

State of California



Fair Political Practices Commission

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• • Enforcement • •
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• • Statements of Economic Interest • •
322-6444

August 5, 1982

Michael H. Miller
Office of the City Attorney
City Hall
3300 Newport Blvd.
Newport Beach, CA 92663

Re: Your Request for Written
Advice, Our No. A-82-119

Dear Mr. Miller:

Thank you for your letter requesting our written advice as to possible conflicts of interest involving five members of the Newport Beach City Council. You have stated the facts as set forth below.

FACTS

The City of Newport Beach is considering certain amendments to its Municipal Code with regard to residential condominium projects. The specific amendments and a description are reflected in a report to the City Council from the Planning Department. You have furnished us with a copy of this report and the Newport Beach Housing Element, which we have reviewed.

The City Council is the final decision-maker with regard to adoption of these amendments and their final wording. The proposed ordinance amendments which are now set for hearing on July 12, 1982, permit the conversion of rental units in projects of four units or less. Currently, such conversions are not permissible. Conversion is subject to certain substantial conditions such as conformity with current code requirements. It is possible that these requirements could be modified during the legislative process. If the proposed amendments are adopted, conversion would not be automatic. An application for a Use Permit and tentative or parcel map would be necessary, followed by processing through the Planning

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Commission with possible review by the City Council. These bodies would exercise discretionary approval or disapproval and apply the ordinance conditions, unless such conditions are waived as spelled out in the proposed ordinance.

Generally, it is the opinion of City Planners and professional appraisers that the ability to convert rental property to condominiums is of substantial value to the property owner because it enhances property values and marketability. This is particularly true with regard to newer buildings which are more amenable to home ownership. Further, you have been advised that even though conversion does not take place, the ability to convert enhances the value. Based upon a review of the materials which you have submitted, we would fully concur.1/

The Councilmembers

As to the various City Councilmembers, you have provided the following information:

1. Councilmember John Cox owns a duplex from which rental income is derived that was reconstructed in 1974 and is in good condition.
2. Councilmember Evelyn Hart owns a duplex from which rental income is derived. It is older than 10 years and in average condition for its age.
3. The husband of Mayor Jackie Heather includes a duplex in his personal retirement plan (Keogh) from which income is derived. Subject property is approximately 10 years old and is in average condition for its age.
4. Councilmember Paul Hummel owns and lives on property that is zoned R-2 and upon which another unit exists. One unit is approximately 30 years old and the other unit is about 10 years old. Both are in average condition for their age. Currently, the entire property is treated by the owner as a single family dwelling.

1/ The material facts contained in these materials are summarized in the attached Exhibit "A".

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5. Councilmember Phillip Maurer owns and lives on property that is zoned R-2. It consists of a house that is approximately 40 years old and a separate garage apartment complex that is about 20 years old. The latter is usually rented out. Both properties are in average condition for their age.

All of the above properties exceed \$1,000 in value and are in Newport Beach.

Questions

You have asked whether, pursuant to Government Code Section 87100, any of the above councilmembers should be disqualified from the process of considering the condominium conversion amendments. You have also asked that, if necessary, we address the following questions:

- a) As a 7-person City Council what happens if more than a quorum are disqualified?
- b) What happens if disqualification evolves into a tie vote?

The Condominium Conversion Ordinance

The essence 2/ of the existing ordinance has previously been described. The fundamental changes being proposed have been set out in the following chart prepared by the Newport Beach Planning Department.3/

<u>PROVISION</u>	<u>Existing Ordinance</u>	<u>Proposed Ordinance</u>
Use Permit requirement for new condominiums and conversions.	yes	yes
Priority for newer, more conforming structures.	no	yes

2/ Because of the 5% vacancy rate restriction in the existing ordinance, conversions have been prohibited, as a practical matter.

3/ For more detailed discussion, see Exhibit "B", consisting of excerpts from the Planning Department memo (dated 6/14/82).

