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Thomas W. Condit
Frederic M. Hanelt
CONDIT & HANELT
716 Tenth Street, Suite 302
Sacramento, California 95814
Telephone: (916) 448-1498

Attorneys for Plaintiffs

(ENDORSED)
FILED
OCT 30 1979

JOHN KAZUBOWSKI, Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)
)
vs.)
)
DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)

NO. 437096

ORDER GRANTING
PRELIMINARY INJUNCTION

The above matter came on regularly for hearing on
October 30, 1979, pursuant to Plaintiffs' Motion for a Preliminary
Injunction: Frederic M. Hanelt appeared as attorney for plain-
tiffs and defendant appeared *through counsel.*

On proof being made to the satisfaction of the Court, and
good cause appearing therefor:

IT IS HEREBY ORDERED that during the pendency of this
action, or until the final determination thereof, or until the
Court shall otherwise order, the Defendant DANIEL V. TEXERA shall
be, and hereby is enjoined and restrained from participating in
any manner, except as a private citizen, in the deliberations and

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vote of the Santa Clara City Council on plaintiffs' application for a condominium conversion, on plaintiffs' appeal from the Planning Commission's denial of their variance application and on proposed City Ordinances Nos. 1390 and 1391 concerning condominium conversions.

OCT 30 1979

DATED:

PETER ANELLO
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM.

BARRY McCARTHY
Deputy City Attorney

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Telephone: (916) 448-1498

Attorneys for Plaintiffs

(ENDORSED)
FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)

NO. **437696**

vs.)

DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)

**COMPLAINT FOR
INJUNCTIVE RELIEF**

FIRST CAUSE OF ACTION
(For Injunctive Relief Pursuant
to Government Code § 91003)

Plaintiffs allege:

I

At all times herein mentioned, STEPHEN SHAPIRO and DAN PORAT were,
and now are, partners doing business under the firm name of The Family Tree and have
filed the statement and have published the notice required by Sections 17900, et seq.,
of the Business and Professions Code.

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II

The above-mentioned partnership has its principal place of business and residence in the City of Santa Clara, Santa Clara County, California.

III

Defendant is a City Councilman for the City of Santa Clara, Santa Clara County, California, and resides in the City of Santa Clara.

IV

Plaintiffs are owners of an apartment complex located at 1000 Kiely Boulevard, Santa Clara 95051, within the City of Santa Clara. Plaintiffs have entered a contract for sale of this property contingent upon approval by the City of Santa Clara of a plan to convert the apartments into condominiums.

V

The City of Santa Clara had placed a moratorium on condominium conversions which was ultimately lifted by the Council on September 4, 1979. In practical effect, however, the moratorium will be operative at least until October 30, 1979. On February 11, 1979, plaintiffs filed an application for a condominium conversion which included an application for a variance that would permit such a conversion on their property. The variance application was denied by the Santa Clara City Planning Commission on September 28, 1979. Plaintiffs timely appealed this decision to the Santa Clara City Council. The City Council will hear this matter on October 30, 1979.

VI

Also on October 30, 1979, the Santa Clara City Council is scheduled to consider and vote on Ordinance 1390 and a related fire safety Ordinance 1391 which, if passed, would create new standards for condominium conversions. Plaintiffs are informed and believe and thereon allege that the passage of these ordinances will in all probability enable plaintiffs to obtain approval from the City Council of Santa Clara for the modification of their apartment units into condominiums.

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VII

As of October 9, 1979, the date of the first reading of the ordinances, defendant, in his capacity as City Councilman of the City of Santa Clara, had failed to disqualify himself from participation in the Council deliberations and votes on the ordinances, plaintiffs' variance denial appeal and plaintiffs' condominium conversion application.

VIII

Defendant is disqualified from participation in the above governmental decisions, pursuant to the provisions of Section 87100 and 87103 of the Government Code of the State of California, in that he has investments greater than \$1,000 (One Thousand Dollars) in at least four townhouse complexes within the City of Santa Clara and in Texera Construction Co., Inc., a company which builds townhouses and condominiums within the city limits or/and in the immediate vicinity of Santa Clara, and it is reasonably foreseeable that the decisions on plaintiffs' variance denial appeal and plaintiffs' application for a condominium conversion permit and the condominium conversion related ordinances will each have a material financial effect upon defendant distinguishable from its effect on the public generally because the economic competition provided by condominium conversions will reduce the public demand for the purchase and construction of new townhouse and condominium units.

IX

Although plaintiffs notified the Office of the City Attorney for the City of Santa Clara of the above grounds for disqualification of Councilman Texera on or about October 9, 1979, neither the City Attorney nor the defendant have taken any action to disqualify defendant from participating in discussions on or voting on these matters. Plaintiffs have exhausted all administrative remedies available capable of affording them relief.

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X

Defendant's participation in these decisions is not legally required in order for the decisions to be made.

XI

This court is empowered, pursuant to the provisions of Section 91003 of the Government Code of the State of California, to restrain defendant's violation of Sections 87100 and 87103.

XII

Plaintiffs have no adequate remedy at law or otherwise for the harm and damage presented by defendant's past and prospective violations. Plaintiffs will not, in all probability, be able to proceed with their plans to convert their apartment complex into condominiums if the City Planning Commission's denial of their variance request is not reversed and if the proposed condominium conversion ordinances are not passed.

WHEREFORE, plaintiffs pray for relief as is hereinafter set forth.

SECOND CAUSE OF ACTION
(Pursuant to CCP § 526)

As a separate ground for relief, plaintiffs allege:

I

Reallege and incorporate herein by reference Paragraphs I through XII of the First Cause of Action as though set forth at length herein.

II

Unless defendant is enjoined from participating in the Council deliberations and votes on plaintiffs' variance denial appeal, Plaintiffs' application for condominium conversion and the related ordinances, plaintiffs will suffer irreparable harm.

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1 **PRAYER**

2 **WHEREFORE**, plaintiffs pray judgment against the defendant as follows:

3 1. For a preliminary injunction and permanent injunction, each enjoining
4 the defendant from participating in any manner, except as a private citizen, in the
5 deliberations or vote of the Santa Clara City Council on plaintiffs' application for a
6 condominium conversion permit.

7 2. For a preliminary injunction and permanent injunction, each enjoining
8 the defendant from participating in any manner, except as a private citizen, in the
9 deliberations or vote of the Santa Clara City Council on plaintiffs' appeal of the
10 variance denial.

11 3. For a temporary restraining order, preliminary injunction and a
12 permanent injunction, each enjoining the defendant from participating in any manner,
13 except as a private citizen, in the deliberations or vote of the Santa Clara City
14 Council on the proposed ordinances relating to condominium conversions.

15 4. For reasonable attorneys' fees;

16 5. For costs of suit herein incurred; and

17 6. For such other and further relief as the court may deem proper.

18 DATED: October 22, 1979

19 **CONDIT & HANELT**

20
21 _____
22 **FREDERIC M. HANELT**

23 **Attorney for Plaintiffs**
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VERIFICATION (Standard) CCP 446, 2015.5

1 I declare that:

2 I am ~~the~~ one of the plaintiffs..... in the above entitled action; I have read the for
3 COMPLAINT FOR INJUNCTIVE RELIEF

4 and know the contents thereof; the same is true of my own knowledge, except as to those matters which are therein
5 upon my information or belief, and as to those matters I believe it to be true.

7 I declare under penalty of perjury that the foregoing is true and correct and that this verification was execute
8 October 19 1979, at San Jose, Califo
(DATE) (PLACE)

10 STEPHEN SHAPIRO
(TYPE OR PRINT NAME)

Stephen Shapiro
(SIGNATURE)

12 PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

13 I declare that:

14 I am (a resident of/employed in) the county of , California
(COUNTY WHERE MAILING OCCURRED)

15 I am over the age of eighteen years and not a party to the within cause; my (business/residence) address is:

16

17 On , I served the within
(DATE)

18 on the

19 in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the

20 United States mail at addressed as follows:

21

22

23 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed o

24 at , California
(DATE) (PLACE)

25

26
(TYPE OR PRINT NAME) (SIGNATURE)

1 Thomas W. Condit
2 Frederic M. Hanelt
3 **CONDIT & HANELT**
4 716 Tenth Street, Suite 302
5 Sacramento, California 95814
6 Telephone: (916) 448-1498

7 Attorneys for Plaintiffs

(ENDORSED)
FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10
11 **STEPHEN SHAPIRO and DAN PORAT,**)
12 Partners, dba THE FAMILY TREE,)
13 Plaintiffs,)

14 vs.)

15 **DANIEL V. TEXERA, Councilman,**)
16 City of Santa Clara,)
17 Defendant.)

NO.

437096

**EX PARTE MOTION
FOR ORDER
SHORTENING TIME**

AND ORDER

18 STEPHEN SHAPIRO and DAN PORAT, plaintiffs in the above-entitled
19 action move the court for an order shortening the time for service of a notice of
20 motion for a preliminary injunction in this action, so that said notice may be served
21 not later than _____ days before the time set for hearing thereof.

22 This motion is made pursuant to CCP 1005, and on the ground that service
23 of process has not been made on defendant earlier because he has been out of the
24 court's jurisdiction and the vote on the question at issue in this litigation will be on
25 October 30, 1979.

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This motion is based on the declaration of Frederic M. Hanelt and on all the pleadings, records, and papers on file in this action.

DATED: October 20, 1979

CONDIT & HANELT

Frederic M. Hanelt
FREDERIC M. HANELT

Attorney for Plaintiffs

DECLARATION IN SUPPORT OF ORDER SHORTENING TIME

I, FREDERIC M. HANELT, do declare:

That in spite of diligent efforts to contact defendant, our efforts to do so have been frustrated by his absence from the State of California, thereby reducing the time in which we could bring this litigation. That a City Council vote is scheduled on proposed City Ordinance Nos. 1390 and 1391 which are, in large part, the subject matter of this lawsuit.

That unless this matter is heard and preliminary relief granted before that date, the issue at bar could be rendered largely moot to the prejudice of plaintiffs.

Executed this 20 day of October, 1979, at Sacramento, California.

I declare under penalty of perjury that the above is true and correct.

Frederic M. Hanelt
FREDERIC M. HANELT, Declarant

*Hearing 10/30/79 - PJ @ 8:45 am
Serve City of Santa Clara Today. Serve individual defendant at least one day before 10/30/79.*

SO ORDERED.

DATED: October 22, 1979

BRUCE F. ALLEN

JUDGE OF THE SUPERIOR COURT

(ENDORSED)

FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

1 Thomas W. Condit
2 Frederic M. Hanelt
3 **CONDIT & HANELT**
4 716 Tenth Street, Suite 302
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7 Attorneys for Plaintiffs

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10
11 **STEPHEN SHAPIRO and DAN PORAT,**)
12 Partners, dba THE FAMILY TREE,)

13 Plaintiffs,)

14 vs.)

15 **DANIEL V. TEXERA,** Councilman,)
16 City of Santa Clara,)

17 Defendant.)

437096

NO.

NOTICE OF MOTION
FOR A
PRELIMINARY INJUNCTION

DATE:

PLACE:

TIME:

18 TO: DANIEL V. TEXERA, Councilman, City of Santa Clara:

19 NOTICE IS HEREBY GIVEN that on October 30, 1979, at 8:45 a. m.,

20 or as soon thereafter as the matter can be heard, in Department PS of the above-
21 entitled court at 191 North First Street, San Jose, plaintiffs STEPHEN SHAPIRO and
22 DAN PORAT will and do hereby move the court for a preliminary injunction
23 restraining the defendant from participating in any manner, except as a private
24 citizen, in the deliberations and vote of the Santa Clara City Council on plaintiffs'
25 application for a condominium conversion, on plaintiffs' appeal from the Planning
26 Commission's denial of their variance application and on the proposed City Ordinances
27 Nos. 1390 and 1391 concerning condominium conversions.

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Said motion is made upon the grounds that defendant has a conflict of interest, as defined in California Government Code §§ 87100 and 87103 and decisional law, and that plaintiffs will suffer irreparable harm is preliminary injunction relief is not granted.

Said motion is made and based on this notice, the pleadings, records and files in this action, the attached memorandum of points and authorities, attached declarations and such oral and documentary evidence that may be presented at the hearing upon this motion, and the attached affidavit.

DATED: October 22, 1979

CONDIT & HANELT

Frederic M. Hanelt
FREDERIC M. HANELT

Attorney for Plaintiffs

(ENDORSED)

FILED
OCT 22 1979

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JOHN KAZUBOWSKI, Clerk

Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)
)
vs.)
)
DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)

NO. **437096**

**POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR THE
ISSUANCE OF A PRELIMINARY
INJUNCTION AND A PERMANENT
INJUNCTION**

I.

INTRODUCTION

Plaintiffs, STEPHEN SHAPIRO and DAN PORAT bring this action to enjoin defendant, Santa Clara City Councilman DANIEL V. TEXERA, from participating in any manner, except as a private citizen, in the deliberations and vote of the Santa Clara City Council on plaintiffs' application for a condominium conversion permit in regard to apartment units which plaintiffs presently own and on proposed ordinances which permit condominium conversions upon certain conditions.

Plaintiffs applied for a variance from the Planning Commission which sought to modify the existing ordinance's parking requirement application as related to their site consisting of 120 units which would be modified. Their application

1 related to their site consisting of 120 units which would be modified. Their application
2 was denied by the Planning Commission and plaintiffs appealed the Commission ruling
3 to the City Council. This appeal is calandered to be heard by the Council on October
4 30, 1979, the same date as the Council is scheduled to consider two proposed
5 ordinances which would facilitate condominium conversions.

