the immediate and current expenses of the City and shall be effective immediately pursuant to California Government Code Section 36937.

Section 6. This Ordinance shall be published once in the Paramount Journal within 15 days after its adoption together with the names of the City Council members voting for and against the same.

Section 7. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance to be published as required by law.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Paramount this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

\_\_\_\_\_  
Gerald A. Mulrooney, Mayor

Attest:

\_\_\_\_\_  
William A. Holt, City Clerk

**ATTACHMENT B**



Peat, Marwick, Mitchell & Co.  
Certified Public Accountants  
555 South Flower Street  
Los Angeles, California 90071  
213-972-4000

March 6, 1985

Mr. David Spilman  
City of Paramount  
City Hall  
16400 Colorado Avenue  
Paramount, California 90723

Dear Mr. Spilman:

At your request, we have performed a limited review of the proposed Ordinance No. 598 amending Chapter 26 of the Paramount Municipal Code, Licenses, by amending Sections 26-1 and 26-55 of the Ordinance and adopting a new Section 26-56 dealing with swap meets. You have specifically requested that we provide you with any input we might have relating to the following items:

1. Adequacy of Section 3B-Record Keeping Requirements.

It appears that the record keeping requirements contained in Section 3B-Record Keeping Requirements are adequate to enable the City to effectively monitor the Swap Meet operator's tax collection efforts.

2. Adequacy of Section 3B, (3b)-Requirements of the Information to be Provided on the Operator's Receipt Issued for Taxes Collected From Swap Meet Exhibitors

The information required by Section 3B, (3b) appears to be adequate. However, to provide even more complete information, we suggest that the operator be required to record all other cash receipts from exhibitors (i.e., stall rental fees) as well as taxes collected. This action would enhance the audit trail if the City chose to perform an audit of the operators' records. The City would then be in position to agree the reported daily cash receipts to the operator's cash register tapes and/or bank deposits.

Because the limited review performed was based only on a review of the proposed Ordinance and did not include an examination of the internal controls of the operator, we do not express an opinion as to the likelihood that the record keeping requirements contained in the Ordinance will prevent or necessarily detect under-reporting and submission of taxes collected



Mr. David Spilman

March 6, 1985

2

by the operator, nor do we express any opinion as to the legality of the Ordinance, in general, or any specific element of the Ordinance. Had we performed additional procedures other matters might have come to our attention that would have been reported to you. It is understood that this report relates only to the items specified above.

Very truly yours,

PEAT, MARWICK, MITCHELL & CO.

Thomas W. Snow, Partner

TWS:s11

**ATTACHMENT C**

# CHANGE IN BUSINESS LICENSE FEES FOR SWAP MEETS

| <u>ORDINANCE</u>  | <u>DATE<br/>EFFECTIVE</u>               | <u>SWAP MEET OPERATOR BUSINESS LICENSE</u> |   |
|---|---|--|---|
|   |   | <u>FLAT FEE</u>                            | <u>CALCULATED FEE</u>                               |
| Original Municipal Code<br>Section 3603.32 and<br>3603.33 | January, 1958                           | \$100/Quarter                              | \$2.00/Average<br>Number of Vendors/<br>Quarter     |
| Ordinance #209  | July, 1965                              | \$90/Quarter                               | \$1.80/Average<br>Number of Vendors/<br>Quarter     |
| Ordinance #219  | June, 1966                              | \$72/Quarter                               | \$1.50/Average<br>Number of Vendors/<br>Quarter     |
| Ordinance #221  | June, 1967                              | \$65/Quarter                               | \$1.50/Average<br>Number of Vendors/<br>Quarter     |
| Ordinance #248  | May, 1969                               | \$150/Quarter                              | \$1.50/Average<br>Number of Vendors/<br>Quarter     |
| Ordinance #411  | June, 1976                              | \$1000/Semi-annual                         | \$6.00/Average<br>Number of Vendors/<br>Semi-annual |
| Proposed Ordinance #452                                   | Tabled<br>(June,1978)                   | \$1500/Semi-annual                         | \$8.00/Average<br>Number of Vendors/<br>Semi-annual |
| Proposed Ordinance #598                                   | For consider-<br>ation (March,<br>1985) | \$1000/Semi-annual                         | Zero*   |

\*A tax of \$2.50/vendor/day or \$5.00/vendor/day, depending on the day of the week, would be imposed on swap meet vendors.