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Physical Elements Report requirement.	no	yes
Special Inspection report required prior to acceptance of application.	no	yes
Minimum 5,000 square feet lot limitation for conversions.	yes	no
Modification of waiver of Development Standards.	yes	revised
30% tenant purchase requirements.	yes	no
Relocation assistance requirement for conversion.	no	yes
Vacancy rate restriction for four or less units.	yes	no
Vacancy rate restriction for five or more units.	yes	yes
Requirement to provide replacement housing in Coastal Zone.	no	yes
Phasing requirement.	no	yes

ANALYSIS

The Political Reform Act ("Act")^{4/} provides that no public official may make or participate in the making of any governmental decision in which he or she knows or has reason to know that he or she has a financial interest. Section 87100. A financial interest is defined to include a direct or indirect interest in real property of \$1,000 or more in value. Section 87103(b).

^{4/} Government Code Sections 81000 - 91014. All statutory references are to the Government Code unless otherwise specified.

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The five Newport Beach Councilmembers here in question are public officials within the meaning of the Act and it is stipulated that their interests in their respective pieces of real property exceed \$1,000.

Section 87103 also provides certain other criteria to be met before an official has a financial interest within the meaning of Section 87100. The reasonably foreseeable effect of the governmental decision in question must be material and must be distinguishable from its effect upon the public generally.

Your letter indicates that materiality is very much foreseeable. Our review of the materials which you submitted causes us to concur.^{5/}

We turn, then, to the question of whether the effect of the proposed changes upon each of the councilmembers' real property interests is distinguishable from the effect upon a significant segment^{6/} of the public.

In its Ferraro Opinion,^{7/} the Commission held that owners of three or fewer rental units would not be affected by rent control decisions in a manner distinguishable from the effect upon a significant segment of the public generally. The Commission felt that owners of three or fewer rental units, as

^{5/} See Exhibits "A" and "B", supra. In the case of a \$300,000 duplex, an increase (or decrease) in market value of \$1,500 would be significant (and hence material). 2 Cal. Adm. Code Section 18702(b)(2). It would appear that increases in value resulting from conversions could easily exceed \$100,000.

^{6/} 2 Cal. Adm. Code Section 18703 states that a material financial effect of a governmental decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

^{7/} Opinion requested by John Ferraro, 4 FPPC Opinions 62, No. 78-009, November 7, 1978, (copy enclosed).

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a group, were both large in numbers and heterogeneous in quality and were not part of the real property "industry."8/

In Ferraro, the Commission found that the proposed rent control ordinance would affect all owners of three or fewer rental units in much the same manner. Hence, the Commission concluded that the effect upon the interests of the three councilmembers was not distinguishable from its effect upon all owners of three or fewer units.9/

In Newport Beach, it would appear that owners of three or fewer units of rental property would also constitute a significant segment of the public generally. However, one subsegment (owners of only one unit of rental property in a single-family detached dwelling) of this segment is not affected by the current ordinance and will not be affected by the proposed changes. It is unclear how much smaller the deletion of this subgroup makes the overall class in question; however, we shall assume that it continues to constitute a significant segment of the public generally.

However, a number of the provisions of the proposed changes to the ordinance raise serious questions as to whether the decision will affect the councilmembers' interests in substantially the same manner10/ as others in the class.

As your letter indicates, the age and condition of the potentially convertible units varies. One of the proposed changes would give priority to certain units over others. Discussions on this issue could have a more significant impact on one of the councilmember's units as opposed to others in the class. Based upon the Housing Element and my conversation with Mr. Burnham, your assistant, it is clear also that

8/ Id., at 62 and 67.

9/ Id., at 68.

10/ The effect need not be identical on all members of the class. For instance, in Ferraro, supra, the across-the-board rent roll-back and freeze being considered would affect landlords differently if they had recently raised rents as opposed to landlords who had not raised rents for several years. However, there the Commission held that there was no distinguishable effect. Ferraro, supra, at 63 and 68.

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location within Newport Beach may well affect values differently as to convertibility, particularly with respect to the Coastal Zone.