6 B. Public Records Show Conclusively that TEXERA Owns an Interest
7 in Three Townhouse Complexes, and a Direct Interest In a
8 Construction Firm Which Plans and Develops Townhouse
9 Complexes, and TEXERA Has Publicly Admitted that He
10 Considers Condominium Conversions to be Against His Business
11 Interests.

12 Public records (TEXERA's Statement of Economic Interest,
13 Exhibit A) show that TEXERA has an equity interest in the following townhouse
14 complexes in Santa Clara:

- 15 1. 1000-1050 Madison Street, Santa Clara
- 16 2. 1800 Civic Center Drive, Santa Clara
- 17 3. 1701-1715 Civic Center Drive, Santa Clara

18 The value of his interest in each of these properties exceeds
19 \$10,000.

20 The same records show TEXERA owns an interest exceeding
21 \$10,000 in the TEXERA CONSTRUCTION CO., INC.

22 TEXERA stated during a public meeting that he opposed
23 condominium conversions generally because they would hurt his townhouse
24 development and sales business.

25 C. Defendant Has Already Participated In Council Proceedings Where
26 He Had A Conflict of Interest.

27 TEXERA participated in several proceedings in the spring and
28 summer of this year when the moratorium and issues involving the condominium

1 conversion ordinances were being considered by the City Council, including the
2 meeting of May 1, 1979. (Exhibit to be submitted.)

3 II

4 TEXERA'S ACTIVITIES REGARDING CONDOMINIUM CONVERSION
5 DECISIONS BY THE SANTA CLARA CITY COUNCIL CONSTITUTE
6 VIOLATIONS OF CONFLICT OF INTEREST LAWS §87100, II CAL.ADM.
7 §§18700-18700-18703, AND SANTA CLARA RESOLUTION NO. 3710.

8 A. Nature Of The Conflict Of Interest Laws.
9 §87100 provides in full:

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

15 Moreover, §§87300-87312 require the City to adopt a Conflict of
16 Interest Code applicable to its Council. Santa Clara Resolution No. 3710 (Exhibit B)
17 provides in part:

18 SECTION 2: Application of Code.

19 This Conflict of Interest Code shall be applicable to
20 members of the City Council, whether acting as a
21 Council member or as governing board member or
22 commissioner of any City agency, expressly including
23 without limitation the Redevelopment Agency of the
24 City of Santa Clara Sports and Open Space Authority.

25 SECTION 3: Circumstances Requiring Disqualification.

26 Any member of the City Council, whether acting as a
27 Council member or as governing board member or
28 commissioner of any City agency, must disqualify
himself or herself from making or participating in the
making of any decisions which will foreseeably have a
material financial effect, distinguishable from its
effect on the public generally, on any economic
interest, as defined in Government Code Section 87103.
No member shall be prevented from making or
participating in the making of any decision to the
extent his or her participation is legally required for the
decision to be made.

SECTION 5: Definitions.

Except as otherwise indicated, the definitions contained
in the Political Reform Act of 1974 (Government Code
81000) and Regulations adopted pursuant thereto are
incorporated into this Conflict of Interest Code.

Government Code Section 87103 defines "financial interest" as follows:

An official has a financial interest in a decision within

1 the meaning of 87100 if it is reasonable foreseeable that
2 the decision will have a material financial effect,
3 distinguishable from its effect on the public generally,
4 on:

5 (b) Any real property in which the public official
6 has a direct or, indirect interest worth more than one
7 thousand dollars [1,000];

8 For purposes of this section, indirect investment or
9 interest means any investment or interest owned by the
10 spouse or dependent child of a public official,

11 The public policy embodied in conflict of interest statutes was
12 forcefully stated by Chief Justice Earl Warren writing for the U.S. Supreme Court in
13 United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549 (1961), as follows:

14 The moral principle upon which (the United States
15 conflict of interest) statute is based has its foundation
16 in the Biblical admonition that no man may serve two
17 masters, Matt. 6:24, a maxim which is especially
18 pertinent if one of the masters happens to be economic
19 self interest.

20 The statute establishes an objective standard of
21 conduct, and that whenever a government agent fails to
22 act in accordance with that standard, he is guilty of
23 violating the statute, regardless of whether there is
24 positive corruption. The statute is thus directed not
25 only at dishonor, but also at conduct that tempts
26 dishonor.

27 This broad proscription embodies a recognition of the
28 fact that an impairment of impartial judgment can
occur in even the most well-meaning men when their
personal economic interests are affected by the
business they transact on behalf of the government. To
this extent, therefore, the statute is more concerned
with what might have happened in a given situation
than with what actually happened. It attempts to
prevent honest government agents from succumbing to
temptation by making it illegal for them to enter into
relationships which are fraught with temptation.
(Emphasis added.)

See also Stigall v. City of Taft, 58 Cal. 2d 565, 570, 25 Cal. Rptr. 411 (1962). (Applying
the same policy to a California conflict of interest law.)

B. TEXERA Attempted To Use His Official Position To
Influence Governmental Decisions And Threatens To

1 Participate In Making Such Decisions, Within The Ambit Of Government Code 87100.

2 Although TEXERA has not yet voted on the Condominium
3 Conversion ordinances in question, he has made public statements showing partiality
4 and he has shown no indication that he will disqualify himself even though the issue has
5 been raised in writing to the city attorney. He has attempted to use his official
6 position to influence "governmental decision(s)" as that term is used in 87100. 2 Cal.
7 Admin. Code 18700 promulgated by the Fair Political Practices Commission pursuant
8 to the Political Reform Act provides in pertinent part:

9 (b) A public official "makes a governmental
10 decision, ". . . when he or she, acting within the
11 authority of his or her office:

12 (1) Votes on a matter;

13 (3) Obligates or commits his or her agency to any
14 course of action;

15 (c) A public official or designated employee
16 "participates in the making of a governmental decision"
17 when, acting within the authority of his or her position,
18 he or she:

19 (2) Advises or makes recommendations to the
20 decision-maker, either directly or without significant
21 intervening substantive review, by:

22 (b) Preparing or presenting any report, analysis or
23 opinion, orally or in writing, which requires the exercise
24 of judgment of the part of the official or designated
25 employee and the purpose of which is to influence the
26 decision.

27 (e) "In any way attempting to use his or her official
28 position to influence a governmental decision" shall
include furthering or attempting to affect in any
manner any decision:

(1) Within or before his or her agency;
or

(2) Before any agency which is appointed by or
subject to the budgetary control of his or her agency.

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1 TEXERA'S acts regarding Condominium Conversions in Santa Clara are prohibited by
2 87100 as defined by 2 Cal. Admin. Code 18700.

3 TEXERA has participated in preliminary discussions by the City Council in opposition
4 to lifting the Condominium Conversion Moratorium and approval of further
5 conversions. On October 30, 1979, the City Council will vote on Plaintiff's application
6 for a zoning variance, and upon two ordinances which would clear the way for further
7 Condominium Conversions in Santa Clara. There is no indication TEXERA intends to
8 reform this conduct and abstain from discussion and voting on these topics in
9 accordance with Government Code Section 87100.

10 Thus, plaintiffs have shown conclusively that TEXERA has shown
11 a willingness to participate in making, and has attempted to influence decisions by the
12 Santa Clara City Council regarding Condominium Conversions. Moreover, as
13 demonstrated in the following section, TEXERA has a material financial interest in
14 these decisions which is distinguishable from the effect of these decisions on the public
15 generally.

16 C. TEXERA Has A Material Financial Interest, Distinguishable
17 From The Interest Of The Public Generally, In The Decision
18 Whether Or Not Santa Clara Permits Further Condominium
19 Conversion And Development.

20 Cal. Admin. Code 18702 provides that a governmental
21 decision will have a material effect on a financial interest within the meaning of 87100
22 and 87103 if the effect of the decision will be to increase or decrease the income-
23 producing potential of the real property owned by the official by \$100 or 5% per month,
24 whichever is less; or the effect of the decision will be to increase or decrease the fair
25 market value of the real property by \$1,000 or more, or by one-half of 1%, whichever is
26 greater.

27 Clearly, approval of further Condominium Conversions will
28 place more such units on the market, reducing demand for, and thereby the value of,

1 comparable condominium and townhouse units in the Santa Clara housing market, such
2 as those owned by defendant. Plaintiffs have shown by declaration that TEXERA'S
3 remarks in a Council discussion that he opposed further condominium conversion as
4 detrimental to his own housing properties' interests, acknowledges his views as to the
5 impact thereupon of the proposed ordinances.

6 Finally, this material financial effect of a resumption of
7 condominium conversion decisions on TEXERA'S interest is distinguishable from the
8 effect these decisions have on the public generally. 2 Cal. Admin. Code Section 18703
9 provides in pertinent part:

10 A material financial effect of a governmental decision
11 on an official's interests, as described in Government
12 Code Sections 87103(a) through (d), is distinguishable
13 from its effect on the public generally unless the
14 decision will affect the official's interest in
15 substantially the same manner as it will affect all
16 members of the public or a significant segment of the
17 public. Except as provided herein, an industry, trade, or
18 profession does not constitute a significant segment of
19 the general public.

20 TEXERA is engaged in the business of townhouse and condominium
21 development. As a result of this activity, his interest in housing costs in Santa Clara
22 differs substantially from that of members of the general public, considering their
23 respective postures of developer and consumer. Due to the magnitude of TEXERA'S
24 real estate holdings, the impact of city council decisions on TEXERA'S interests would
25 be substantially different from that upon individual owners of single condominiums.
26 The only group from which TEXERA'S interests are not distinguishable would be other
27 members of the townhouse and condominium development industry in the Santa Clara
28 area.

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III

PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF PURSUANT TO GOVERNMENT CODE, SECTION 91003(b)

A. Plaintiffs Have Standing to Enjoin Defendant from Participating in Council Proceedings. Government Code, Section 91003 (a) provides:

Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

Government Code Section 82047 includes partnerships within its definition of "person" for purposes of the Political Reform Act of 1974. Therefore the Act clearly gives standing to partnerships located in Santa Clara to enjoin violations.

B. Upon Plaintiff's Showing that Defendant has Violated Government Code Sections 87100 and 87103 the Court may Exercise its Equitable Jurisdiction.

Government Code, Section 91003 provides in part:

Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Section 87100) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication.

Injunctive relief was granted pursuant to this section in Witt V. Morrow, (1977) 70 Cal App. 3d 817, 822. In that case, a city councilman was held to have a conflict of interest when he participated in decisions concerning redevelopment projects in the vicinity of real estate owned by a company that employed him and he was compelled to comply with Section 87100. Plaintiffs have established that

//

1 defendant is and has been clearly in conflict of interest in participating in any City
2 Council decision on plaintiffs' variance application or decisions relating to the
3 ordinances in question and since plaintiffs have no other remedies, the present case is
4 a situation in which equitable relief is appropriate.

5 IV

6 AS AN ALTERNATIVE GROUND FOR RELIEF, PLAINTIFFS
7 ARE ENTITLED TO AN INJUNCTION PURSUANT
8 TO CODE OF CIVIL PROCEDURE, SECTION 526,

9 A. Injunctive Relief May Be Granted When There is Not an
10 Adequate Remedy at Law or When Irreparable Harm Will
11 Result in the Absence of the Granting of Equitable Relief.

12 Code of Civil Procedure Section 526 provides in part:

13 An injunction may be granted in the following cases:
14 that the commission or continuance of some act during
15 the litigation would produce waste, or great or
16 irreparable injury, to a party to the action . . .

17 4. When pecuniary compensation would not afford
18 adequate relief . . .

19 A danger is imminent that plaintiffs will suffer the generalized
20 harm that is incurred by all businesses and residents when a councilman violates the
21 Political Reform Act. Also, plaintiffs will suffer financial harm if they are unable to
22 modify their apartments. Counsel for plaintiffs have been unable to find a legal
23 remedy other than an injunction that would adequately compensate plaintiffs for their
24 losses.

25 B. Injunctions May Issue Enjoining Public Officials From Acting
26 Illegally.

27 Although the Code of Civil Procedure, Section 526, Subdivision 2
28 prohibits the granting of an injunction to "prevent the exercise of a public or private
office, in a lawful manner, by the person in possession," an injunction may be granted
to prevent the exercise of an office contrary to law or in excess of authority.
Financial Indemity Company V. Superior Court (1955), 45 C 2d 395; Pierce Insurance

1 Company V. Maloney (1932), 124 CA 501; Pughe V. Lyle (1935) 10 F. Supp. 245;
2 Associated Cal. Loggers V. Kinder (1978), 79 CA 3d 34. As plaintiffs have established
3 that defendant has violated Government Code Sections 87100 and 87103, an injunction
4 may be granted.