# RUTAN & TUCKER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CENTRAL BANK TOWER, SUITE 1400

SOUTH COAST PLAZA TOWN CENTER

611 ANTON BOULEVARD

POST OFFICE BOX 1950

COSTA MESA, CALIFORNIA 92628

April 22, 1985

A. W. RUTAN (1980-1972)  
JAMES B. TUCKER, SR. (1986-1980)  
H. RODGER HOWELL (1925-1983)

TELEPHONE (714) 641-5100  
(213) 625-7586

TELECOPIER (714) 546-9035

TELEX 910 596-1883  
CABLE ADDRESS RUTAN TUC CSMA

IN REPLY PLEASE REFER TO

MILFORD W. DAHL\*  
GARVIN F. SHALLENBERGER\*  
JAMES R. MOORE\*  
H. L. (MIKE) MCCORMICK\*  
WILLIAM R. BIEL\*  
RICHARD A. CURNUTT\*  
LEONARD A. HAMPEL\*  
JOHN B. HURLBUT, JR.\*  
MICHAEL W. IMMELL\*  
MILFORD W. DAHL, JR.\*  
THEODORE L. WALLACE, JR.\*  
RONALD P. ARRINGTON\*  
RICHARD R. SIMS\*  
MARSHALL M. PEARLMAN\*  
ROBERT C. BRAUN\*  
ROGER A. GRABLE\*  
EDWARD D. SYBESMA, JR.\*  
THOMAS S. SALINGER\*  
BARRY R. LAUBSCHER\*  
ROBERT W. ALBERTS\*  
ROGER H. SCHNAPP\*  
DAVID C. LARSEN\*  
CLIFFORD E. FRIEDEN\*  
ARTHUR G. KIDMAN\*  
MICHAEL D. RUBIN\*  
IRA G. RIVIN\*  
JEFFREY M. ODERMAN\*  
JOSEPH D. CARRUTH\*  
STAN WOLCOTT\*  
ROBERT S. BOWER\*  
MARCIA A. FORSYTH\*  
WILLIAM M. MARTICORENA\*  
WILLIAM V. SCHMIDT\*  
BRUCE D. WALLACE\*  
ANNE NELSON LANPHAR\*  
WILLIAM J. CAPLAN\*  
MICHAEL T. HORNAK\*  
JANICE L. CELOTTI\*  
PHILIP D. KOHN\*  
JOEL D. KUPERBERG\*  
GARY M. LAPE\*

JUDITH WOODWARD\*  
M. TONI PERRY\*  
MARY M. GREEN\*  
KATHRYN L. TOBIN\*  
EVRIQKI (VICKI) DALLAS\*  
STEVEN A. NICHOLS\*  
THOMAS G. BROCKINGTON\*  
DAVID R. JENKINS\*  
MAURICE SANCHEZ\*  
WILLIAM T. ELIOPOULOS\*  
ERIC R. NEWMAN\*  
RANOALL M. BABUSH\*  
CRAIG LABADIE\*  
RANDY L. REZEN\*  
TIMOTHY S. MCCANN\*  
DAVID H. HOCHNER\*  
MARK B. FRAZIER\*  
KARIN T. KROGIUS\*  
HEATHER A. MAHOOD\*  
STEVEN T. GRAHAM\*  
PAMELA J. JOHNSTONE\*  
M. KATHERINE JENSON\*  
DAWN C. HONEYWELL\*  
SELMA J. MANN\*  
JANET L. MACLACHLAN\*  
DAVID A. THOMPSON\*  
CAROL J. FLYNN\*  
SCOTT R. PINZONE\*  
HELEN A. ROBICHAUD\*  
DEBORAH S. THOREN\*  
RICHARD G. MONTEVIDEO\*  
KAREN L. BUSH\*  
DAVID B. COSGROVE\*  
MARK SMITH FLYNN\*  
JOHN M. WRAY\*  
CAROLE STEVENS\*  
LEE M. STRAUS\*  
DANIE I. SPENCE\*  
KATHY M. FORBATH\*  
LORI SARNER SMITH\*

\*A PROFESSIONAL CORPORATION

Diane Maura Fishburn  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95805

Re: City of Paramount Swap Meet Tax  
and Potential Conflict of Interest of  
Councilman Mulrooney

Dear Ms. Fishburn:

I am in receipt of copies of the most recent correspondence to you from Mr. Weiner and Mr. Mulrooney, both dated April 15, 1985. In response, I would request that the FPPC keep certain things clearly in mind in making its determination regarding Mr. Mulrooney's conflict, as perspective is easily lost in the debate of controversial issues. Moreover, it is clear that Mr. Weiner has mischaracterized both the situation at hand and prior FPPC opinions in his request that disqualification not be ordered for Mr. Mulrooney.