Another aspect of the proposal which could easily lead to a differential effect is that of lot size. If any of the properties in question have a lot size of less than 5,000 square feet, this could create a conflict. The same could be true if their lot size exceeds 5,000 square feet, in which case the value of their respective properties may also be materially affected by a decision which excludes or includes lots under 5,000 square feet for conversion.

The foregoing aspects of the proposed change were the subject of considerable debate at the Planning Commission meetings (as shown in the minutes supplied). Presumably they will be open for discussion, modification, rejection or adoption by the City Council when it hears the proposal.

Without more detailed information on the property holdings of each councilmember, it is difficult to ascertain the impact of some of the other proposed changes. The vacancy rate requirement amendment clearly cuts across-the-board and, if it were being considered alone, we would see no reason for disqualification.

I have been advised by Mr. Burnham that the 5% (phasing) limitation will not likely be a factor since it is anticipated that applications for conversion under the proposed amended ordinance would not reach this level annually.

In conclusion, it is our advice that, based upon the information provided, there will exist a conflict of interest requiring disqualification of each of the councilmembers in question on certain aspects of the proposed amendment. This would not be true of the vacancy rate modification, standing alone. In our advice letter to Steven F. Nord (A-82-038), we considered a similar situation. There we stated as follows:

The officials must disqualify themselves as to both decisions if the result on one decision will effectively determine the result of the other decision. This would be true, for example, if the same policies and interests are at stake in both decisions. They must also disqualify themselves on both decisions if the decision is of the type that cannot be legally divided. For example, if

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there were different results in the two ordinances, a legal challenge could successfully compel the city council to arrive at a consistent result. On the other hand, if the policies and equities involved in the two decisions differ significantly, dividing the decision into two separate ordinances would be an appropriate manner to deal with the conflicts of interest.

If the issues presented by the various proposed amendments can be separated and dealt with independently, then disqualification could occur on an issue-by-issue basis. However, if the amendments are considered to be interrelated (i.e., the vacancy rate change won't be adopted unless the priority package is also adopted, or the 5,000 square foot limitation is lifted, then such a separation would not be possible.)

It should be kept in mind that councilmembers who must disqualify themselves as to any particular issue may not participate in any way in the decision on that issue. Participation would include lobbying other councilmembers as well as discussion and debate; it is not limited to voting. 2 Cal. Adm. Code Section 18700(e). (Copy of 2 Cal. Adm. Code Section 18700 enclosed.) However, pursuant to 2 Cal. Adm. Code Section 18700(f), a councilmember may address the council from the audience, on his or her own behalf.

We turn now to your second two-part question which addressed the problem of multiple disqualifications. Where, as is the case here, a quorum is unattainable because a majority of the city council is disqualified under the Act, Section 87101 will permit participation where it is "legally required." The method for selecting the members to participate is delineated in the Commission's Hudson Opinion.11/ If the decisions are separated, then as to each issue a determination will have to be made as to which councilmembers are disqualified, and then, if a majority must disqualify, selection of the participants would occur.

In recent telephone conversations, you have posed an additional related question. You have asked whether disqualifications would be required if the council was to take

11/ Opinion requested by Matthew L. Hudson, 4 FPPC Opinions 13, No. 77-007, Feb. 7, 1978 (copy enclosed).

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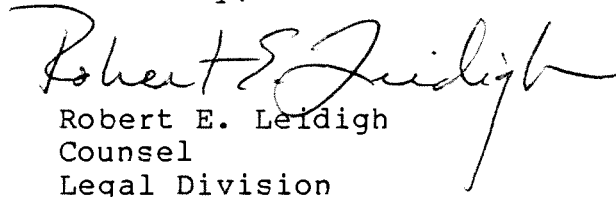
up only the question of whether to consider the proposed amendments at all or merely whether to refer the entire matter back for further study and reconsideration.