5 V

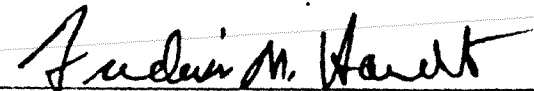
6 CONCLUSION

7 For all the above said reasons, Plaintiff is entitled to the preliminary
8 injunctive relief sought herein.

9 DATED: October 22, 1979

10 Respectively submitted,

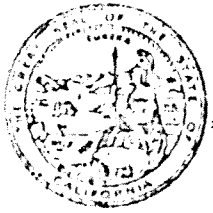
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FREDERIC M. HANELT

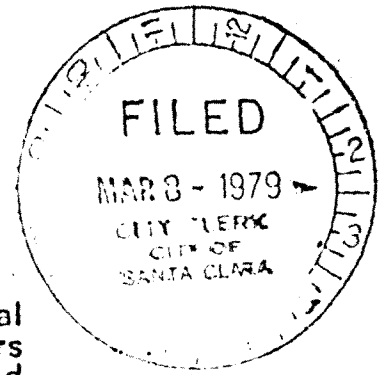
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FORM 721

Statement of Economic Interests

(Government Code Sections 87200 et seq.)



This form is for officeholders filing annual statements, newly elected state office holders assuming office in December or January, and officials who have left office.

See "Instruction Manual for Statement of Economic Interest—Form 721."

Please type or print in ink.

- 1. Name: DANIEL V. TEXERA
- 2. Address: 1510 Fremont Street, Santa Clara, California 95050
- 3. Office held: CITY COUNCILMAN, SEAT NO. 5
(e.g., county supervisor, city council member, etc.)

[] State of California [] County of _____ [x] City of Santa Clara

4. Check the appropriate box:

- [] This is my assuming office statement. (File between January 1 and March 1.)
- [x] This is my annual statement. (State officers, including judges, file between January 1 and March 1; city and county officials file between January 1 and April 1.)
- [] I left the above-named office as of _____ (Date)
(File within 30 days of leaving office.)

5. Period covered by the Statement:

January 1 1978 to December 31 1978
Mo. Day Year Mo. Day Year

VERIFICATION

I declare under penalty of perjury that I have used all reasonable diligence in preparing this statement and to the best of my knowledge it is true and complete.

Executed on 2/21/79, 19 79 at Santa Clara, California.

[Signature] (Signature)

NOTE to officers receiving statements: Except for statements of city managers and chief administrative officers, which should be retained by you, make and retain copies of all statements filed with you and forward the originals within five days of the filing deadline (or if filed late, within five days of receipt) to: The Fair Political Practices Commission, Conflicts of Interest Division, P.O. Box 807, Sacramento, California 95804.

FOR INFORMATION REQUIRED TO BE PROVIDED TO YOU PURSUANT TO THE INFORMATION PRACTICES ACT OF 1977, PLEASE SEE INSTRUCTION MANUAL FOR STATEMENTS OF ECONOMIC INTERESTS—FORM 721, APPENDIX II.

THE FOLLOWING SUMMARY MUST BE COMPLETED BY ALL FILERS

SCHEDULE A—Investments over \$1,000

Schedule completed and attached

No reportable interests

SCHEDULE B—Interests in Real Property over \$1,000

Schedule completed and attached

No reportable interests

SCHEDULE C—Investments and Interests in Real Property Held by Business Entities or Trust

Schedule completed and attached

No reportable interests

SCHEDULE D—Income (Other Than Gifts)

Schedule completed and attached

No reportable interests

SCHEDULE E—Gifts

Schedule completed and attached

No reportable interests

SCHEDULE EE—Honoraria

Schedule completed and attached

No reportable interests

SCHEDULE F—Income of Business Entity Which Provides Legal or Brokerage Services

Schedule completed and attached

No reportable interests

SCHEDULE G—Income of Business Entity Which Does Not Provide Legal or Brokerage Services

Schedule completed and attached

No reportable interests

NOTE: Filers whose reportable interests on any particular schedule have not changed since a previously filed annual statement may complete this statement by attaching the appropriate schedule(s) from the previous annual statement and checking "Schedule completed and attached" above.

SCHEDULE 721-A

Investments

(Government Code Sections 82034 & 87206)

Investments owned by the filer, spouse and dependent children aggregating \$1000 or more in business entities in the filer's jurisdiction.

<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired <u>8/77</u> Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired _____ Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired _____ Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired _____ Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired _____ Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired _____ Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Name of Company)</p> <p>..... (Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)</p> <p>..... (General Description of Business Activity)</p> <p style="text-align: right;">Date Acquired _____ Date Disposed _____</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>

Attach additional information on appropriately labeled continuation sheets.

SCHEDULE 721-B

Interests in Real Property

(Government Code Sections 82033 & 87206)

Interests in real property in the filer's jurisdiction in which the filer spouse and dependent children have an aggregate interest of \$1,000 or more. (Principal place of residence is not reportable.)

<p>1365-1367 Block Drive (Street Address or Precise Location of Property)</p> <p>3/4 Equity Interest (Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired 1966 Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>1807 Clay Street (Street Address or Precise Location of Property)</p> <p>Equity (Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired 1968 Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p> <p style="text-align: right;">Date Acquired Date Disposed</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>

Attach additional information on appropriately labeled continuation sheets

SCHEDULE 721-C

**Investments and Interests in Real Property held by
Business Entities or Trusts**

(Government Code Sections 82033, 82034 & 87206)

Reportable investments and interests in real property held by business entities or trusts in which the filer, spouse and dependant children have an aggregate interest of 10% or more.

NAME OF BUSINESS ENTITY Texera Construction Company, Inc.

INVESTMENTS HELD BY BUSINESS ENTITY

Mary-Vin Corporation (Name of Company)	Common Stock-50% Ownership (Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)	Development-Condominiums (General Description of Business Activity)	Date Acquired <u>1/78</u> Date Disposed _____	Check One <input type="checkbox"/> Value does not exceed \$10,000 <input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
_____ (Name of Company)	_____ (Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)	_____ (General Description of Business Activity)	Date Acquired _____ Date Disposed _____	Check One <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
_____ (Name of Company)	_____ (Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)	_____ (General Description of Business Activity)	Date Acquired _____ Date Disposed _____	Check One <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000

Attach additional information on appropriately labeled continuation sheets.

INTERESTS IN REAL PROPERTY HELD BY BUSINESS ENTITY

1000-1050 Madison Street (Street Address or Precise Location of Property)	Equity (Nature of Interest, e.g., Equity, Option)	Date Acquired <u>12/77</u> Date Disposed _____	Check One <input type="checkbox"/> Value does not exceed \$10,000 <input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
1800 Civic Center Drive (Street Address or Precise Location of Property)	Equity (Nature of Interest, e.g., Equity, Option)	Date Acquired <u>12/76</u> Date Disposed <u>7/78</u>	Check One <input type="checkbox"/> Value does not exceed \$10,000 <input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
2795 Park Avenue (Street Address or Precise Location of Property)	Equity (Nature of Interest, e.g., Equity, Option)	Date Acquired <u>8/77</u> Date Disposed _____	Check One <input type="checkbox"/> Value does not exceed \$10,000 <input checked="" type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000

Attach additional information on appropriately labeled continuation sheets.

SCHEDULE 721-D
Income (Other than Gifts)

(Government Code Sections 82030 & 87207(a))

Income aggregating \$250 or more from any source in the filer's jurisdiction. Salary and reimbursement for expenses from federal, state and local government agencies are not reportable.

<p>Texera Construction Company, Inc. <small>(Name of the Source of Income)</small></p> <p>1265-A El Camino Real <small>(Address of the Source of Income)</small></p> <p>Santa Clara, CA 95050 <small>(Address of the Source of Income)</small></p> <p>Construction and Development <small>(Business Activity of the Source of Income)</small></p>	<p align="center"><i>Check One</i></p> <p><input type="checkbox"/> Amount or value received was not greater than \$1,000</p> <p><input type="checkbox"/> Amount or value received was greater than \$1,000 and was not greater than \$10,000</p> <p><input checked="" type="checkbox"/> Amount or value received was greater than \$10,000</p>
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<p>Personal Services <small>(Description of the consideration, if any, for the Income)</small></p> <p>Duplex <small>(Name of the Source of Income)</small></p> <p>1365-1367 Block Drive <small>(Address of the Source of Income)</small></p> <p>Santa Clara, CA 95050 <small>(Address of the Source of Income)</small></p> <p>Rental Property <small>(Business Activity of the Source of Income)</small></p>	<p align="center"><i>Check One</i></p> <p><input type="checkbox"/> Amount or value received was not greater than \$1,000</p> <p><input checked="" type="checkbox"/> Amount or value received was greater than \$1,000 and was not greater than \$10,000</p> <p><input type="checkbox"/> Amount or value received was greater than \$10,000</p>
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<p>Rental <small>(Description of the Consideration, if any, for the Income)</small></p> <p>Bank of America <small>(Name of the Source of Income)</small></p> <p>990 Lafayette Street <small>(Address of the Source of Income)</small></p> <p>Santa Clara, CA 95050 <small>(Address of the Source of Income)</small></p> <p>Bank <small>(Business Activity of the Source of Income)</small></p>	<p align="center"><i>Check One</i></p> <p><input type="checkbox"/> Amount or value received was not greater than \$1,000</p> <p><input type="checkbox"/> Amount or value received was greater than \$1,000 and was not greater than \$10,000</p> <p><input checked="" type="checkbox"/> Amount or value received was greater than \$10,000</p>
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<p>Construction Loan and Automobile Loan <small>(Description of the Consideration, if any, for the Income)</small></p> <p>Bank of Santa Clara <small>(Name of the Source of Income)</small></p> <p>2027 El Camino Real <small>(Address of the Source of Income)</small></p> <p>Santa Clara, CA 95050 <small>(Address of the Source of Income)</small></p> <p>Bank <small>(Business Activity of the Source of Income)</small></p>	<p align="center"><i>Check One</i></p> <p><input type="checkbox"/> Amount or value received was not greater than \$1,000</p> <p><input type="checkbox"/> Amount or value received was greater than \$1,000 and was not greater than \$10,000</p> <p><input checked="" type="checkbox"/> Amount or value received was greater than \$10,000</p>
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<p>Automobile Loan <small>(Description of the Consideration, if any, for the Income)</small></p>	
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Attach additional information on appropriately labeled continuation sheets.

ADDENDUM TO
SCHEDULE 721-C

510, 516, 520 & 526 Saratoga Avenue

Value exceeds \$10,000 but does
not exceed \$100,000

Equity	Date Acquired	10/76
	Date Disposed	7/78

1701-1715 Civic Center Drive

Value exceeds \$10,000 but does
not exceed \$100,000

Equity	Date Acquired	12/77
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SCHEDULE 721-E

Gifts

(Government Code Sections 82028 & 87207(a))

Gifts aggregating \$25 or more from any source.

Marriott's Great America (Name of Donor)	April 1978 Date(s) of Gift(s)
P.O. Box 393, Santa Clara (Address)	\$175.00 Value of Gift(s)
Amusement Park (Business Activity, if any, of the Donor)	Admission Fees Description of Gift(s)
----- (Name of Donor)	----- Date(s) of Gift(s)
----- (Address)	----- Value of Gift(s)
----- (Business Activity, if any, of the Donor)	----- Description of Gift(s)
----- (Name of Donor)	----- Date(s) of Gift(s)
----- (Address)	----- Value of Gift(s)
----- (Business Activity, if any, of the Donor)	----- Description of Gift(s)
----- (Name of Donor)	----- Date(s) of Gift(s)
----- (Address)	----- Value of Gift(s)
----- (Business Activity, if any, of the Donor)	----- Description of Gift(s)
----- (Name of Donor)	----- Date(s) of Gift(s)
----- (Address)	----- Value of Gift(s)
----- (Business Activity, if any, of the Donor)	----- Description of Gift(s)

Attach additional information in appropriately labeled sections.

SCHEDULE 721-EE

Honoraria

(Government Code Sections 82028, 82030 and 87207(a))

Payments, aggregating \$25 or more, received for speaking at an event, participating in a panel, leading a seminar or providing similar services

Name of Source	Date(s) of Payment(s)
Address	Amount or Value of Payment(s)
Business Activity, if any, of Source	Description of Payment(s)
Other Relevant Information (Optional):	Specific Description of Service(s) Rendered

Name of Source	Date(s) of Payment(s)
Address	Amount or Value of Payment(s)
Business Activity, if any, of Source	Description of Payment(s)
Other Relevant Information (Optional):	Specific Description of Service(s) Rendered

Name of Source	Date(s) of Payment(s)
Address	Amount or Value of Payment(s)
Business Activity, if any, of Source	Description of Payment(s)
Other Relevant Information (Optional):	Specific Description of Service(s) Rendered

SCHEDULE 721-G

Income of Business Entity Which Does Not Provide Legal or Brokerage Services

(Government Code Sections 82030 & 87207(b))

Income (from sources in the jurisdiction) of a business entity in which the filer, spouse and dependent children have an aggregate interest of 10% or more.

Texera Construction Company, Inc.
(Name of Business Entity)

1265-A El Camino Real, Santa Clara, CA 95050
(Address of Business Entity)

Construction and Development Company
(Description of its Business Activity)

List the name of each individual or entity from whom the above business entity received payments if your pro rata share of gross receipts from the individual or entity was \$10,000 or more.

E. Rivoir
[Multiple blank lines for listing names and addresses]

(Name of Business Entity)

(Address of Business Entity)

(Description of its Business Activity)

List the name of each individual or entity from whom the above business entity received payments if your pro rata share of gross receipts from the individual or entity was \$10,000 or more.

[Multiple blank lines for listing names and addresses]

CERTIFICATION

I, MARY F. ARNTZEN, am employed as a Office Technician for the Fair Political Practices Commission of the State of California and I hereby certify:

That the annexed statement of Economic Interest has been compared with the record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

In Witness Whereof, I execute this certificate.