Perhaps the single most important point which can be discerned from the exchange of letters on the disqualification issue is that neither Mr. Mulrooney, nor anyone on his behalf, has disputed:

- 1) That Mr. Mulrooney was part of a previous coalition that sought to ban the Paramount Swap Meet from the City and even sought the advice of outside counsel on how to do just that;



Diane Maura Fishburn  
Fair Political Practices Commission

April 22, 1985

Page Two

- 2) That Mr. Mulrooney has in the past stated that he believes the competition of Paramount Swap Meet was the cause of certain financial difficulties experienced by his family and other businesses in the vicinity of the Paramount Swap meet;
- 3) That Mr. Mulrooney believes the Paramount Swap Meet is currently hurting the City of Paramount, especially businesses in the vicinity, due to traffic congestion and lack of parking; and
- 4) That Mr. Mulrooney has in the past campaigned for reelection on the issue of "cleaning up" the Paramount Swap Meet, and currently seeks to do so.

The only fact disputed by Mr. Mulrooney or those who have spoken on his behalf is that the current tax proposal is the vehicle by which this "cleaning up" of the Paramount Swap Meet will occur. Instead, we are told that it is merely a revenue-raising measure. I submit, however, that it would be naive to assume that Mr. Mulrooney or anyone else at the City would explicitly state the true purpose of this proposed tax. Rather, the purpose of this tax can be more readily inferred from past statements and conduct, and since the above points regarding Mr. Mulrooney's comments or conduct remain undisputed, the only reasonable inference that can be drawn, in spite of Mr. Mulrooney's remonstrations to the contrary, is that the purpose of this proposed tax is to significantly impact the Paramount Swap Meet and ultimately close it down.

With regard to Mr. Weiner's letter, it is asserted that disqualification is inappropriate, since it is not "substantially probable" that Mr. Mulrooney will benefit from the decision. Mr. Weiner argues that this is so because (1) the tax is "very small" and could not adversely affect the vendors at the swap meet (significantly, Mr. Weiner fails to address the portion of the tax which will be placed directly upon the swap meet operator); (2) even if the Paramount Swap Meet were to go out of business, the bike shop across the street would not be affected because it deals with different lines of bicycles and there are other dealers in the area to fill the void; (3) the value of the real property held by the Mulrooney Trust would not increase due to improved parking and traffic conditions, since reduced traffic would lead to reduced

Diane Maura Fishburn

April 22, 1985

Page Three

sales volumes; and finally (4) any reduction in the swap meet operations would benefit not just the Mulrooney interests, but the interests of all "nearby" retailers.

These arguments, however, are based upon faulty premises. First, contrary to the assertion of Mr. Weiner, the FPPC has not adopted the "substantial probability" test to define "reasonably foreseeable" under Government Code Section 87103. Nor does the Thorner opinion (1 FPPC 198 (1975)) conclude, as suggested by Mr. Weiner, that the official in question need only disqualify himself when his company had a "prior connection" to a project under consideration. Rather, the Commission in Thorner concluded that the official in question could not participate in any decision regarding the lifting of a moratorium on new water connections, since such a decision would result in increased building activity which could provide significant opportunities for the official's business to increase its sales within the district. With regard to decisions on variances from the moratorium, the Commission determined that whether the official was disqualified depended upon the facts of each particular variance request. In this regard, the Commission expressly stated that "the statute requires foreseeability, not certainty." (Id. at 206.), and that "the ultimate test is whether the element of foreseeability, together with the other elements discussed earlier, is present to the point that the official's 'unqualified devotion to his public duty' might be impaired." (Id. at 206.) (Emphasis added.)

This standard was again cited in Gilmor, Gary G., 3 FPPC 38 (1977), where the Commission found a conflict existed for a Councilman voting on a rezoning to permit the construction of a 9-story senior citizens' housing complex:

"We think it is clear that the existence of Mayor Gilmor's multiple financial interests might interfere with his ability to perform his duties relative to the rezoning issue 'in an impartial manner, free from bias'. Accordingly, we conclude that the Mayor is prohibited from making, participating in making, or in any way attempting to use his financial position to influence the rezoning decision." (See also Sankey, Iris, 2 FPPC 157 (1976); Brown, McKenzie, 4 FPPC 19 (1978).) (Emphasis added.)

Not only does Mr. Weiner mischaracterize the appropriate standard to apply in determining what is "reasonably foreseeable", but he mischaracterizes pertinent facts, as well. It should be

RUTAN & TUCKER  
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Diane Maura Fishburn  
Fair Political Practices Commission

April 22, 1985

Page Four

noted that the ordinance as it was initially proposed, that is with a variable license fee rate of \$2.50 to \$5.00 per day, has been revised. Under the current version of the ordinance, each swap meet vendor must pay a license fee of \$1.00 per day, and the swap meet operator must pay, in addition to the semi-annual license fee already imposed of \$1,000, another license fee of \$1.00 per vendor per day. Since there are approximately 650 vendors who attend the swap meet daily, this will amount to a license fee on the operator of approximately \$240,000 per year. Moreover, the \$1.00 per day license fee charged swap meet vendors will tax each vendor approximately \$365 annually, resulting in an annual cumulative license fee of \$240,000 per year.