So long as the issue is dealt with as "amendment" or "no amendment," without consideration of any specifics, then all owners of two units to four units would be affected in the same manner and the "public generally" exception would apply and disqualification would not be required. However, in referring the matter back for study, the councilmembers could not try to focus the review on such matters as the 5,000 square foot limit, etc., as discussed above. You have indicated that the referral might be tied to a Housing Element amendment to foster preservation of rental housing. Such an amendment would, again, be across-the-board, affecting all owners of two units to four units and would not trigger disqualification.

As to the tie vote question which you have posed, that is addressed by the Hudson Opinion, supra, and Section 87101. Participation is not "legally required" when necessary to break a tie.

I trust that this letter has given you and the councilmembers the guidance you seek. If you have any questions please contact me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Attachments

Exhibit "A"

Newport Beach Housing

From the materials which you have provided to us, we have gleaned the following additional material facts about Newport Beach and this proposal.

1. There are 32,007 housing units in Newport Beach, of which 5,398 are in duplexes, 915 in triplexes, and 874 in fourplexes.

2. Over 41% of all units in Newport Beach are rental units, with vacancy rates running below 3%.

3. The median sales price of homes in Newport Beach as of November 1980 was \$200,000. The median rental price of vacant units was \$695 per month.

4. Much of Newport Beach is now the most favored residential site for aspiring upper-income families from the entire Orange County area. However, the supply of vacant land to support new residential development in the City of Newport Beach is rapidly being diminished. Opportunities to purchase housing as a first-time home buyer are rare. Many housing market professionals report that an income of at least \$60,000 is required in order to seriously consider a housing purchase in the city; median income for Newport Beach households is estimated at approximately \$30,000. Many households allocate a higher percentage of their income for housing because of the unique environmental features of the community which are purchased with the housing unit. In addition, a higher allocation of income toward housing is justified because of the investment qualities of housing in the city.

5. The ultimate residential capacity within the City of Newport Beach has been projected at 36,859 dwelling units. The average rate of growth in Newport Beach for the last 4 years has been 365 new units per year, most (82%) of this growth has been concentrated in four areas within the city.

6. The city contains many rented duplex, triplex, and fourplex rental units in its older neighborhoods.

7. Since 1976, the amount of new rental construction in the city has been negligible; approved condominium conversions, since 1976, total 424 units. In September 1979, the city adopted a new ordinance to regulate condominium conversions. Condominium conversions are restricted as follows:

- No condominium conversion may be approved on a lot of less than 5,000 square feet, regardless of when such lot was legally established (Zoning Code, Chapter 20.73.025).
- No condominium conversion use permit shall be approved when the rental dwelling unit vacancy rate in the city is equal to or less than 5% (Zoning Code, Chapter 20.73.035). This provision can be overridden if two-thirds of the tenants of a project vote to recommend project conversion, or if conversion will minimize vacancies or otherwise substantially comply with the intent of the city's zoning code.

These restrictions have influenced the incidence of condominium conversions in the City of Newport Beach as follows:

Table 29

Condominium Conversion Applications Approved

	<u>Resubdivisions</u>	<u>Tracts</u>	<u>Total</u>
1976	0	34	34
1977	12	0	12
1978	60	53	113
1979	7	255	262
1980	11	0	11
1981 (through 2/5/81)	<u>2</u>	<u>0</u>	<u>2</u>
Total	92	342	434

Under this zoning regulation, most rental units in the older beach neighborhoods are preserved as rental housing, because lots in these neighborhoods are generally less than 5,000 square feet. Property owners may not convert rental units, but, in some cases, such units have been demolished and new attached for-sale housing has been built to bypass the city's restrictions on condominium conversions.

Review of assessor parcel information indicates that 384 of the 424 units approved for conversion by the city actually converted. This represents 10 projects, including 2 triplexes, 1 duplex and 1 project consisting of 225 units. The remaining 7 conversions ranged in size from 8 units to 45 units. Among those units which were approved, but did not convert were 9 duplexes and 3 triplexes. The remaining projects which did not convert contained 6, 10, and 11 units.