Mary F. Arntzen
Oct 17, 1979
Date

RESOLUTION NO. 3710

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, ADOPTING A CONFLICT OF INTEREST CODE APPLICABLE TO THE MEMBERS OF THE CITY COUNCIL PURSUANT TO THE POLITICAL REFORM ACT OF 1974
(As Revised by State of California Fair Political Practices Commission on September 21, 1976)

THE CITY COUNCIL OF THE CITY OF SANTA CLARA HEREBY RESOLVED, as follows:

SECTION 1: Adoption of Conflict of Interest Code.

In compliance with Section 87300 of the Government Code, the City Council hereby adopts this Conflict of Interest Code.

SECTION 2: Application of Code.

This Conflict of Interest Code shall be applicable to members of the City Council, whether acting as a Council member or as governing board member or commissioner of any City agency, expressly including without limitation the Redevelopment Agency of the City of Santa Clara and the Santa Clara Sports and Open Space Authority.

SECTION 3: Disclosure.

Members of the City Council are required, pursuant to Government Code Section 87200, to disclose investments, interests in real property and income; accordingly, no other or no additional disclosure requirements are imposed by this Conflict of Interest Code on members of the City Council.

SECTION 4: Circumstances Requiring Disqualification.

Any member of the City Council, whether acting as a Council member or as governing board member or commissioner of any City agency, must disqualify himself or herself from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any economic interest, as defined in Government Code Section 87103. No member shall be prevented from

making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made.

SECTION 5: Definitions.

Except as otherwise indicated, the definitions contained in the Political Reform Act of 1974 (Government Code §81000) and Regulations adopted pursuant thereto are incorporated into this Conflict of Interest Code.

SECTION 6: The City Clerk is directed to forward a certified copy of this resolution to the Fair Political Practices Commission.


I hereby certify the foregoing to be a true copy of a resolution adopted by the City Council of the City of Santa Clara, California, at a regular meeting thereof held on the 1st day of August, 1976, by the following vote of the members thereof:

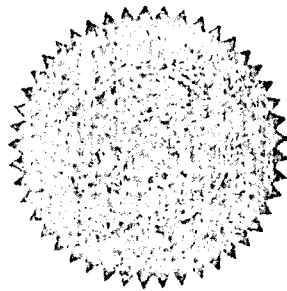
AYES, and in favor thereof, Councilmen: Barcells, Gissler, Hansen, Kiely, Stewart, Texera and Mayor Gillmor

NOES, Councilmen: None

ABSENT, Councilmen: None

ABSTAINED, Councilmen: None

ATTEST: 
A. S. BELICK
City Clerk
City of Santa Clara



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Thomas W. Condit
Frederic M. Hanelt
CONDIT & HANELT
716 Tenth Street, Suite 302
Sacramento, California 95814
Telephone: (916) 448-1498

Attorneys for Plaintiffs

(ENDORSED)
FILED
OCT 25 1979
JOHN KAZUBOWSKI, Clerk
By

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)
)
vs.)
)
DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)

NO. 437096

**EXHIBIT "C"
MEMORANDUM OF OPINION
OF DELBERT L. SPURLOCK, JR.
AND DECLARATION OF
DELBERT L. SPURLOCK, JR.**

The attached Declaration of Delbert L. Spurlock, Jr., and Memorandum of Opinion is submitted pursuant to Section 720 of the California Evidence Code and incorporated by this reference in plaintiffs' points and authorities.

DATED: October 24, 1979

CONDIT & HANELT


FREDERIC M. HANELT

Attorney for Plaintiffs

DELBERT L. SPURLOCK, JR.
GREGORY D. THATCH

SPURLOCK & THATCH
ATTORNEYS AT LAW
106 K STREET
SUITE 310
SACRAMENTO, CALIFORNIA 95814

(916) 443-6956

DECLARATION

I, DELBERT L. SPURLOCK, JR., Attorney at Law, duly licensed to practice law in the State of California hereby declare:

From August, 1975, until November, 1977, I served as Chief of the Conflicts of Interest Division of the California Fair Political Practices Commission; that in that capacity I supervised the operations of the Conflicts of Interest Division, advised the Fair Political Practices Commission upon substantive policies regarding the interpretation of the conflict of interest provisions of the Political Reform Act, Government Code Section 81000, et. seq.; that I have been, since November, 1977, engaged in the private practice of law; and that I was asked by Frederic M. Hanelt, Esquire, on or about October 15, 1979, to submit an expert legal opinion regarding the potential responsibilities of Councilman Daniel V. Texera to disqualify himself from participating in the proposed October 30, 1979, deliberations of the Santa Clara City Council regarding a certain ordinance related to condominium conversions.

Executed this 24th day of October, 1979, in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.


DELBERT L. SPURLOCK, JR.

DELBERT L. SPURLOCK, JR.
GREGORY D. THATCH

SPURLOCK & THATCH
ATTORNEYS AT LAW
106 K STREET
SUITE 310
SACRAMENTO, CALIFORNIA 95814

(916) 443-6956

MEMORANDUM OF OPINION

INTRODUCTION

This firm has been asked to submit an expert legal opinion regarding the responsibilities of a City Councilman to disqualify himself from participation in the decision of the Santa Clara City Council to revise City Ordinances concerning condominium conversions where the Councilman, Mr. Daniel V. Texera, is an owner of a construction and development and townhouse sales company within the City, and a part owner of a company engaged in the development of condominiums.

FACTS

The factual premises relating to the interests of Councilman Texera upon which this opinion is based were derived from the "Statement of Economic Interest" of Councilman Texera for the period of January 1, 1978, to December 31, 1978; from the Report dated July 26, 1979, of the City of Santa Clara Planning and Inspection Department regarding the Condominium Conversion Ordinance; and from declarations of Mr. Larry Fargher, Mr. Donald Landberg, and Mr. Stephen Shapiro, attached as exhibits to this opinion.

Councilman Texera has an "ownership interest" in Texera Construction Company. The extent of his interests in this company is identified on his Statement of Economic Interests as less than \$100,000.00. Mr. Texera identifies several pieces of real property holdings of Texera Construction Company within Santa Clara, including, multiple unit complexes on Madison Street, Saratoga Avenue, and Civic Center Drive. The Tax Assessor's office shows other properties on Washington and Patricia Streets. Included among these parcels are completed and developing townhouse units. In addition, Mr. Texera lists a 50% ownership interest in Mary-Vin Corporation, a developer of condominiums, through his ownership of Texera Construction Company. The tax rolls show Mary-Vin to own property bounded by Lochinvar, Homestead, Pomeroy and Bing Drives which includes some 30 developed and undeveloped parcels. The Texera Construction Company is also listed by Mr. Texera as a source of income to him in excess of \$10,000.00 for the period.

The Articles of Incorporation and Statement of Domestic Stock Corporation of Texera Construction Company, show that the Chief Executive Officer and President of the company is Mr. Texera. The Secretary and Chief Financial Officer is Laura M. Texera. It is assumed, based upon this information, that Mr. Texera and his immediate family are the sole or controlling owners of Texera Construction Company.

On October 30, 1979, the Santa Clara City Council will vote on a final version of a proposed revision to the Santa Clara City Zoning Ordinance related to condominium conversions entitled "AN ORDINANCE OF THE CITY OF SANTA CLARA AMENDING ARTICLE 27 OF 'THE ZONING ORDINANCE OF THE CITY OF SANTA CLARA' PERTAINING TO THE REGULATIONS FOR PD-PLANNED DEVELOPMENT AND COMBINED

ZONING DISTRICT." An effect of the amendments would be to facilitate the development of condominium complexes and the conversion of apartment complexes to condominiums within the City. Proposed Ordinance

"Section 27-2: INTENT" provides:

"Residential community ownership projects require that households, each with a common ownership interest in their project coupled with a right of ownership or occupancy in their dwelling units, be bound together in an owner's association which is responsible for the maintenance and management of the common area and the improvements within the common area of the project. This mix of individual and common ownership is different from conventional and familiar patterns of housing in the City of Santa Clara. Community ownership in residential projects can provide new opportunities of homeownership at a lower cost than single family units, and provide housing for people who prefer not to have the responsibility of maintaining a separate lot and building. There are also potential problems associated with residential community ownership such as owner expectations, maintenance expenses for the entire common area, and the conversion of unsuitable apartments.

"To insure that other problems are avoided in both the short and long-term, it is the expressed intent of the City of Santa Clara to treat community ownership projects differently from rentals and to establish rules and standards thereto regulating the construction of and conversion to community ownership projects in the City of Santa Clara." (Emphasis added.)

In addition, proposed Section 27-8 sets forth the physical standards, maintenance requirements, and organizational requirements necessary to develop new condominiums and to convert existing apartment complexes to community ownership projects. Proposed Section 27-9 adds additional requirements and standards to those under Section 27-8 regarding community ownership conversions. The Section 27-9 standards articulate various socio-economic considerations which should be weighed by the City

Council in future determinations on whether an apartment complex should be permitted to convert to condominium ownership.

Without question, the nature of the standards enunciated in the proposed amendment — i.e., their stringency, costliness, or flexibility — to the City Zoning Ordinance could have a significant impact upon the number of potential apartment complexes which might convert to condominiums. Similarly, the Council could prohibit all conversions pursuant to action at its October 30 meeting. According to the Declaration of Mr. Fargher, a licensed real estate broker within the City of Santa Clara, the likely number of apartment units which would be eligible for conversion to condominiums should the proposed ordinance pass in its present form exceeds 1,000.

ANALYSIS

A. Government Code § 87100

The principal prohibitions against participation in governmental decisions in which a public official has an interest is found in Government Code Section 87100 of the Political Reform Act of 1974, as amended, [hereinafter, "The Act".]

That Section provides:

"No public official at any level of state or local government shall make or 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."

Government Code Section 87100.

As a City Councilman, Mr. Texera is clearly a local government official within the meaning of The Act.^{1/} It is equally clear that by

1. Government Code Section 82048 defines "Public Official" to be "every member, officer, employee or consultant of a state or local government agency."

participating in the deliberations of the City Council or by voting as a member of the Council on the proposed amendments to the Zoning Ordinance pertaining to community ownership projects, Councilman Texera would be making or participating in the making of a governmental decision within the meaning of The Act.^{2/}

Accordingly, the sole broad issue for consideration in regard to Councilman Texera's vote or participation in this matter is whether he has a "financial interest" in the decision of the Council regarding the amendments to the zoning ordinance.

Government Code Section 87103 defining "financial interest" provides:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

"(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

"(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

"(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

"(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

2. See 2 Cal. Admin. Code § 18700 (b) (c).

"For the purposes of this section, indirect investment or interest means any investment or interest owned, . . . by any business entity controlled by the public official A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. . . ."

The California Fair Political Practices Commission has interpreted the concept "Material Financial Effect" at 2 Cal. Adm. Code § 18702 Subpart (a) of that section sets forth a general standard as follows:

"(a) 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 upon the business entity, real property or source of income in question."

The prohibition of Government Code Section 87100 and the general regulatory standard of Section 18702 (a), above, are to be read consistently with the principle that conflict of interest statutes are to be strictly construed to eliminate the potential for private financial bias. See Stigall v. City of Taft, (1962) 58 Cal.2d 565, 569; People v. Vallergera, (1977) 67 Cal.App.3d 847, 865-866; Terry v. Bender, (1956) 143 Cal.App.2d 198, 206-208; Schaefer v. Berinstein, (1956) 140 Cal.App.2d 178; People v. Elliott, (1953) 115 Cal.App.2d 410, 418-419. The decisions of the Fair Political Practices Commission (hereinafter FPPC) have reflected that strict construction, In the Matter of Tom Thorner, 1 FPPC Opinions — (No. 75-089, December 4, 1975).

In an attempt to provide guidance to public officials and their counsel, the FPPC has further amplified the general regulatory standard by attempting to quantify in 2 Cal. Admin. Code Section 18702 (b) the requisite financial effects compelling disqualification of an official. While an analysis pursuant to such quantification is not necessary in order to compel

disqualification in any specific case, Witt v. Morrow, (1977) 70 Cal.App.3d

. 817, 822, resort to the FPPC standards are instructive.

1. Effect Upon Mr. Texera's Business Entities

2 Cal. Admin. Code Section 18702 (b) (1) provides:

"(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

"(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

"(A) The annualized gross revenues by the lesser of:

"1. One hundred thousand dollars (\$100,000); or

"2. One percent if it is one thousand dollars (\$1,000) or more; or

"(B) Annual net income by the lesser of:

"1. Fifty thousand dollars (\$50,000); or

"2. One half of one percent if it is one thousand dollars (\$1,000) or more; or

"(C) Current assets or liabilities by the lesser of:

"1. One hundred thousand dollars (\$100,000); or

"2. One half of one percent if it is one thousand dollars (\$1,000) or more.

"Current assets are deemed to be decreased by the amount of any expenses incurred as a result of a governmental decision."