Mr. Weiner characterizes this tax as "very small", and asserts that it is "wildly speculative" to assume the tax imposed will force the Paramount Outdoor Market Center out of business. Significantly, Mr. Weinder focuses only upon the tax to be imposed upon the vendors at the swap meet. He simply ignores the tax to be imposed upon the operator. It is readily apparent that the imposition of a license fee of nearly a quarter of a million dollars annually on the swap meet operator, just for conducting a business, (especially when compared to the \$26.00 license fee on other retailers in town) is clearly so excessive that the operation of the swap meet will likely no longer be profitable. This is especially true when the tax is considered in conjunction with the burdensome, timely and costly collection procedures imposed upon the operator for collection of the taxes imposed on the vendors. The City estimates it will cost the City approximately \$42,000.00 a year just to monitor the swap meet's collection practices. Obviously, the cost to the swap meet will be much greanter since it is directly involved. The closing of the swap meet operation will obviously force the swap meet vendors, themselves, out of operation, including the 13 or so vendors engaged in bicycle sales within the swap meet.

Even if one were to accept Mr. Weiner's argument that the ordinance's excessive fees would not be prohibitory, the ordinance's effect on the bicycle vendors within the swap meet would still result in a clear benefit to Mr. Mulrooney, since these vendors would be forced to raise prices, thereby reducing their competitive price edge. Such effect on the approximately 13 competitors located directly across the street from the bicycle shop property in which Mr. Mulrooney has an interest, would clearly result in a financial benefit to said property.

Diane Maura Fishburn  
Fair Political Practices Commission

April 22, 1985

Page Five

Mr. Weiner also syllogizes that since increased traffic generally results in increased sales, the existence of the swap meet is helpful and profitable to the businesses in the area because it draws customers to the area. To a point, Mr. Weiner is correct. The swap meet, however, does not merely increase traffic in the area, as Mr. Weiner suggests; rather, it is perceived by City officials as having created critical parking and traffic problems within the general area of the swap meet, which has discouraged the general public and potential customers of businesses in the area from frequenting said businesses. Hence, the closing down of the Paramount Outdoor Market Center, or a substantial reduction in its operations, would assist retailers in the area, including those which are a source of income to Mr. Mulrooney, to achieve higher prices.

Moreover, Mr. Weiner's argument assumes that disqualification is based upon "benefit" alone. Taking Mr. Weiner's argument at face value, forcing the swap meet out of business or substantially reducing its operation, will decrease traffic in the area of nearby businesses, thereby reducing their sales volumes. This effect on Mr. Mulrooney's financial interests, though detrimental, would also furnish the reasonably foreseeable effect that would compel Mr. Mulrooney's disqualification.

To summarize, Mr. Mulrooney's financial interest is clear. He does business with the bike shop across the street from the swap meet, which is a source of income to him, both as a tenant and as a customer of his bicycle business. He is also the beneficiary of a trust which owns the property directly across the street.

It is also reasonably foreseeable that the imposition of this business license tax will have a material effect upon those financial interests of Mr. Mulrooney. It is reasonably foreseeable that the tax will substantially reduce business at the swap meet, if not completely eliminate it from the City limits. This in turn will decrease traffic and increase parking opportunities, which will ameliorate problems in the specific area of the swap meet, thereby benefiting property values. Moreover, even if the tax merely results in increased prices at the swap meet, this will have a foreseeable effect on business at the bicycle shop across the street, which is a source of income both to Mr. Mulrooney and to his family trust.

RUTAN & TUCKER  
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Diane Maura Fishburn  
Fair Political Practices Commission

April 22, 1985

Page Six

Finally, the effect on Mr. Mulrooney is distinguishable from that on the public at large. This is clear not only from Mr. Mulrooney's past, undisputed statements, but also from the inherent localized effect that improved traffic and parking conditions would have. Even Mr. Weiner acknowledges that the ordinance's impact will be on "nearby retailers." (April 15, 1985 letter from Beryl Weiner, p.5.)

We continue to urge that Mr. Mulrooney be disqualified in this matter. It is respectfully submitted that the Commission has been furnished sufficient facts to indicate that Mr. Mulrooney's "unqualified devotion to his public duty" might be impaired (People v. Darby, 114 Cal. App. 2d 412, 433 (1952)), and that he should therefore be disqualified.