The conversion of large rental projects has been restricted by the city's condominium conversion ordinance

vacancy rate provision. As a practical matter, no conversions have been approved since the ordinance's enactment.

8. Housing Prices

New Homes

Prices of new homes in Newport Beach have escalated sharply in the last five years. The increase in price can be estimated by comparing value ratios of homes for sale in 1975 to those for sale in 1980.

Of the 7 condominium and planned unit development projects constructed in 1975, average value ratios were \$49.69 to \$63.78 per square foot. Average value ratios for the 4 projects constructed in 1980 ranged from \$134.51 to \$181.50 per square foot. The increase represented by these figures is 170% to 180%.

The most significant factor in the increasing prices of new homes in Newport Beach is the increase in land costs. As the supply of vacant residential land decreases, the price of the last remaining residential acres increases. This, in turn, triggers the construction of more luxurious units with more amenities and higher construction costs which "balances" the land price component of the unit selling price. For this reason, units built in 1980 are not necessarily similar in nature to the types of units built in 1975; amenities and luxury features have been increased.

New units coming on the market in 1981 include two types. Several condominium projects have recently been completed. Sales prices for these units vary as follows:

Table 34

Characteristics of Recently Completed Condominiums

<u>Project</u>	<u>Projected Price</u>	<u>Square Feet</u>	<u>No. of Units</u>
Villa Balboa (third phase of nine)	\$125,000-\$350,000	894-1,288	60
Newport Knolls	\$100,950-\$155,450	764-1,577	26
Brookview Newport	\$170,900-\$199,900	1,325-1,675	24

Two higher priced projects are in grading stages in the east side of the city. Sea Island will contain 132 condominiums adjacent and to the south of Newport Center. The

projected sales prices for these units will start at approximately \$500,000 each. Also, 300 units are planned for construction around Ford Aeronutronic. The projected price range for these units is \$325,000 to \$700,000.

See also, the attached copy of Table 35 from the Newport Beach Housing Element.

Existing Homes

Prices for existing owner-occupied housing in Newport Beach have also risen sharply in the last 5 years, reflecting the increased demand for housing in the Orange County area, and the identification of Newport Beach as one of the most desirable areas in the region. Information available from the Newport Harbor-Costa Mesa Board of Realtors indicates that the median price of existing homes rose by 42% between May 1978 and November 1980. Newport Beach represents only one portion of this real estate area, and approximately one-third of all sales used to determine median prices. While the median sales price of existing housing in the Newport-Costa Mesa area as of November 1980 was \$147,777, the estimated median price of homes selling in Newport Beach is well above this figure.

Information is not available to determine the actual median selling prices of existing homes with the city. A median figure estimated by several real estate professionals was \$250,000. The average price of homes sold in Newport Beach in January 1981 was \$213,275.

Of 538 class one properties (single-family properties) listed for sale in January 1981 in Newport Beach, only 10% were listed at prices below \$150,000. These included mobile homes and condominiums. Most of these housing opportunities were in Newport Heights, the West Newport Triangle and Hoag Hospital area, Santa Ana Heights (unincorporated), West Newport, and in various mobile home parks.

These facts demonstrate that the purchase of existing housing within Newport Beach is not possible for a vast majority of first-time homebuyers. The existing owner-occupied housing market in the city serves persons who are moving up in their housing purchase either from another area of the county or from another neighborhood in Newport Beach. Even for these homebuyers, a housing purchase in the City is probably not possible unless down payments are larger than 20% of the purchase price, and incomes are well above the regional median.