As noted, Texera Construction Company and the Mary-Vin Corporation are business entities of Mr. Texera;^{3/} in addition, he is an officer of the Construction Company. It is reasonably foreseeable that virtually any one of the myriad threshold dollar or percentage amounts for establishing a significant effect upon either of the two companies may be satisfied by decisions of the Santa Clara City Council involving the condominium conversion ordinances. For instance, a decision to pass the ordinances in their present form may create, according to Mr. Fargher, some 1,000 units in competition with the Texera Companies' existing or contemplated townhouses or condominiums. The resulting possible delay in sales of his units, the effect upon presently contemplated pricing arrangements or construction dates of his condominiums or townhouses, and the potential redesign of his contemplated units each could cost the Texera Companies many times the Section 18702 (b) thresholds established for "annualized gross revenues," "annual net income" or "current assets or liabilities." This is not a situation in which it is merely conceivable that the Council decision may have a significant financial effect upon the companies of Mr. Texera, rather, here, it is a virtual certainty, since the legislation in question specifically seeks the direct regulation of the business and indirect conditioning of the housing market in which the Texera Companies are engaged. As was stated in Witt v. Morrow, supra:

3. Government Code Section 82034 defines "investment" to include ". . . a pro rata share of the investments of any business entity, . . . in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater."

" . . . [T]here is no need to give specific dollar amounts or percentage increases of the appreciation that . . . [the company] . . . might expect The whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is employed. (See County of Nevada v. McMillen, 11 Cal.3d 662, 674 [114 Cal.Rptr. 345, 522, P.2d 1345]."

But in the instance of the Texera Companies resort to an analysis based upon either the specific dollar or percentage thresholds or upon the general standard of Section 18702 (a) appears to provide overwhelming grounds for compelled disqualification of Mr. Texera from deliberations concerning the condominium conversion ordinances.

2. Effect Upon Mr. Texera's Real Property Interests

2 Cal. Admin Code Section 18702 (b) (2) concerning the threshold effect of a governmental decision upon real property of the official provides:

"(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

"(A) The income producing potential of the property by the lesser of:

"1. One thousand dollars (\$1,000) per month; or

"2. Five percent per month if it is fifty dollars (\$50) or more per month; or

"(B) The fair market value of the property by the lesser of:

"1. Ten thousand dollars (\$10,000); or

"2. One half of one percent if it is one thousand dollars (\$1,000) or more."

As noted, Mr. Texera, through the Texera Companies, holds significant interests in real property within the City.^{4/} It is reported that developed and undeveloped townhouse and condominium units are included in these real property holdings. Proposed Section 27-8 of the pending ordinance would appear to directly effect the manner of construction of new condominiums and townhouse units, with significant potential increases in construction costs to the developer. More importantly, however, as in the case of Texera Companies, the real property interests in question likely will be subjected to significant, though not precisely quantifiable, financial effects, by the passage of the Ordinance in its present form. The FPPC guidelines ask that one consider the "income producing potential of the property" and/or its "fair market value." In this case, a more meaningful measure of the potential financial effect of the Ordinance passage or denial upon the property may be the cost of improvements or the time necessary to resell the property. The FPPC regulation, which is permissive and non-exclusive,^{5/} readily permits consideration of such additional financial effects. In the context of the real property of Mr. Texera, it is foreseeable that the passage or failure of the ordinance or the stringency of the building standards for new and converted community ownership projects will effect Texera's ease of new unit construction, will effect the quality and quantity

4. Government Code Section 82033 defines "interest in real property" to include "... a pro rata share of interests in real property of any business entity . . . in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater."

5. 2 Cal. Admin. Code § 18702 (b) provides that "... consideration should be given to . . ." certain factors in determining whether the effects of a governmental decision will be significant within the meaning of the general standard of § 18702 (a).

of lower cost competitive condominium units, and will effect the ability of Mr. Texera to timely resell his completed townhouse and condominium units. The direct financial implications of these factors for valuating the Texera real property interests is anything but insignificant. Accordingly, I conclude that various alternative decisions before the Santa Clara City Council in connection with the condominium conversion ordinance will foreseeably materially financially effect the real property interests of Mr. Texera.

3. Effects Upon Sources of Income of Mr. Texera

2 Cal. Admin. Code Section 18702 (b) (3) concerning the threshold effect of a governmental decision upon a source of income of the public official provides:

"3. Whether, in the case of a source of income, as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:

"(A) The effect of the decision will be to directly increase or decrease the amount of income (other than rents) to be received by the official by one hundred dollars (\$100) or more; or

"(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

"(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in subsection (b) (1) above; . . ."

Mr. Texera on his "Statement of Economic Interest" lists the Texera Construction Company as a source of income for his rendition of personal services. As President and Chief Executive Officer of the Company, it is reasonable to assume that Mr. Texera's income from the Company is at least in part dependent upon the success of the Company in developing and marketing new condominiums or townhouses, thus satisfying the one hundred dollar threshold of Section 18702 (b) (3) (A).

Of further significance, there appears to be a clear "nexus" between the "governmental decision pending" before the Council — namely, the regulation of condominium construction and conversion — and the "purpose for which" Mr. Texera receives income from his condominium and townhouse development and marketing companies. The clear purpose of the nexus consideration was to focus the public official's attention upon the co-existence of his public responsibilities and his private source of income regardless of a possible marginal financial effect of the governmental decision upon his source of income. Thus, the nexus consideration reiterates the admonition of Witt v. Morrow, supra, that it is the appearance of "total" objectivity in decision making which the Act seeks to insure. Under the circumstances, there appears to be no more clear example of the applicability of the nexus consideration compelling disqualification than in the case of Mr. Texera's source of income.

Finally, it should be noted that the analysis, above, relating to the effect of the decision upon the Texera Construction Company as a business entity is equally applicable to the Company as a source of income, thus providing an additional basis for disqualification. 2 Cal. Admin. Code Section 18702 (b) (3) (C).

In sum, the totality of the Councilman's business interests within the City point irresistably to the conclusion that Mr. Texera, among all of the citizens of Santa Clara, is at the pinnacle of those whose interests would be affected by the pending decision of the City Council.

"An official has a financial interest in a decision when it is 'reasonably foreseeable' that the decision will have a material financial effect on his investments, property or income. (§ 87103.) The conflict of interest laws operate without regard to actual corruption or actual governmental loss; they establish an objective standard 'directed not only at

dishonor, but also at conduct that tempts dishonor; they are preventive, acting upon tendencies as well as prohibited results. (U.S. v. Mississippi Valley Co. (1961) 364 U.S. 520, 549-551 [5 L.Ed.2d 268, 288-290, 81 S.Ct. 294]; Stigall v. City of Taft (1962) 58 Cal.2d 565, 569 [25 Cal.Rptr. 441, 375 P.2d 289]; People v. Watson (1971) 15 Cal.App.3d 28, 37-39 [92 Cal.Rptr. 860].)"

Commission on California State Government and Economy v. Fair Political Practices Commission, (1977) 75 Cal.App.3d 716.

Based upon the foregoing, I conclude that Government Code Section 87100 compels Mr. Texera's disqualification in decisions of the City Council relating to the proposed ordinances concerning condominium conversions.

B. Common Law Prohibition

The general common law prohibition against governmental conflicts of interest was succinctly stated in San Diego v. San Diego and Los Angeles Railroad Company, (1872) 44 Cal. 106, 113, to the effect that, ". . . no man can faithfully serve two masters, whose interests are or may be in conflict." Otherwise stated:

"There is neither a more wholesome nor a sounder rule of law than that which requires public officers to keep themselves in such a position as that nothing shall tempt them to swerve from the straight line of official duty. Officers ought not to be allowed to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public. The rule which has so long prevailed is eminently just."

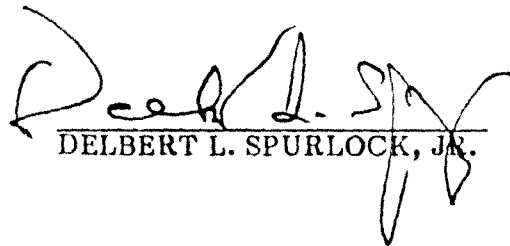
Noble v. City of Palo Alto, (1928) 89 Cal.App. 47, 51-52. (See also, Stockton Plumbing and Supply Company v. Wheeler, (1924) 68 Cal.App. 592, 601-602; People v. Darby, (1952) 114 Cal.App.2d 412, 426).

Given the totality of the Texera financial interests, the traditional strict construction of the common law standard similarly dictates the disqualification of Mr. Texera. Schaefer v. Berinstein, *supra*, at 140.

CONCLUSION

Based upon the foregoing analysis, I conclude that Government Code Section 87100, as complemented by the public policy considerations of The Act and the common law require the disqualification of Mr. Texera from the deliberations of the Santa Clara City Council relating to condominium conversions.

DATED: October 24, 1979



DELBERT L. SPURLOCK, JR.

DECLARATION OF SERVICE BY MAIL

I, Vicki Williams, declare as follows:

I am over the age of 18 years and not a party to the within action. My place of employment and business address is 716 Tenth Street, Suite 302, Sacramento, California 95814.

On October 23, 1979, I served the attached EXHIBIT "C" MEMORANDUM OF OPINION OF DELBERT L. SPURLOCK, JR., AND DECLARATION OF DELBERT L. SPURLOCK, JR., by placing a true copy thereof in an envelope addressed to each of the persons below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:


Edwin J. Moore
City Attorney
City of Santa Clara
1500 Warburton
Santa Clara, CA 95050

Attn: Mr. Barry McCarthy
Deputy City Attorney

Daniel V. Texera
City Councilman
City of Santa Clara
1500 Warburton
Santa Clara, CA 95050

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 1979, at Sacramento, California


Declarant

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(ENDORSED)
FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)
)
vs.)
)
DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)

437096

NO.

DECLARATION

I, DONALD LANDBERG, do declare as follows:

That I am Manager, Civil Engineering, for the firm of Ruth and Going, Inc., and have been retained by the plaintiffs in this action as a consultant in connection with their application for a condominium conversion permit now pending before the City Council of the City of Santa Clara.

That I have attended most, if not all of the public meetings conducted by the Santa Clara City Council and the Santa Clara City Planning Commission having to do with plaintiffs' above-referenced application, as well as those public sessions having to do with the presently pending condominium conversion ordinances referenced by title and subject matter in the declaration executed by Stephen Shapiro which has been filed as an exhibit in this action.

1 That in the late spring or early summer of 1979, I was personally present at
2 a meeting of the Santa Clara City Council at which Councilman Daniel V. Texera was
3 also present.

4 That during the course of said meeting and during discussions involving
5 condominium conversions I heard Councilman Texera make a statement to the effect
6 that he was opposed to condominium conversions because they compete with his
7 townhouses.

8 That I was present at said meeting and was in the company of persons
9 known to me as Larry Fargher and Ronald Aubert, and it is my belief those persons
10 would, if called to testify in this action, confirm that Councilman Texera made the
11 above-referenced statement as I have recited it herein.

12 That I, on behalf of my clients, plaintiffs herein, wrote a letter dated
13 October 9, 1979, to the Santa Clara City Attorney, Edwin J. Moore, requesting that
14 Councilman Texera be disqualified from participating or voting on the presently
15 pending condominium conversion ordinances (a true and accurate photocopy of said
16 letter is attached hereto and marked as Exhibit "A").

17 That as of the date of the execution of this declaration neither I nor my
18 clients have received a written response to my October 9, 1979, letter to Mr. Moore.

19 That an employee of my firm is one William Gissler who is also the Mayor
20 of the City of Santa Clara. That Mr. Gissler, in light of the fact he is an employee of
21 our firm and because I have been retained by the plaintiffs in this action, has, upon
22 advice of the City Attorney, disqualified himself from participating and voting in
23 connection with the pending Family Tree condominium conversion application and in
24 connection with the presently pending proposed condominium conversion ordinance and
25 the related fire safety ordinance.

26 That as a result of Mr. Gissler's disqualification, there now remain six
27 potential voting members of the Santa Clara City Council.

28 //

1 That I attended the October 9, 1979, City Council meeting when the first
2 reading of the proposed condominium conversion ordinance and the related fire safety
3 ordinance was had. Councilman Texera was not present at this meeting and when the
4 ordinances were voted upon, the result was three (3) Council members voting in favor
5 of the ordinances and two (2) Council members voting in opposition.

6 That it is my belief that based upon his public statement of opposition to
7 condominium conversions in general that it is reasonable to expect that Councilman
8 Texera will vote in opposition to these ordinances when they appear on the Council
9 agenda for its second reading and final vote.

10 That if Councilman Texera is permitted to vote on the ordinances and
11 based upon the votes recorded from the five other Council members at the ordinances'
12 first reading, the final vote will result in a 3 to 3 deadlock. The effect of such a
13 deadlock will in fact defeat the ordinances and that result will have serious financial
14 implications upon plaintiffs' ownership interests in The Family Tree apartment
15 complex.

16 That it is my opinion based upon my personal knowledge that due to
17 Councilman Texera's business interests and his public statement in opposition to
18 condominium conversions based upon their being his competitors, that Councilman
19 Texera is in conflict of interest and therefore he should ~~either~~ disqualify himself from
20 voting on the proposed ordinances, the variance denial appeal filed on behalf of
21 plaintiffs herein, and ^{the} upon plaintiffs' application for Council approval of their proposed
22 condominium conversion.

