

State of California



Fair Political Practices Commission

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

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

July 17, 1981

Furman B. Roberts
City Attorney
CITY OF ORANGE
P.O. Box 449
Orange, CA 92666

A-81-07-116

Re: Request for Informal Advice -
Councilman Fred Barrera

Dear Mr. Roberts:

Thank you for your recent request for informal advice on behalf of Councilman Fred Barrera. As you have related them to us, the material facts are as follows:

FACTS

1. Councilman Barrera owns the site on the northwest corner of West Chapman Avenue and Batavia Street. At that site he operates a Union Oil Service Station.
2. The City of Orange proposes to widen West Chapman Avenue adjacent to Councilman Barrera's property.
3. There are two alternative proposals for doing this, which are illustrated on the map 039-045-30, which you have provided to us. (Copy attached as Exhibit "A".)
4. Under one proposal ("minimum take") a substantial portion (8.5 feet) of Councilman Barrera's frontage on West Chapman Avenue would be taken, leaving very little space between the curb and the south island of pumps.
5. Under the second proposal ("maximum take"), a great portion (16.5 feet) of Councilman Barrera's frontage of West Chapman Avenue would be taken, completely removing the south island of pumps.
6. The City Council will be considering all of these matters.

7. Councilman Barrera's interest in his property exceeds \$1,000, and has been a source of income to him in excess of \$250 in the last 12 months.

QUESTION

You have asked our advice as to whether the Political Reform Act (Government Code Sections 81001-91014)1/ requires Councilman Barrera to disqualify himself from participating in these decisions.

ANALYSIS

Section 87100 requires all public officials to disqualify themselves from participating in any way in the making of any governmental decision in which he has a financial interest. Section 87103 defines what constitutes a financial interest and includes:

- (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 investment worth more than one thousand dollars (\$1,000).
- (c) Any source of income...agreggating two hundred fifty dollars (\$250) or more...to the public official within 12 months prior to the time when the decision is made.

Clearly, Councilman Barrera's financial interest in the subject property meets all three of these tests. However, Section 87103 also requires that the effect on such financial interests be "material" and "reasonably foreseeable". Guidance in this regard is given by the Commission's regulation, 2 Cal. Adm. Code §18702.2/

Under our regulation, if the effect will be to increase or decrease Councilman Barrera's gross revenues or net income by at least \$1,000,3/ or to increase or decrease the income

1/All references are to the Government Code.

2/Copy attached.

3/We assume that the applicable percentage tests in 18702 (b) (1) (a) and (b) are met. These assumptions appear appropriate based upon a review of the facts involved in our advice letter of June 3, 1980, for Councilman Barrera (referred to in your letter).

produced by his property by more than \$50 per month,⁴/then it is reasonably foreseeable that the financial effect will be material. It seems safe to us to conclude that at least one of these tests will be met. Furthermore, under 2 Cal. Adm. Code Section 18702(b)(3)(a), the effect of the decision will almost assuredly directly decrease his income by \$100 or more.

CONCLUSION

Therefore, we conclude that Councilman Barrera must disqualify himself and may not "make, participate in making or in any way attempt to use his official position to influence" the decision of the City of Orange relative to the widening of East Chapman Avenue in front of his property.

Our regulation 2 Cal. Adm. Code Section 18700 ⁵/ further defines what constitutes participating in a decision. Subdivision (f) states:

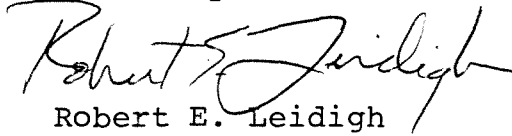
(f) "In any way attempting to use his or her official position to influence a governmental decision" shall not include:

- (1) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest;

(Emphasis added.)

Therefore, so long as Councilman Barrera represents himself on this matter solely related to his personal interest (and not that of Union Oil Company), then he may appear before the city agencies involved (but may not lobby in private) on this issue.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL/gs