Table 35

VALUE RATIOS OF NEW RESIDENTIAL CONSTRUCTION IN NEWPORT BEACH 1975-1980

Condominiums and Planned Unit Developments

<u>Development Location, (Developer)</u>	<u>Phase</u>	<u>Basic Price Range</u>	<u>Square Feet</u>	<u>Value Ratio (Price ÷ Square Feet)</u>	<u>Date of Price Figures</u>
1. Canyon Crest Estates/ Condominium	1	\$ 76,900-\$ 85,500	1,650-2,100	46.61- 40.71	February 1975
Pacific View Drive & New McArthur (Estate Builders Inter- national)	2	\$ 76,900-\$ 88,000	same	46.61- 41.90	February 1976
2. Deane Homes-Big Canyon/ P.U.D. San Joaquin & Big Canyon Dr. (Ben Deane & Co.)		\$125,000-\$260,000	1,820-3,695	68.68- 70.37	February 1975
3. Jasmine Creek/P.U.D. San Joaquin Hills & Marguerite	1	\$ 95,500-\$112,000	1,857-2,582	51.43- 43.38	February 1975
Inlet & Marguerite	2	\$ 98,500-\$148,000	same	53.04- 65.05	February 1976
San Joaquin & Marguerite	3	\$168,950-\$226,950	1,857-2,323	90.98- 97.70	March 1978
(M.J. Brock & Son)	4	\$189,950-\$223,950	1,857-2,275	102.29- 98.44	May 1979
	5	\$222,000-\$395,000	1,850-2,000	120.00-197.50	March 1980
4. Newport Crest/Condominium Superior & Ticonderosa (Pacific Newport Crest)	1	\$ 58,875-\$ 68,875	1,242-2,043	47.40- 33.71	February 1975
	2	same	same	same	February 1976
5. Sea Wind Newport/Condominium Superior & Ticonderosa (Don W. Woodward)		\$ 45,000-\$ 51,000	1,050-1,300	42.86- 39.23	February 1975

VALUE RATIOS OF NEW RESIDENTIAL CONSTRUCTION IN NEWPORT BEACH 1975-1980 (Cont.)

Condominiums and Planned Unit Developments

<u>Development Location, (Developer)</u>	<u>Phase</u>	<u>Basic Price Range</u>	<u>Square Feet</u>	<u>Value Ratio (Price ÷ Square Feet)</u>	<u>Date of Price Figures</u>
6. Six Twenty-One Park Dr./Condominium	1	\$135,000-\$165,000	2,150-2,632	62.79- 62.69	February 1975
Lido Park & Lafayette (Dan Olmstead)	2	\$129,500-\$170,000	2,550-2,650	50.78- 64.15	February 1976
7. Six Zero One Lido Park Dr./ Condominium	1	\$110,000-\$250,000	1,850-2,000	59.46-125.00	February 1975
Lido Park & Lafayette (Swan Construction)	2	\$115,000-\$245,000	1,990-2,000	60.53-122.50	February 1976
8. The Cove/Condominium Bayside & Jamboree (Irvine Pacific)		\$ 85,000-\$199,500	1,600-2,386	53.13- 83.61	February 1976
9. Big Canyon Townhomes Ford & MacArthur (McLain Development)		\$136,300-\$199,800	1,606-1,986	84.87-100.60	March 1978
10. Tract 9810 Tustin & Sixteenth (Pacesetter Homes)		\$105,000-\$130,000 (Proposed)	1,496-1,967	66.09- 70.19	March 1978
11. Harbor Ridge Crest/P.U.D. Spyglass & Harbor Ridge (Irvine Pacific)	1	\$275,000-\$360,000	1,950-2,967	141.03-121.33	May 1979
	2	\$310,000-\$385,000	1,950-2,967	158.97-129.76	May 1980

VALUE RATIOS OF NEW RESIDENTIAL CONSTRUCTION IN NEWPORT BEACH 1975-1980 (Cont.)

Condominiums and Planned Unit Developments

<u>Development Location, (Developer)</u>	<u>Phase</u>	<u>Basic Price Range</u>	<u>Square Feet</u>	<u>Value Ratio (Price ÷ Square Feet)</u>	<u>Date of Price Figures</u>
12. Harbor Ridge Estates/P.U.D. Spyglass & Harbor Ridge (Irvine Pacific)		\$345,000-\$625,000	2,350-3,804	146.81-164.30	March 1980
13. The Versailles/Condominiums Superior & Hoag (Daon Corp.)		\$ 65,500-\$325,500	463-1,586	141.47-205.23	March 1980

Exhibit "B"

Revisions to Ordinance

The following sections discuss the proposed revisions in detail.