Very truly yours,

RUTAN & TUCKER



Robert S. Bower

RSB:rg  
Beryl Weiner, Esq.  
Mr. William Holt  
Maurice O'Shea, Esq.  
Copy by Zap Mail 10:45 a.m., 4-22-85

PAUL P. SELVIN  
BERYL WEINER  
JAMES S. TYRE  
BRIAN WALTON  
GUY C. NICHOLSON  
WENDY J. PHILLIPPAY  
JOEL M. GROSSMAN

LAW OFFICES  
**SELVIN AND WEINER**

A PROFESSIONAL CORPORATION

SUITE 2400

1900 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067

AREA CODE 213  
277-1555  
879-1555

APR 15 10 20 AM '85

April 15, 1985

VIA ZAP MAIL

Diane Maura Fishburn  
Staff Counsel, Legal Division  
California Fair Political Practices  
Commission  
1100 "K" Street  
Sacramento, CA 95814

Re: City of Paramount and Gerald Mulrooney  
Your File # A-85-065

Dear Ms. Fishburn:

As you are aware, the Paramount City Council is soon to consider an ordinance establishing a business license tax on operators of, and vendors at, swap meets. The City has asked for your advice on whether Council Member and Vice Mayor Gerald Mulrooney is disqualified from voting on this ordinance, due to an alleged financial interest in the outcome of the vote. Based on your letter of April 4, 1985, we understand that your advice will be based upon the facts presented to you by the City and Mr. Mulrooney.

As the City has already informed you, Mr. Mulrooney is the beneficiary of a family trust which owns real property across the street from the Paramount Swap Meet. We are enclosing a supplemental letter from Mr. Mulrooney summarizing the information he has previously given to you over the telephone. Based on these facts, we respectfully request that you issue an opinion advising that Mr. Mulrooney is not disqualified from voting on the ordinance, because Mr. Mulrooney has no financial interest in the outcome of the vote.

We are in receipt of a copy of a letter dated April 5, 1985 to the Commission from Mr. Robert S. Bower, as well as his letter to the City Council of March 12, 1985, expressing the view that Mr. Mulrooney is disqualified from voting on the ordinance because he has a personal financial interest in the ordinance. He claims that if the tax is imposed, the swap meet vendors who sell bicycles will be driven out of business, and the bicycle

## SELVIN AND WEINER

A PROFESSIONAL CORPORATION

Diane Maura Fishburn

April 15, 1985

Page 2

shop will benefit from this loss of competition. He also posits that the tax will lead to "changes in traffic patterns, and increases in parking spaces" which supposedly will increase the value of the trust's real property. Not only are these contentions wholly speculative, they are unsupported by any evidence, and contrary to all logic.

Under Government Code §87103, an official is not disqualified from voting based on mere speculation that he might have a financial interest in a particular governmental decision. Rather, under the statute an official has a financial interest in a decision "if it is reasonably foreseeable that the decision will have a material effect, distinguishable from its effect on the public generally, . . ." (emphasis added.)

The Commission had occasion to define the term "reasonably foreseeable" in the case of Tom Thorner, 1 F.P.P.C. 198 (1975). In that case, the issue was whether a Mr. MacPhail, a director of a municipal water district, could participate in a decision on a request for a new water connection. Mr. MacPhail was the executive vice-president, a salaried employee and a minority stock holder of a company which engaged in selling ready mix concrete and building materials to contractors. The Commission made clear that when, under the circumstances, it was substantially probable that Mr. MacPhail's company would benefit from a decision, he would be disqualified. When, however, it was only possible that Mr. MacPhail's company might benefit, he need not disqualify himself. Thus, even when Mr. MacPhail's company would be bidding on supplying materials to a particular project, he need not disqualify himself, so long as the company did not have a prior connection to that project.

In analyzing the meaning of the term "reasonably foreseeable," the Commission relied on the United States Supreme Court case of United States v. Mississippi Valley Generating Company, 364 U.S. 520 (1961). In that case the Supreme Court held that an official should not participate in a governmental decision if there were a "substantial probability" that he would benefit from the decision. In the Thorner opinion, the Commission adopted the "substantial probability" requirement. Thus, Mr. Mulrooney is only disqualified from voting on the ordinance if there is a substantial probability that he has a financial interest in the vote. Mr. Bower's conjectures do not come close to meeting the "substantial probability" standard.