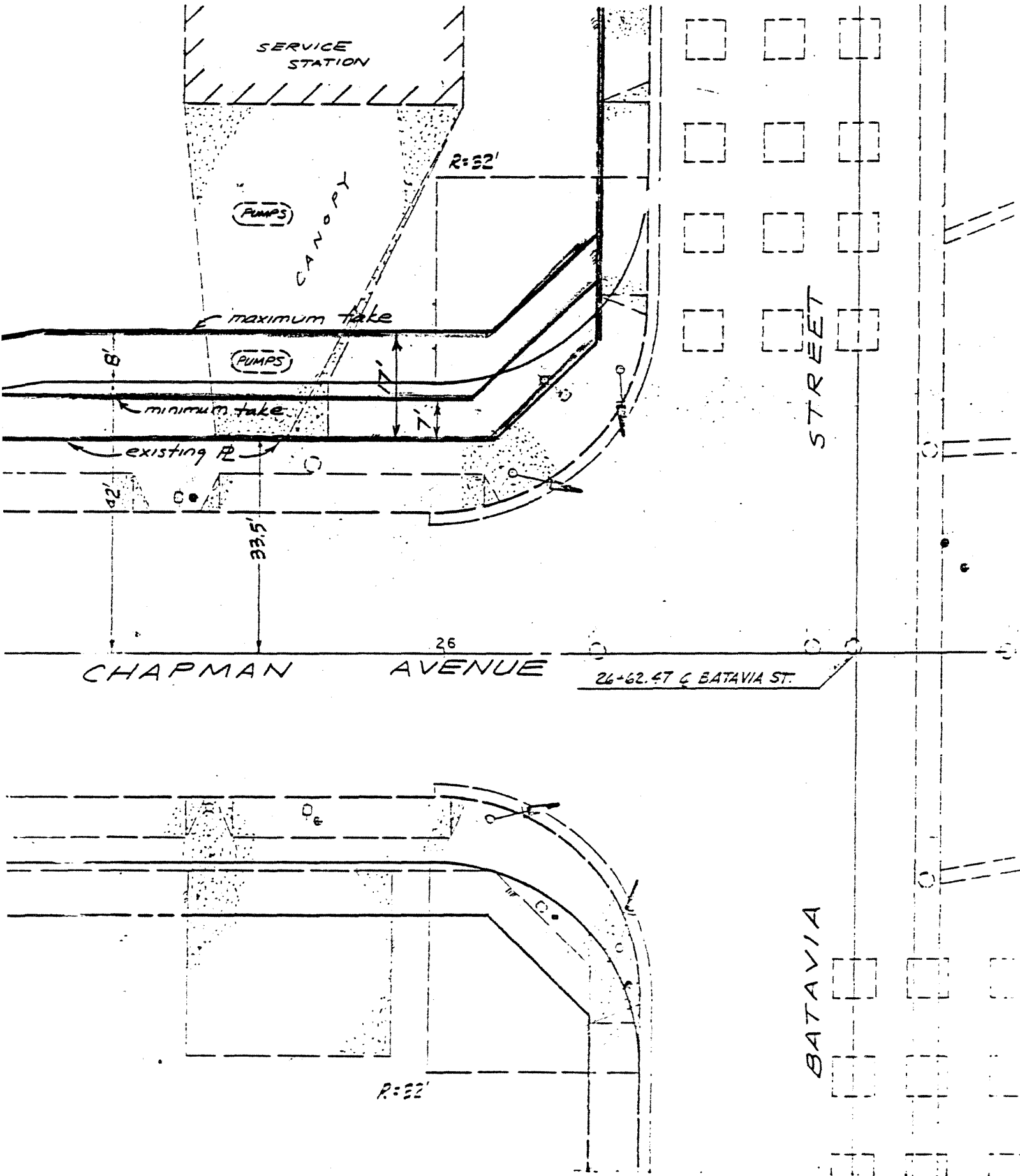
⁴/Again, we assume that the 5% test is met since, under the second proposal he will lose 50% of his pump islands.

⁵/Copy attached.

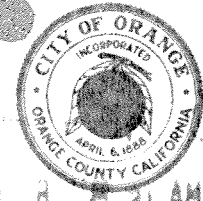
21116

905
039-045-30

1" = 20'



city of orange



81116

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July 6, 1981

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

Attn: Ms. Barbara A. Milman
Chief of Legal Division

Re: Request for Informal Advice Regarding Participation and
Voting on Issue of West Chapman Avenue Street Widening
by Councilman Fred Barrera

Gentlemen:

I have been requested by Councilman Fred Barrera, a member of the City Council of the City of Orange, to inquire of your agency whether he may participate in deliberations and vote on the issue of widening a major arterial street known as Chapman Avenue in the western portion of the City from Main Street easterly to Clark Street. This project is being constructed pursuant to a Federal Aid Urban project participation project using Arterial Highway Funds derived from taxes on gasoline sales. I include a street map describing the street to be widened and pointing out the limits of the project. Also, I have indicated with an arrow on that map the location of Councilman Barrera's property.

As you can see, Councilman Barrera owns the site on the northwest corner of Chapman and Batavia at which site he operates a Union Oil Service Station. Several years ago, while Councilman Barrera was still a citizen of the City of Orange and not a member of the City Council, the City widened Batavia Street and took a portion of his property located on the east side of his service station building.

Now, the City proposes to widen West Chapman from Main Street to Clark Street on the east which portion of West Chapman includes the service station site owned by Councilman Barrera.

Enclosed herein is a list of Objectives and Goals of this F.A.U. project for West Chapman. Also, I enclose a copy of a detailed map showing the alternatives for widening West Chapman Avenue and how these alternatives would affect Councilman Barrera's property. You will notice that if a bus bay is installed on his property, the effect on Councilman Barrera's property is quite severe since one of the two remaining gasoline pump islands will be required to be removed from his station. If the bus bay is not installed at the point of Councilman Barrera's property, then the effect would be less severe as shown by the minimum take or green line. Whether to install this bus bay at this particular location using his property is one of the decisions which the Council may have to make.

You may safely assume that Councilman Barrera's interest in his property exceeds one thousand dollars (\$1,000) and has been a source of income to him in excess of two hundred and fifty dollars (\$250) during the preceding 12 months.

Your office has previously rendered an opinion to me on June 3, 1980, concerning Councilman Barrera in connection with the J & L Oil Company matter.

Very truly yours,


Furman B. Roberts
City Attorney

FBR:cfk
enclosures
cc: City Council
City Manager
City Clerk
Director of Public Works

W. Chapman Avenue FAU Project

Objectives:

Provide 4 travel lanes plus
a continuous left turn lane

Provide bus bays

Provide street trees,
underground utilities
and improved street
lighting

Resurface street

Goals

- increase traffic capacity
and safety

- increase transit access
to respond to need

- improve street
appearance

- improve rideability

905
039-045-30

1" = 20'