Criteria for Planning Commission or City council Review (20.73/016). A section has been added which establishes criteria for Planning Commission and City Council review of Use Permit applications for condominium conversions. Consideration would be given to: 1) the age and physical condition of the building; 2) the condition of wiring, plumbing, and bathroom fixtures; and 3) the provision of adequate sound barriers and insulation between units. Priority would be given to newer structures which more closely conform to current Building and Zoning Code provisions.

Physical Elements Report (20.73.019). A provision has been added which would require the applicant to have prepared a Physical Elements Report for any proposed conversion. This report would detail the estimated remaining useful life of each element of the project including roofs, foundation, exterior paint, electrical systems, plumbing, fire protection, etc. The report would include a replacement cost estimate for those items with a useful life of less than 5 years. In addition the report would evaluate the structure in terms of existing Building and Zoning Code provisions. The information contained in the report would serve as a basis for review criteria contained in 20.73.016 and the "Special Inspection" required by 20.73.020.

Special Inspection Report (20.73.020). For condominium conversions, a special inspection report will be prepared by the City outlining any Building or Zoning Code non-conformities. Applications would not be accepted for filing until completion of this report.

Lot Size (20.73.025[B]). Under existing regulations, condominium conversions are prohibited on lots of less than 5,000 square feet. Because many existing two to fourplexes are on lots of less than 5,000 square feet, this regulation effectively prohibits the conversion of a substantial portion of two to fourplex units. In order to facilitate conversion of these units it is recommended that the 5,000 square foot lot requirement be eliminated. Existing zoning regulations for multiple dwelling units will be adequate to ensure that sufficient lot area per unit is provided.

Modification or Waiver of Development Standards (20.73-030). The ordinance revisions as proposed would require all conversions to meet zoning and building code provisions in effect at the time of conversion. A

conversion with zoning code non-conformities could only be approved by 4/5ths vote of the Planning Commission or City Council. The Planning Commission stated their intention that buildings which have inadequate parking and open space will not be allowed to convert, unless they are modified to substantially comply with current standards. Non "public safety" Building Code provisions could be waived by the Building Official after Planning Commission or City Council approval by a 2/3rds majority vote. "Health and Safety" non-conformities could not be waived.

Tenant Purchase (20.73.035 [A,4]). The existing ordinance states that:

"A minimum of thirty percent (30%) of the existing tenants shall have expressed written interest in exercising their option to purchase a converted unit within the project at the price offered."

Under this regulation, at least one tenant of a duplex or two tenants of fourplex would have to express interest in purchasing a unit. Other sections of Chapter 20.73 dealing with relocation assistance, notice of conversion, and existing State laws have been designed to protect tenants potentially displaced by conversions. It is therefore recommended that this section be deleted.

Relocation Assistance (20.73.35 [A,3]). A section has been added which requires relocation assistance for existing low income tenants (below 80% of County median, or approximately \$23,920 per year under current standards).

Removal of Vacancy Rate Restriction for Four or Less Units (20.73.035 [B]). The proposed ordinance would remove the requirement for a 5% vacancy rate in order to allow the conversion of 4 units or less. The vacancy rate restrictions would still apply to 5 or more units.

Provision of Replacement Housing (20.73.035 [C & E]). Senate Bill No. 626 (Mello) was passed by both houses of the State Legislature on September 15, 1981. The bill regulates housing policy in the coastal zone, adding Section 65590 to the Government Code and Sections 30500.1 and 30607.2 to the Public Resources Code and amending Section 30213 of the Public Resources Code. The bill applies only to housing within the coastal zone and to the conversion or demolition of 3 or more units in a structure, or if more than one structure is involved in a project, 11 or more units.