LAW OFFICES  
SELVIN AND WEINER  
A PROFESSIONAL CORPORATION

Diane Maura Fishburn  
April 15, 1985  
Page 3

As we explain, Mr. Bower's conclusion that Mulrooney has a conflict of interest depends upon three assumptions. Only if these assumptions are substantially probable should Mayor Mulrooney be disqualified. As a matter of fact, however, none of the three is substantially probable, and therefore there is no basis whatsoever for disqualifying Mr. Mulrooney.

Mr. Bower's three assumptions are these: (1) the business license tax would drive the swap meet vendors out of Paramount; (2) once the swap meet vendors are driven out of Paramount, the bicycle shop down the street from the swap meet will realize greater profits, and (3) once the swap meet vendors are driven out of Paramount, the value of the trust's real property will increase, in light of changed traffic patterns and increased parking spaces. None of these three assumptions is the probable result of the imposition of a business license tax.

First, the swap meet license tax is very small. Under the present formulation of the ordinance, the vendors would be charged \$1 per day for selling at the swap meet. It is wildly speculative to posit that such a tax, or even a \$2.50 or \$5.00 per day tax would drive any vendor out of business. As you may be aware, the vendors already pay rent to the swap meet owner, Mr. Bower's client, which far exceeds the amount of this tax. For example, vendors already pay a basic rent of \$5 to \$15 per day. Moreover, the swap meet conducts an auction for the prime locations, and vendors routinely bid as much as \$100 per day rent for these locations. It is ludicrous to argue that a vendor paying \$15 to \$100 per day rent would go out of business if he were asked to pay a \$1, or for that matter a \$2.50 or \$5.00 per day tax.\*

---

\* We have received a copy of a letter from Mr. Jay Swerdlow opining that if the business license tax were imposed "many sellers would no longer be able to afford to conduct their business in Paramount." Mr. Swerdlow does not set forth the basis for this opinion, nor does he indicate how many vendors of the swap meet's many hundreds of vendors (there are some 650 vendor spaces, and the swap meet is often full) would be affected. Mr. Swerdlow also does not mention that he is administrative assistant to the general manager of Pacific Theatres, which operates the drive-in theatre at, and is a tenant of, the owner of the Paramount Swap Meet. He is hardly a disinterested party.



## SELVIN AND WEINER

A PROFESSIONAL CORPORATION

Diane Maura Fishburn

April 15, 1985

Page 4

The second prong of Mr. Bower's argument is equally without foundation. There is no reason to assume that if the swap meet went out of business, the bicycle shop's business would improve. The bicycle shop is a specialty store, and draws a different clientele from those who buy bicycles at swap meets. Additionally, the retail store sells Schwinn and other "top-of-the-line" bicycles, and the swap meet vendors do not. The bicycles at the retail location are generally higher in price, and the retailer offers servicing which a swap meet vendor does not. Even assuming that former swap meet customers will now purchase from a retail shop, there is no showing that they will purchase from this retail shop, as opposed to another specialty shop, or department stores such as Sears, K-Mart or Gemco. For your information, we have prepared a map showing the locations of over sixty (60) other bicycle sellers within a 4-mile radius of the swap meet. As you can see, there are many other retailers who would be competing for this business.

Moreover, this bicycle shop is in exactly the same position as Mr. MacPhail's contracting company in the Thorner case. In that case, Mr. MacPhail was permitted to vote on the granting of a request for new construction, even though his company would be bidding on the contract, and might benefit from the vote. Mr. MacPhail would only be disqualified if his company already had a connection to the project. When, however, his company would be bidding on the project along with other companies, he would not be disqualified.

The same is true of the bicycle shop. Even if the swap meet vendors closed down, the bicycle shop would be competing for new customers, along with K-Mart, Gemco, Sears, etc. There is certainly no reason to believe that these customers will purchase bicycles from a retail specialty store. To the contrary, it is far more logical to assume that the bargain-oriented customers who patronize a swap meet would shop for a bicycle at a discount store such as K-Mart than at a specialty retail store. Thus, even if Mr. Mulrooney owned the bicycle shop, he would not be disqualified from voting. Additionally, as you are aware, the bicycle shop pays a fixed rent to the trust, not a percentage of sales. It is therefore irrelevant whether the bicycle shop's sales increased.

As to the argument that the real property upon which the bicycle shop is located will increase in value if the swap meet closes, the argument verges on the ridiculous. First, as noted above, the assumption that the small daily tax would lead to the

## SELVIN AND WEINER

A PROFESSIONAL CORPORATION

Diane Maura Fishburn

April 15, 1985

Page 5

closure of the swap meet is wildly speculative. Even if the swap meet closed, however, its closure would not increase the value of the property. The swap meet draws potential customers into this area. Any retail merchant will attest that increased traffic means increased sales volume. To put it another way, if you were a retailer, would you prefer that hundreds of consumers drive on to your street, or would you prefer that they shop at a distant location, and never drive past your window? It is true that the traffic patterns could be affected if the swap meet closed, and there would be additional parking spaces. That would not be of great value to a retail merchant, however, if there were no customers to fill those empty spaces.