23 Executed this 19th day of October, 1979, at SAN JOSE,
24 California.

25 I declare under penalty of perjury that the foregoing is true and correct.

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27 151
28 DONALD LANDBERG, Declarant

RUTH AND GOING, INC ARCHITECTURE ENGINEERING PLANNING

919 THE ALAMEDA P.O. BOX 26430 SAN JOSE, CALIFORNIA 95159 (408) 297-8273

Leo W. Ruth, Jr., C.E., M.E.
E. Jackson Going, Jr., C.E.
William H. Bender, S.E.
Harry N. Lalor, C.E.
Donald C. Landberg, C.E.
Albert W. Ostloff, A.I.A.,



October 9, 1979

15,913

EXHIBIT "A"

Edwin J. Moore
City Attorney
City of Santa Clara
1500 Warburton
Santa Clara, CA. 95050

Re: Councilman Daniel Texera
Conflict of Interest

Dear Mr. Moore:

During recent deliberations on condominium conversions, we have become increasingly concerned about Councilman Texera's involvement in the proceedings. It is common knowledge that his personal business is that of building new townhouses, which compete in sales for the same market as do new condominiums and condominium conversions. In fact he has made open statements, for example, during the May 1, 1979 City Council meeting, expressing the fact that he is against condominium conversions because they compete with his townhouses.

It now appears that Councilman Texera might be using his position on the City Council to influence the drafting of a revised Condominium Conversion Ordinance, with the objective of an ordinance so restrictive that conversion of existing projects would be structurally or economically impossible.

We therefore request that, in accordance with the interpretations of the Fair Political Practices Commission, Councilman Texera be disqualified from all discussion, deliberation and voting on the Condo Conversion Ordinance, and further that he not be permitted to take part in consideration of any applications for future condominium conversions.

It is our understanding that the revised Condo Conversion Ordinance is scheduled for consideration by the City Council this evening, October 9. We therefore request that the disqualification of Councilman Texera be accomplished prior to the commencement of Council discussion on that matter.

Very truly yours,

DONALD C. LANDBERG

DCL/iv
cc - Mayor Win. Gissler
cc - Council Members
cc - City Clerk
cc - City Manager

(ENDORSED)
FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)
)
vs.)
)
DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)
)

NO. 437096

DECLARATION

I, DENNIS ALAN LEMPert, attorney at law duly licensed to practice law in the State of California and acting as co-counsel for the plaintiffs in this action do hereby declare as follows:

That beginning in the morning hours of Monday, October 15, 1979, to the date and hour of the execution of this declaration, I have made diligent efforts to locate the whereabouts of City of Santa Clara Councilman Daniel V. Texera.

That these efforts have included numerous telephone calls to the Councilman's business office and to the offices of the Santa Clara City Council, among others.

That on Wednesday, October 17, 1979, at approximately 10:00 a.m. I made contact with one Susan Davis, who identified herself to me as Councilman Texera's daughter.

1 That upon my inquiring of said Susan Davis as to the whereabouts of her
2 father, she declined to advise me of said whereabouts although she acknowledged she
3 knew where Councilman Texera was and that he was reachable.

4 That Susan Davis informed me that unless I would advise her of the nature
5 of the matter involving her father she would continue to decline to advise me as to his
6 present whereabouts.

7 That after consultation with my co-counsel Frederic M. Hanelt, I
8 telephoned Susan Davis later in the morning of Wednesday, October 17, 1979, and
9 advised her of the nature of this proceeding.

10 That I also explained to Susan Davis that it was imperative that Council-
11 man Texera be notified of this proceeding as soon as possible so that he would have the
12 maximum time possible to review the pleadings and exhibits of this action and to
13 consult with legal counsel if he so desired.

14 That I further explained to Susan Davis that if her father wished, he could
15 designate counsel of his choosing to accept service on his behalf of the Summons and
16 Complaint filed in this action.

17 That Susan Davis after having been apprised as is herein recited, informed
18 me that she would call me back.

19 That as of the time of the execution of this declaration, I have had no
20 further communications with Susan Davis, nor have I had communication with any
21 person purporting to represent Councilman Texera, nor have I had any communication
22 from or with the Councilman himself.

23 That pursuant to instructions I received from the Honorable Judge Bruce
24 Allen of the Santa Clara County Superior Court by telephone at approximately 3:15
25 p.m., Thursday, October 18, 1979, I made telephonic contact with Deputy City Attorney
26 Barry McCarthy that same afternoon.

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(ENDORSED)

FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)
)
Plaintiffs,)
)
vs.)
)
DANIEL V. TEXERA, Councilman,)
City of Santa Clara,)
)
Defendant.)

NO.

437096

DECLARATION

I, LARRY FARGHER, a resident of the City of Santa Clara, California, do hereby declare as follows:

That I was present at a meeting of the Santa Clara City Council in the late spring or early summer of 1979 in the company of two other persons known to me as Donald Landberg and Ronald Aubert.

That, also present at said meeting was Councilman Daniel V. Texera whom I personally know. I heard Councilman Texera make a statement in public to the effect that he was opposed to condominium conversions because they would be in competition with his townhouses.

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1 That I advised Mr. McCarthy that it was my intention to file an application
2 for an order to show cause on this matter at some time Monday, October 22, 1979. I
3 further advised Mr. McCarthy that I would advise him in advance as to the time and
4 Superior Court department where this matter would be heard.

5 That Mr. McCarthy advised me that he agreed that his telephone
6 advisement was notice to him and that upon notification Monday he would make an
7 appearance.

8 That in the course of this conversation, Mr. McCarthy informed me he had
9 spoken with Susan Davis during the morning of October 18, 1979, and she had advised
10 him she would continue to decline to provide information regarding Councilman
11 Texera's present whereabouts as he is in ill health.

12 Executed this 22 day of October, 1979, in SAN JOSE,
13 California.

14 I declare under penalty of perjury that the foregoing is true and correct.

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151
DENNIS ALAN LEMPert, Declarant

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1 That I have been actively engaged in real estate matters for 10 years and I
2 am thoroughly familiar with the availability of and the types of housing in the City of
3 Santa Clara.

4 That in my opinion there are in excess of 1000 units within the city limits of
5 Santa Clara which would be eligible for condominium conversion should the presently
6 pending condominium conversion ordinances be approved by the Santa Clara City
7 Council.

8 That in my opinion, having personal knowledge of the nature of Councilman
9 Texera's business activities, there are probably no more than 3 or 4 other individuals or
10 businesses directly in competition with him insofar as townhouse development is
11 concerned in and around the City of Santa Clara.

12 Executed this 19th day of October, 1979, in SAN JOSE,
13 California.

14 I declare under penalty of perjury that the foregoing is true and correct.

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15/
LARRY FARGHER, Declarant

1 Thomas W. Condit
2 Frederic M. Hanelt
3 **CONDIT & HANELT**
4 716 Tenth Street, Suite 302
5 Sacramento, California 95814
6 Telephone: (916) 448-1498

7 Attorneys for Plaintiffs

(ENDORSED)
FILED
OCT 22 1979

JOHN KAZUBOWSKI, Clerk

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10
11 **STEPHEN SHAPIRO and DAN PORAT,**)
12 Partners, dba THE FAMILY TREE,)
13 Plaintiffs,)
14 vs.)
15 **DANIEL V. TEXERA, Councilman,**)
16 City of Santa Clara,)
17 Defendant.)

437096
NO.

DECLARATION

18 I, STEPHEN SHAPIRO, do hereby declare:

19 That I presently hold an ownership interest in an apartment complex known
20 as The Family Tree.

21 That said apartment complex is located at 1000 Kiely Boulevard within the
22 city limits of the City of Santa Clara, California.

23 That through a representative, Mr. Donald Landberg of the Architectural
24 Engineering and Planning firm of Ruth and Going, Inc., my partner, Mr. Dan Porat and
25 I applied to the City of Santa Clara Planning Commission for approval to convert The
26 Family Tree apartment complex to condominiums.

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1 That said application made on our behalf was presented to the Planning
2 Commission on February 11, 1979.

3 That after several meetings involving staff and members of said
4 Commission, on September 26, 1979, said Commission accepted our tentative map and
5 approved our application for rezoning, but denied our application for a variance.

6 That said variance denial was duly and timely appealed to the Santa Clara
7 City Council.

8 That said Council considered the appeal and continued further hearing on
9 the matter to October 30, 1979.

10 That during the time our condominium application has been pending, said
11 City Council has been considering proposed ordinances entitled "An Ordinance of the
12 City of Santa Clara Amending Article 27 of 'The Zoning Ordinance of the City of Santa
13 Clara', Pertaining to the Regulations for P. D. -- Planned Development and Combined
14 Zoning District" and "An Ordinance of the City of Santa Clara Amending Certain
15 Portions of a Document Entitled 'Modifications and Amendments to the Fire
16 Prevention Code' said Document's Modifications and Amendments Were Incorporated
17 Into the Fire Prevention Code (1970 Edition) Which Was Adopted by Article I of
18 Chapter II of 'The Code of the City of Santa Clara, California'," respectively. Copies
19 of said proposed ordinances are attached hereto and incorporated by reference herein.

20 That said proposed ordinances, if passed or defeated, will have a significant
21 financial impact upon the ownership interest my partner and I hold in The Family Tree
22 apartment complex as their passage or failure to pass will determine the outcome of
23 our application for condominium conversion and our appeal from the variance denial as
24 the said proposed ordinances are specifically directed toward establishing the basis
25 upon which condominium conversion applications may be granted.

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA
AMENDING ARTICLE 27 OF
"THE ZONING ORDINANCE OF THE CITY OF SANTA CLARA"
PERTAINING TO THE REGULATIONS FOR PD -
PLANNED DEVELOPMENT AND COMBINED ZONING DISTRICT

BE IT ORDAINED BY THE CITY OF SANTA CLARA, as follows:

SECTION 1: That ARTICLE 27 of "The Zoning Ordinance of the
City of Santa Clara" is hereby amended to read as follows:

ARTICLE 27 REGULATIONS FOR PD - PLANNED DEVELOPMENT AND COMBINED
ZONING DISTRICT

SECTION 27-1: APPLICATION

The regulations set forth in this Article shall apply to all PD
zoning districts.

SECTION 27-2: INTENT

This district is intended to accommodate development that is
compatible with the existing community and that:

- (a) Integrates uses that are not permitted to be combined in
other zone districts; or
- (b) Utilizes imaginative planning and design concepts that would
be restricted in other zone districts; or
- (c) Subdivides land or air space in a manner that results in units
not having the required frontage on a dedicated public street; or
- (d) Creates a community ownership project. (See definition of
"Community Ownership Project" in Section 3-3(c) of Article 3 herein-
above.)

Residential community ownership projects require that house-
holds, each with a common ownership interest in their project coupled
with a right of ownership or occupancy in their own dwelling units,
be bound together in an owner's association which is responsible for
the maintenance and management of the common area and the improvements

within the common area of the project. This mix of individual and common ownership is different from conventional and familiar patterns of housing in the City of Santa Clara. Community ownership in residential projects can provide new opportunities of home ownership at a lower cost than single family units, and provide housing for people who prefer not to have the responsibility of maintaining a separate lot and building. There are also potential problems associated with residential community ownership such as owner expectations, maintenance expenses for the entire common area, and the conversion of unsuitable apartments.

To insure that other problems are avoided in both the short and long term, it is the express intent of the City of Santa Clara to treat community ownership projects differently from rentals and to establish rules and standards thereto regulating the construction of and conversion to community ownership projects in the City of Santa Clara

SECTION 27-3: THE FOLLOWING USES ARE PERMITTED

Any and all uses are permitted in this district except those excluded in Section 27-4; provided further that such use or uses and their location shall be shown in the development plan of the applicant for the particular Planned Development zoning district as approved. Any change in use requires a rezoning.

SECTION 27-4: USES NOT PERMITTED

Those industrial uses limited to MH zoning districts or involving outdoor storage on more than ten percent (10%) of the lot area shall not be allowed in Planned Developments.

SECTION 27-5: DESIGN STANDARDS

The proposed development plan must be designed to provide an environment of a stable, desirable character not out of harmony with its surrounding neighborhood. It must meet the most restrictive

standards of this ORDINANCE with respect to open space, circulation, density, off-street parking and other conditions pertinent to the proposed use in such a way as to form a harmonious, integrated project of sufficient unity and architectural quality to justify the mixture of normally separated uses or to justify certain exceptions to the normal regulations of this ORDINANCE. These regulations include, but are not limited to the following: height limits, setback requirements, required distances and buffering between residential and commercial development.

(a) The number of dwelling units which are proposed shall not exceed the number of dwelling units which would normally be permitted in the area under consideration as indicated on the General Plan.

(b) The General Plan indicates the density (number of dwelling units) permitted. The Zoning Ordinance then indicates the zoning district which would permit a particular density. The maximum building coverage for each proposed use within the planned development shall not exceed the maximum coverage allowed for the particular use or uses in the appropriate zoning district.

SECTION 27-6: DEVELOPMENT PLAN

An application for a Planned Development zoning district shall include and be accompanied by a development plan which, if approved by the City Council, shall become a part of the Zoning Map of the City of Santa Clara as provided for by Section 2-3 of this ORDINANCE.

(a) Changes in the development plan shall be considered as changes in the Zoning Map and shall be made in accordance with the procedures set forth in Article 56 of this ORDINANCE.

(b) The development plan shall include:

(1) A map showing any and all street systems and lot designs within the proposed Planned Development zoning district, any area proposed to be dedicated or reserved for public open space, parkways,

common open space, playground, school sites, public buildings and other such uses. Compliance with this requirement shall not be construed to relieve the applicant from compliance with the Subdivision Ordinance or any other applicable ordinance of the City of Santa Clara.