There is a second reason why Mr. Mulrooney should not be disqualified from voting. Even assuming that Mr. Bower is right, that the license tax would drive the swap meet out of business, and the traffic patterns and parking spaces would change, the impact on the retail property owned by the trust would be the same as the impact on all other retailers in the vicinity. The Commission has held that a governmental decision which has an impact on all retailers is a decision which has an impact on the public generally, as that term is used in Section 87103. Thus, in the case of William L. Owen, 2 F.P.P.C. 77 (1976) the Commission was asked whether the owner of a natural foods store which leases space in an existing commercial building which would benefit from re-development should be disqualified from voting. The Commission held that the owner of the store need not disqualify himself from voting, because the retailers were "the public generally."

Applying this holding to the present case, even were the swap meet to close, the benefits to the bicycle shop would be no different from the benefits to any other retailer in the area. The impact on all nearby retailers would be the same if the swap meet were to close.

In sum, Mr. Bower's objections are based on erroneous assumptions and pure speculation. Because it is not substantially probable that Mr. Mulrooney has a financial interest in the ordinance, there is no basis whatever to disqualify Mr. Mulrooney from voting on this ordinance. We therefore respectfully request that you promptly issue an opinion

SELVIN AND WEINER

A PROFESSIONAL CORPORATION

Diane Maura Fishburn

April 15, 1985

Page 6

indicating that he is not disqualified. If we can provide any additional information to you, please do not hesitate to contact us.

Very truly yours,

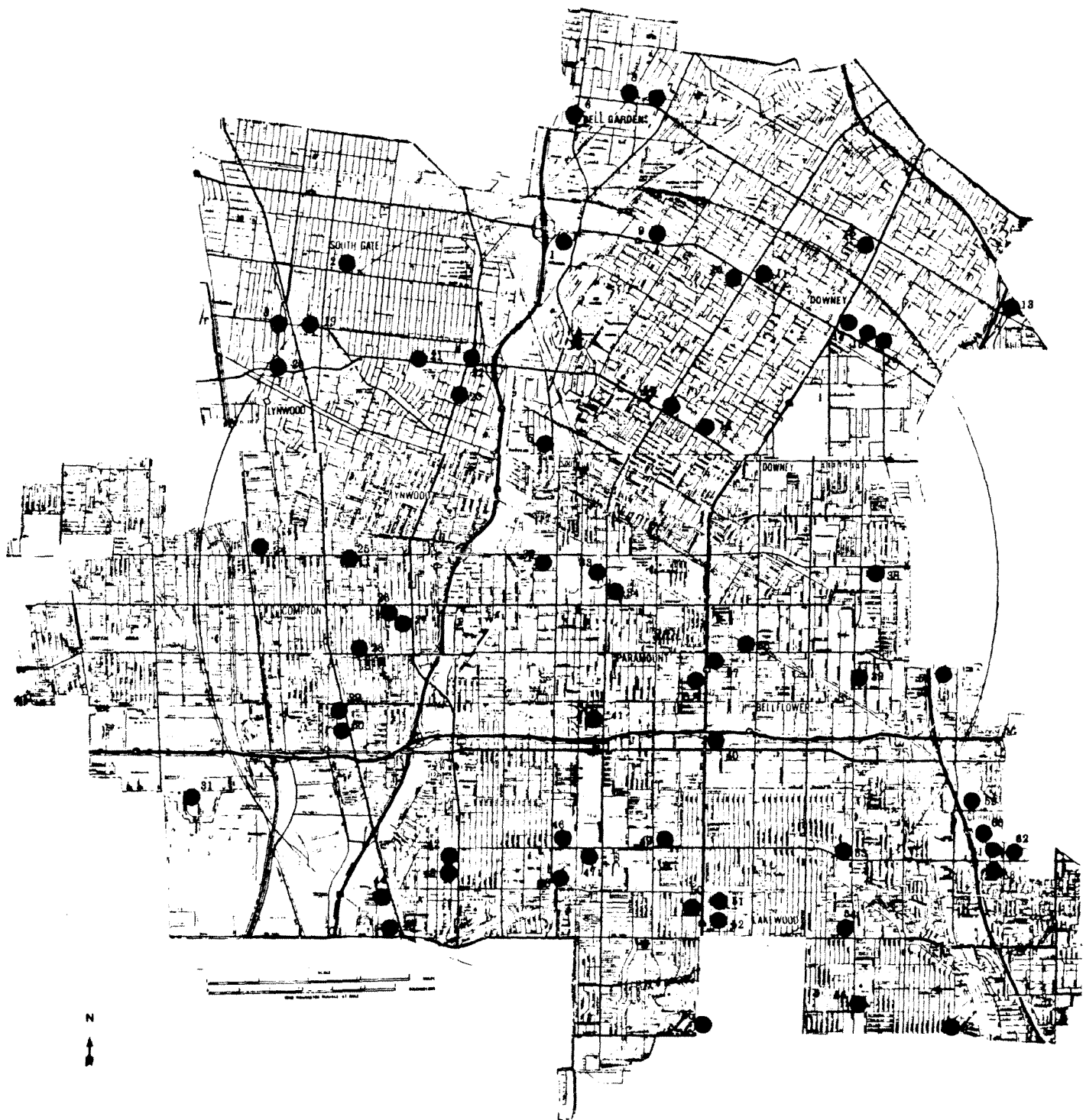
A handwritten signature in dark ink, appearing to read "Beryl Weiner", written in a cursive style.

BERYL WEINER

cc: William Holt  
Maurice O'Shea, Esq.  
Gerald A. Mulrooney  
Robert S. Bower, Esq.

BW/SWA38

# Retail Bicycle Outlets



Mulrooney, Inc.  
Doing Business As:  
Cerritos Bike Shop  
South Coast Bike Shop  
Sea Schwinn Bike Shop  
12148 South Street  
Artesia, CA 90701

April 15, 1985

Diane Fishburn  
Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Re: City of Paramount and Gerald A. Mulrooney

Dear Ms. Fishburn:

The purpose of this letter is to supply information to you regarding my relationship to the Paramount Bike Shop, which is approximately one block from the Paramount Swap Meet. I have already supplied some information to you on the telephone, and this letter will briefly summarize that information.

I am a beneficiary in a trust which owns the real property upon which the Paramount Bike Shop is located. The property is leased to the Paramount Bike Shop on a three-year lease, which expires November 1, 1986. The monthly rental is approximately \$1,500.00. The rent is tied to a base of \$1,440.00 per month, with an annual cost adjustment based on the Bureau of Labor Statistics cost of living index. The rent is not in any way tied to the volume of sales of the Paramount Bike Shop.

I am aware of the allegation that I have a financial interest in the outcome of the vote to impose a business license tax on vendors at the swap meet. As I understand the objection, I would have a financial interest because if the swap meet license tax is imposed, the swap meet vendors could no longer afford to do business there, the bicycle shop sales volume would increase, and the value of the real property upon which the Paramount Bike Shop is located would increase. I do not believe that the business license tax would force the closure of the swap meet. It is the intention of the City Council in proposing the ordinance to increase revenues. Obviously, if the swap meet were to close, we would have no revenues from it.

Ms. Diane Fishburn  
April 15 1985  
Page No. 2

Our purpose is certainly not to close down the swap meet. Even if the swap meet were to close, however, and there were increased sales to the Paramount Bike Shop, neither I nor my family trust would benefit. I also do not believe that the value of the real property upon which the Paramount Bike Shop is located would increase. It is my judgment, and it is also the opinion of Mr. Velasco who owns the Paramount Bike Shop, that the commercial value of the property is increased by virtue of the swap meet, because potential customers are drawn into the area. Mr. Velasco also informs me that the swap meet generates repair and parts sales business for the Paramount Bike Shop.

I also wish to clarify my very limited relationship to the Paramount Bike Shop. At one time I owned the Bike Shop, and I sold it to Mr. Velasco in 1978 for \$46,200.00. The sale was on a three-year note, which was fully paid in two years. Mr. Velasco and I are both independent retail bike dealers. Very occasionally, we will swap bicycles with each other, a very common practice in the bicycle business, when one of us has a bike that the other needs. No cash is involved in such transactions, which are conducted solely for the benefit and convenience of our customers. I engage in such swaps with other retailers as well. I am a retailer, and not a wholesaler. On one occasion I purchased four bicycles I needed from the Paramount Bike Shop when they were overstocked.

In sum, I have no financial interest in the swap meet ordinance, nor do I have any personal interest in closing down the swap meet. To the contrary, it is our goal to increase City revenues through the business license tax on swap meet vendors.

If you have any further questions regarding the subject matter of this letter, please do not hesitate to contact me at any time.

Very truly yours,



Gerald A. Mulrooney  
Vice-Mayor  
City of Paramount

cc: Robert S. Bowers, Esq.  
Maurice F. O'Shea