(2) If required by the Zoning Administrator of the City of Santa Clara, a map showing the topography of the proposed district at one (1) foot contour intervals shall be submitted.

(3) A general land use plan for the proposed district delimiting the area of each of the proposed uses.

(4) A fully dimensioned plot plan for each building site or sites in the proposed Planned Development zoning district. The required plot plan shall show the exact location of all existing and/or proposed buildings, indicating maximum and minimum distances between buildings and between buildings and property or building sites, and the location of outdoor storage areas.

(5) An off-street parking and loading plan drawn to scale shall be submitted. The number of required off-street parking spaces shall be the same as required for the particular uses in the zones in which they are otherwise permitted. Required parking spaces shall conform to all of the City of Santa Clara off-street parking standards.

(6) Elevations and/or perspective drawings of all proposed structures drawn to scale. The purpose of such drawings is to indicate the height of proposed buildings, materials to be used, and the general appearance of the existing and/or proposed structures so that the entire development will have architectural unity and be in harmony with surrounding developments.

(7) When the project involves the conversion of an existing structure to a community housing project, complete as-built drawings may be required by the Zoning Administrator.

SECTION 27-7: DEVELOPMENT SCHEDULE

(a) Construction of the planned development must begin within one year of final approval of the City Council.

(b) Extension of time limits.

For good cause shown by the property developer, extensions of time may be granted for a period not to exceed one year for each extension. A request for an extension of time shall be made in writing prior to the expiration of the original time schedule or subsequent extensions granted for the development. The Planning Commission may, with or without a public hearing, recommend for or against an extension of time. Upon receipt of the recommendation of the Planning Commission, the City Council may change or extend the time limits imposed by the development schedule or leave the schedule unchanged as it deems necessary to secure the purposes of this Ordinance.

SECTION 27-8: COMMUNITY OWNERSHIP PROJECTS

In addition to the requirements of Section 27-5 and 27-6, the following shall apply to community ownership projects (both new and conversions). In the event of a conflict in requirements, the requirements set forth in this Section shall control.

(a) Physical standards.

(1) Maximum building coverage, landscaped area and lot area per dwelling unit for new residential projects shall all be the same as those required in the corresponding residential (R) zone district. The density of the proposed project shall determine the corresponding zone.

(2) Off-street parking shall be provided as required in the corresponding residential (R) zone district and by City Council policy. At least ten percent (10%) of these spaces shall be conveniently arranged and assigned to visitors and the general use of the residents.

(3) Each dwelling unit must have a separate circuit breaker panel and shut-off valves for all plumbing fixtures and gas supply. In addition, all newly constructed projects shall have individual dwelling unit meters for all utilities except water. Individual unit meters for water may be installed at the option of the developer.

(4) All permanent mechanical equipment and major domestic appliances including but not limited to dishwashers, washing machines and air conditioning units, determined by the Building Official to be a potential source of vibration or noise, shall be shock mounted, isolated from the floor and ceiling, or otherwise installed in a manner approved by the Building Official to lessen the transmission of vibration and noise.

(5) Two-hour firewalls for all vertical common walls shall be required in all condominiums.

(6) The Life Safety System as adopted in Chapter 11 of the "Santa Clara City Code" shall be provided.

(7) The walls and floor/ceilings separating dwelling units must meet the applicable sound transmission criteria found in the Uniform Building Code as adopted by the City of Santa Clara in effect at the time of approval of PD zoning. If architectural plans are available and sufficient in detail, the Building Official may determine the sound transmission class based on laboratory tests of similar designs. If the Building Official is unable to make such a determination for any reason, field testing of an existing building shall be made by an acoustical engineer (or a professional acoustician) acceptable to the Building Official, and said testing shall be based on a representative sample of walls and ceiling/floors.

(b) Maintenance.

In order to protect the public health, safety, and welfare and in order to avoid disproportionate public expense, the owners'

association shall be responsible for proper maintenance of the common area (including, but not limited to, property and facilities) and of the activities necessary to maintain operation of the community ownership project as approved. Said maintenance is dependent on the payment by the unit owners of assessments imposed by the owners' association.

It is imperative that the unit owners in a community ownership project be held strictly accountable for his and/or her share of the costs expended by the owners' association for the health, safety, and welfare of the project. To the extent permitted by law, to accomplish said objective of accountability for health, safety, and welfare matters, the unit owners shall be subject to having a lien placed against his and/or her unit by the owners' association. Said imposition of a lien may occur in the event that the unit owner fails to pay for his and/or her share of expenses incurred by the owners' association in providing for the health, safety, and welfare of the project. The City encourages the developer to give notice of said authority of the owners' association to impose said lien on the individual unit in the organizational documents. Said authority to impose a lien is necessary to assure the owners' association that a unit owner cannot refuse to accept his and/or her responsibility to pay for expenditures pertaining to the health, safety, and welfare of the community ownership project by refusing to pay assessments imposed by the owners' association for said purposes.

(c) Organizational documents.

(1) Prior to approval of the final map, the organizational documents shall be reviewed and approved by the City Attorney. If no action is taken by the City Attorney within 45 days after a complete set of documents have been duly filed with him, the organizational documents shall be deemed approved.

(2) The organizational documents shall provide that the City, at its option, has the right and authority to veto any amendment to the organization documents that would adversely affect the long term maintenance of the project structure or its common areas. To enable the City to exercise said optional veto, the organization documents shall provide that any amendment shall not become effective until 60 days after notice of such proposed action is filed with the City Council and the Council has not vetoed the amendment.

SECTION 27-9: COMMUNITY OWNERSHIP CONVERSION

In addition to those requirements set forth in Section 27-8, the following requirements shall apply to conversion of a rental project to a community ownership project.

(a) The conversion of a rental project to a community ownership project presents potential problems due to the fact that the structure may not have been originally designed and constructed for community ownership use. In reviewing applications for conversions, the City of Santa Clara may consider not only the specific standards required of all community ownership projects, but also the following considerations, as applicable to the type of project.

(1) The condition of the structure and major mechanical facilities.

(2) Size of units.

(3) Open space and recreational facilities.

(4) Adequacy of parking spaces in relation to unit size and potential occupancy. There shall be a requirement that two parking spaces for each dwelling unit be maintained. Tandem parking may be considered as justification for a parking variance.

(5) The impact of conversion on existing tenants. Ability of residential tenants to find equivalent housing in the City for

equivalent rent.

(6) The impact on the City's rental housing market.

(7) The impact on the public school system.

(8) Where there are significant open spaces, recreational facilities, and/or maintenance responsibilities, a conversion request shall be evaluated only if the apartment complex has over twenty-five (25) units.

(9) Existing roofs less than two (2) years of age are exempted from required fire resistive material.

If in reviewing these considerations, the City finds that the proposed conversion is unsuitable for community ownership, the City shall deny the rezoning application and not approve the tentative map.

(b) A community ownership conversion must also comply with the following regulations:

(1) Pursuant to Section 66427.1 of the California Government Code, as amended from time to time, the applicant shall submit evidence concerning the following requirements in order that the City Council may make a determination whether or not said requirements have been complied with and make findings with respect to said determination:

(a) Each tenant of a project proposed to be converted into a community ownership project has been, or will be given, one hundred twenty (120) days written notice of the applicant's intention to convert prior to termination of tenancy due to the conversion or proposed conversion. This provision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent or the obligations imposed by Section 1941, 1941.1 and 1941.2 of the California Civil Code.

(b) Each tenant of the proposed community ownership project has been or will be given notice of an exclusive right to contract for the purchase of their respective units upon the same terms and conditions that such units will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than sixty (60) days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the California Business & Professions Code, unless the tenant has given prior written notice of his intention not to exercise the right.

(2) A report on the physical condition of the planned conversion and estimated unit owner payments for capital improvements, repairs and maintenance for both the common area and the individual units shall be given by the applicant to potential unit purchasers. The report shall be based on a structural analysis which describes the condition of the following major physical elements of the project: foundations, walls and roofs, mechanical equipment, recreation facilities, parking facilities, and any appliance.

The report shall estimate, to the best knowledge of the applicant, the approximate date when each element will require replacement and the cost of such replacement. In addition, the applicant's report shall estimate the on-going maintenance and repair costs to the buyer of the common area, the cost of utility payments that will be billed to the buyer as an individual and other costs necessary for normal occupancy.

Said report requirement is expressly intended to realistically apprise a potential buyer of costs he or she may reasonably anticipate with respect to their purchase and maintenance of a unit in community ownership project.

(3) The City shall complete, at the applicant's expense, a pre-sale inspection of a planned conversion project for compliance with the Housing Codes and all corrective actions must be made, agreements executed, and/or bonds posted to cover such actions, prior to sale.

(4) The applicant shall include a list of all known tenants' names and addresses with submission of the request for rezoning. Subsequently, the City may notify through mailing all known tenants of the proposed rezoning at least ten (10) days prior to the rezoning hearing. This notification may also inform the tenants of their future rights and alternatives if the conversion is approved. The failure to mail such notice to all of said persons shall not operate to divest the City of jurisdiction to conduct any hearing required to be held.

SECTION 2: Savings Clause

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance.

SECTION 3: Penalties

Any person violating any of the provisions of this ordinance shall be guilty of an infraction punishable by a fine of not more than Five Hundred Dollars (\$500.00).

SECTION 4: Constitutionality; Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council of the City of Santa Clara declares that it would have passed this ordinance and every section, subsection,

sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases, were to be held invalid by such court.

SECTION 5: Effective Date.

This ordinance shall take effect and be in force thirty days after its final adoption, but before such final adoption, it shall be published in an official newspaper of the City of Santa Clara as required by the Charter of said City.

PASSED FOR THE PURPOSE OF PUBLICATION BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA this ____ day of _____, 1979, by the following vote:

AYES: COUNCILMEN:

NOES: COUNCILMEN:

ABSENT: COUNCILMEN:

ATTEST: A. S. BELICK
 City Clerk
 City of Santa Clara

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA AMENDING CERTAIN PORTIONS OF A DOCUMENT ENTITLED "MODIFICATIONS AND AMENDMENTS TO THE ~~FIRE PREVENTION CODE~~" SAID DOCUMENT'S MODIFICATIONS AND AMENDMENTS WERE INCORPORATED INTO THE FIRE PREVENTION CODE (1970 EDITION) WHICH WAS ADOPTED BY ARTICLE I OF CHAPTER 11 OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"

BE IT ORDAINED BY THE CITY OF SANTA CLARA, as follows:

SECTION 1: By Ordinance No. 1265 the City of Santa Clara amended Article I of Chapter 11 of "The Code of the City of Santa Clara, California" by adopting the 1970 Edition of the Fire Prevention Code (hereinafter "FIRE PREVENTION CODE"). The FIRE PREVENTION CODE was modified by printed amendments and modifications contained in a document entitled "MODIFICATIONS AND AMENDMENTS TO THE FIRE PREVENTION CODE" (hereinafter "AMENDMENT") adopted and made a part of the FIRE PREVENTION CODE. Changes of circumstances have made it advisable to amend those AMENDMENTS to the FIRE PREVENTION CODE.

SECTION 2: Section 14.1 of Article 14 entitled "FIRE PROTECTION EQUIPMENT" as contained in the AMENDMENTS to the FIRE PREVENTION CODE is amended to read as follows:

"(k) Sec. 14.1(b) Application of Regulations. Regulations.

The following regulations shall apply to multiple occupancies or complexes, including, but not limited to, apartment buildings, motels, hotels, condominiums and townhouses (single family residences and duplexes are expressly excluded). These regulations shall apply to both new construction and existing occupancies or complexes converted into condominiums. Buildings or complexes within the scope of these regulations shall be in full compliance with all applicable Federal, State and local requirements at the time of their construction or conversion. The City of Santa Clara regulations are as follows:

1. Smoke detectors

There shall be a single station smoke detector in each dwelling unit. The required smoke detector(s) shall receive their primary power from the building wiring. The wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection.

2. Heat detectors

A heat detector shall be provided in each dwelling unit and in such other areas in the building as are designated by the chief of the bureau of fire prevention when a building contains dwelling units (e.g., laundry rooms, recreation rooms, garages/carports, and storage areas, etc.). The heat detectors shall be part of an approved system designed to alert all occupants of the building in the event of fire.

3. Monitoring by the municipal fire alarm system

Buildings or complexes having seven or more dwelling units, or those having a public assemblage building with an occupant capacity of fifty or more persons shall provide a means for monitoring the on-site fire alarm system by the municipal fire alarm system.

4. Access for firefighting equipment

Access for firefighting equipment shall be provided. Vehicular parking shall be in designated spaces only so that access by firefighting equipment is not impaired. Specific areas will be designated as fire lanes and all improperly parked vehicles shall be removed by management or owner from said fire lanes.

5. Survey of fire protection needs

Each building or complex shall be surveyed for fire protection needs. Appropriate fire protection requirements

will be directed by the fire chief or his designee. Plans for fire protection equipment which have been required shall be submitted for approval of the Fire Department. Fire extinguishers shall be provided and maintained by the property management or owner as required by the fire chief or his designee.

6. Level of maintenance

All buildings and related mechanical equipment shall be maintained in good repair. Also subject to the good repair maintenance standard shall be fire resistive building construction including, but not limited to:

- (a) Firewalls.
- (b) Fire doors and assemblies.
- (c) Attic separations.
- (d) Fire protection equipment - such as hydrants, standpipes, extinguishers, fire alarm systems, etc.

7. Emergency egress requirements

- (a) Lower window sill located more than six feet above grade level.

Where the lower sill of an egress or rescue window from a sleeping room is located more than six feet above grade level and only one exit door is provided from the dwelling unit, exit door hardware shall comply with the following:

- (1) New Construction. Entrance door hardware shall have an additional dead bolt lock incorporated in the assembly and both locks shall retract by turning the inside knob. No other locking device shall be allowed on the entrance door.
- (2) Condominium Conversions. No separate locking device will be allowed unless it has a thumb

latch or key retaining feature. No separate locking device will be permitted to be located higher than 48" above the inside floor level.

- (b) Lower window sill located more than fifteen feet above grade level.

Where the lower sill of an egress or rescue window from a sleeping room is located more than fifteen feet above grade level, and one exit door is provided from the dwelling unit, the following regulations shall apply:

(1) ~~Door Locking Devices.~~ The door locking device requirements for new construction and condominium conversion shall also be applicable to situations where the lower sill of the egress or rescue window is more than fifteen feet above ground level.

(2) Automatic Fire Sprinkler Protection. The exit way's egress/egress stairs shall be provided with an automatic fire sprinkler protection system.

8. Roof coverings

In all new construction and where more than twenty five percent of the roof area is replaced or repaired in any twelve-month period on an existing building, the roof covering shall be classed A, B, C or special purpose roof covering complying with Uniform Building Code Standard #32-14. It shall be the property owner's responsibility to conform to this requirement.

9. Submission of plans

Plans submitted for approval to the Building Department

for occupancies within the scope of these regulations shall also be submitted to the Fire Department for purposes of imposing these regulations and obtaining approval from the fire chief or his designee.

SECTION 3: Those portions of Ordinance No. 1265, and the 1970 Edition of the Uniform Fire Code, as amended by the modifications and amendments to the Fire Prevention Code in conflict with or inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect the duty or responsibility of any person, or punishment of any person, for any act done or committed, or for failure to perform any act required to be performed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

SECTION 4: (Penalties)

SECTION 5: (Constitutionality; Severability)

SECTION 6: (Effective Date)

1 1919 Bellomy Street, Santa Clara, California, which parcel of
2 real property has a value in excess of One Thousand Dollars
3 (\$1,000).

4 f. That said TEXERA INVESTMENTS has an ownership in-
5 terest in the following parcels of real property, all located
6 within the City of Santa Clara, California and each having a
7 value in excess of One Thousand Dollars (\$1,000):

8 1690 Long Street
9 2375 Patricia Drive
10 344 Kellogg Way
11 1867 Clay Street
12 1365-1367 Block Drive

13 g. That the following, and each of them, are a source
14 of income to me in an amount or value received for calendar year
15 1979 anticipated to be in excess of Ten Thousand Dollars (\$10,000):

16 Texera Construction Company, Inc.
17 1265-A El Camino Real
18 Santa Clara, California 95050
19 (construction and development)
20 payment for personal services

21 Mary-Vin Corporation
22 1265-A El Camino Real
23 Santa Clara, California 95050
24 (real estate development and investment)
25 personal services and investment

26 Texera Investments
27 1265-A El Camino Real
28 Santa Clara, California 95050
(real estate investment)
rents and personal services

4. That other than those interests listed above, my per-
sonal residence, remuneration for my services as a Councilman
and loans in the ordinary course of business, I have no economic
interest or income reportable under the provisions of the Poli-
tical Reform Act of 1974 or the Rules and Regulations of the Fair
Political Practices Commission promulgated thereunder.

1 EDWIN J. MOORE, City Attorney
MICHAEL R. DOWNEY, Asst. City Attorney
2 BARRY F. McCARTHY, Deputy City Attorney
CITY HALL, 1500 Warburton Avenue
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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IN AND FOR THE COUNTY OF SANTA CLARA

10

11 STEPHEN SHAPIRO and DAN PORAT,)
Partners, dba THE FAMILY TREE,)

NO. 437096

12

Plaintiffs,)

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vs.)

POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR A
PRELIMINARY INJUNCTION

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DANIEL V. TEXERA, Councilman,)
15 City of Santa Clara,)

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Defendant.)

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Defendant, DANIEL V. TEXERA, submits the following
points and authorities in opposition to Plaintiff's Motion for
a Preliminary Injunction:

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I

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THIS COURT IS WITHOUT JURISDICTION TO ENJOIN
A VIOLATION OF THE POLITICAL REFORM ACT AS
PLAINTIFFS ARE NOT "PERSONS RESIDING WITHIN
THE JURISDICTION" OF SANTA CLARA.

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This action is brought by individual Plaintiffs, SHAPIRO
and PORAT, who, it is alleged, are partners doing business under
the firm name of THE FAMILY TREE. It is further alleged that said
partnership has its principal place of business and residence in

1 the City of Santa Clara.

2 Standing to sue for injunctive relief under the pro-
3 visions of the Political Reform Act require that the person who
4 brings such action reside in the jurisdiction. Government Code
5 §91003(a). Although a partnership is a "person" for purposes of
6 the Act (Government Code §82047), a partnership is not in itself
7 a legal entity and is incapable of "residing" in any jurisdiction.
8 It simply transacts business therein. Reed v. Industrial Accident
9 Commission (1937) 10 Cal. 2d 191, 73 P. 2d 1212. As the Plain-
10 tiffs lack standing to bring this action, the action should be
11 dismissed.

12 II

13 PLAINTIFFS HAVE FAILED TO SEEK AN ADMINISTRATIVE
14 RULING ON THE ISSUES INVOLVED IN THIS CASE AND
15 SHOULD BE REQUIRED TO DO SO PRIOR TO SEEKING IN-
JUNCTIVE RELIEF.

16 Under the Political Reform Act of 1974, the Fair Poli-
17 tical Practices Commission was created and is charged with the
18 primary responsibility for the administration and implementation
19 of the Fair Political Practices Act. Government Code §83111.
20 Said Commission has adopted comprehensive rules and regulations
21 governing the duties of political office holders under the Act.
22 2 California Administrative Code §§18109, et seq.

23 Plaintiffs here seek injunctive relief as authorized
24 by §91003 of the Government Code. §91003(a) reads in full as
25 follows:

26 "§91003. Injunctions.

27 (a) Any person residing in the juris-
28 diction may sue for injunctive relief
to enjoin violations or to compel compli-
ance with the provisions of this title.

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The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees." (emphasis added)

Given the administration and expertise of the Commission and its staff, Plaintiff should be required to seek their analysis and ruling on the responsibilities of Defendant prior to seeking relief from this Court. In order to permit this, Plaintiffs could request a continuance of the matters now pending before the City Council relating to their condominium conversion.

III

DEFENDANT HAS NO FINANCIAL INTEREST IN THE GOVERNMENTAL DECISIONS WHICH ARE THE SUBJECT OF THIS ACTION.

Plaintiffs herein seek to enjoin Defendant TEXERA from participating in City Council consideration and determination of three matters now set for hearing on October 30, 1979 at the regularly scheduled meeting of the Santa Clara City Council. The first matter is the final passage of Ordinance No. 1390, relating to condominium conversion regulations. This ordinance makes several changes, primarily clarifying changes, in the existing Article 27 of "The Zoning Ordinance of the City of Santa Clara." The matter to be considered by the Council is Ordinance No. 1391, relating to requirements for a "life safety system" for multi-occupancy dwellings. This ordinance would impose certain fire protection equipment requirements on all new and construction of multiple occupancies as well as existing structures if converted into condominiums. The third matter involves

1 consideration of the application of Plaintiffs for approval of a
2 condominium conversion project of one hundred twenty units.

3 The basis upon which Plaintiffs seek relief is the dis-
4 qualification provision of the Political Reform Act of 1974.

5 This provision reads as follows:

6 "§87100. When influencing governmental
7 decision prohibited.
8 No public official at any level of state
9 or local government shall make, partici-
10 pate 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."

11 Section 87103 of the Government Code attempts to qualify
12 what is meant by a "financial interest" by limiting it to those
13 situations where "it is reasonably foreseeable that the decision
14 will have a material financial effect, distinguishable from its
15 effect on the public generally, on . . . a business entity . . .
16 any real property . . . any source of income . . ."

17 The regulations of the Fair Political Practices Commis-
18 sion attempt to quantify in numerical terms the meaning of a
19 "material financial effect". In so doing, the Commission has
20 outlined numerical "factors" to be considered by the public offi-
21 cial when determining the foreseeability of a material financial
22 effect.

23 Plaintiffs have failed to show, either in the Complaint
24 or accompanying Declarations, how any of the matters to be deter-
25 mined by the City Council have a material financial effect on any
26 business entity, real property, or source of income of Councilman
27 TEXERA. They have charged that Councilman TEXERA has made cer-
28 tain public statements with regard to his opposition to condominium

1 conversion projects because of an adverse financial impact on his
2 business. Defendant denies ever making such a statement and
3 Plaintiffs have failed to show when and where such statements
4 were made on the record by the Defendant.

5 Plaintiff's sole contention of an adverse financial im-
6 pact on Defendant from approval of Plaintiff's project is the
7 likelihood of increased competition for Defendant's business.
8 As the testimony of John J. Hollwedel, a qualified appraiser, will
9 show, the types of residential units currently owned and sold by
10 Defendant are different not only in quantity, but in quality from
11 those residential units proposed to be marketed by Plaintiffs.
12 The units differ significantly in size, quality of design and
13 improvements, methods of construction and amenities. In short,
14 the types of units in which Defendant deals would not be consider-
15 ed to be in the same "market" as those units contemplated by
16 Plaintiffs.

17 IV

18 PLAINTIFFS HAVE FAILED TO SHOW THE REQUISITE
19 IRREPARABLE HARM OR INJURY IF THIS PRELIMINARY
INJUNCTION IS NOT GRANTED.

20 Government Code §91003(b) provides that "If it is ul-
21 timately determined that a violation has occurred and that the
22 official action might not otherwise have been taken or approved,
23 the Court may set the official action aside as void." This
24 clearly provides for corrective action by the Court in the event
25 of City Council action taken if it is determined that (a) Council-
26 man TEXERA voted improperly and (b) the official action would not
27 have taken place had he disqualified himself from voting. In addi-
28 tion, the ordinances in question would not take effect until thirty

1 days after the date of final adoption. The Charter of the
2 City of Santa Clara §810.

3 In light of the foregoing, it is respectfully requested
4 that this Court deny Plaintiff's Motion for a Preliminary Injunc-
5 tion, enter an Order Dismissing the Action, and enter such other
6 Orders as it may deem just and proper, including the award of at-
7 torneys fees and costs.

8 Respectfully submitted,

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10 Dated: October 29, 1979


BARRY F. MC CARTHY
Deputy City Attorney

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 STEPHEN SHAPIRO and DAN PORAT,)
12 Partners, dba THE FAMILY TREE,) No. 437096
13 Plaintiffs,)
14 vs.) DECLARATION IN OPPOSITION TO
15 DANIEL V. TEXERA, Councilman,) MOTION FOR A
16 City of Santa Clara,) PRELIMINARY INJUNCTION
17 Defendant.) Hearing Date: October 30, 1979
18)

19 I, DANIEL V. TEXERA, do declare as follows:

20 1. That I am a duly elected member of the City Council of
21 the City of Santa Clara, California.

22 2. That on or about March 8, 1979, I filed a Statement of
23 Economic Interests (Form 721) as required by the Political
24 Reform Act of 1974 and the rules and regulations promulgated
25 thereunder by the Fair Political Practices Commission. Further,
26 that the period covered by said Statement of Economic Interests
27 was January 1, 1979, through December 31, 1978.

28 3. That at the present time, a summary of my economic

1 interests, as reportable under the Political Reform Act and the
2 above mentioned regulations of the Fair Political Practices
3 Commission, is as follows:

4 a. That I have an ownership interest in TEXERA
5 CONSTRUCTION COMPANY, INC., a construction and development firm
6 located in the City of Santa Clara, California, which interest
7 is valued in excess of One Thousand Dollars (\$1,000).

8 b. That I have an ownership interest in TEXERA
9 INVESTMENTS, a real estate investment firm located in the City
10 of Santa Clara, California, having a value in excess of One
11 Thousand Dollars (\$1,000).

12 c. That said TEXERA CONSTRUCTION COMPANY, INC. owns
13 a 50% ownership interest in MARY-VIN CORPORATION a real estate
14 development firm having a value in excess of One Thousand Dollars
15 (\$1,000).

16 d. That said MARY-VIN CORPORATION has an ownership
17 interest in the following real property, each parcel constituting
18 a townhouse unit and each unit having a value in excess of
19 One Thousand Dollars (\$1,000):

20	3433 Homestead Road
21	3435 " "
22	3437 " "
23	3439 " "
24	3443 " "
25	3451 " "
26	3430 Lochinvar
27	3432 "
28	3438 "


29 e. That TEXERA CONSTRUCTION COMPANY, INC. has an
30 ownership in undeveloped parcel real property located at

1 5. That at no time have I made a statement to the effect
2 that I was opposed to condominium conversions because they com-
3 pete with property owned or developed by me.

4 Executed October 29, 1979 at Santa Clara, California.

5 I declare under penalty of perjury that the foregoing is
6 true and correct and that if called as a witness, I could testify
7 competently thereto.

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DANIEL V. TEXERA
Declarant