Under SB 626, conversion or demolition of dwelling units occupied by low or moderate income tenants can not be approved by a local jurisdiction unless provision is made

for replacement units. If feasible, the replacement units should be on the site of the original units or elsewhere in the coastal zone. Otherwise, the units must be within 3 miles of the coastal zone. The replacement must be available within 3 years of the date on which the demolition or conversion began.

The requirements of the bill apply even if more than one person or family occupies the unit and only one of the persons or families is of low or moderate income. It also applies if any low or moderate income person or family was evicted within the year prior to the application to convert, if the purpose of the eviction were to avoid requirements for replacement units. Under SB 626, if substantial numbers of low and moderate income tenants have been evicted, it is to be assumed that it was for the purpose of circumventing the replacement requirement.

The revised ordinance contains the requirement that the provisions of SB 626 be met as a condition of approvals for conversion. In order to ensure that requirements are met, information regarding tenants, tenant income, and evictions will be necessary, and administration of the law could become rather arduous for the City. For this reason, the amended condominium code has been written to place the burden of providing the necessary information on the applicant for conversion.

Phasing (20.73.035[D]). Before the enactment of the existing conversion ordinance, the number of conversions approved each year had been growing, as shown in Table 1.

Table 1

Dwelling Units Approved by Year

<u>Year</u>	<u>2-4 plex units</u>	<u>5 + multiple units</u>	<u>Total</u>
1976	0	34	34
1977	12	0	12
1978	14	89	103
1979	<u>7</u>	<u>255</u>	<u>262</u>
Total	33	378	411

Of the 411 total, only 384 dwelling units were actually converted, including one duplex, 2 triplexes, and zero fourplexes. Although the number of conversions of duplex to fourplex units is relatively low, one could expect that a relaxation of the conversion ordinance would lead to increased numbers of conversions.

The EIR for the Housing Element, GPA 81-1(H), suggests that condominium conversions be phased in order to prevent the loss of large numbers of rental units and displacement of large numbers of people at one time. It is suggested that an annual ceiling of 5% of the total duplex to fourplex units in the City be utilized. Five percent of the current total would be approximately 360. This number is roughly equivalent to the annual average of new dwelling units that would be anticipated under the existing General Plan.



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

(714) 640-2201

July 1, 1982

Ms. Barbara A. Milman
Chief - Legal Division
State of California
Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, Ca. 95814

Dear Ms. Milman:

Pursuant to Government Code Section 83114 (b) I am requesting written advice on behalf of certain members of the Newport Beach City Council with reference to the following situation.

The City of Newport Beach is considering certain amendments to its Municipal Code with regard to residential condominium projects. The specific amendments and a description are reflected in the enclosed report to the City Council from the Planning Department. The City Council is the final decision-maker with regard to adoption of these amendments and their final wording. The proposed ordinance amendments which are now set for hearing on July 12, 1982, permit the conversion of rental units in projects of four units or less. Currently, such conversions are not permissible. Conversion is subject to certain substantial conditions such as conformity with current code requirements. It is possible that these requirements could be modified during the legislative process. If the proposed amendments are adopted conversion would not be automatic. An application for a Use Permit and tentative or parcel map would be necessary followed by processing through the Planning Commission with possible review by the City Council. These bodies would exercise discretionary approval or disapproval and apply the ordinance conditions, unless such conditions are waived as spelled out in the proposed ordinance.

Generally, it is the opinion of City Planners and professional appraisers that the ability to convert rental property to condominiums is of substantial value to the property owner because it enhances property values and marketability. This is particularly true with regard to newer buildings which are more amenable to home ownership. Further, I have been advised that even though conversion does not take place, the ability to convert enhances the value.

As to various City Councilmembers, please consider the following:

1. One member of the City Council owns a duplex from which rental income is derived that was reconstructed in 1974 and is in good condition.

2. One member of the City Council owns a duplex from which rental income is derived. It is older than ten years and in average condition for its age.

3. The husband of one Councilperson includes a duplex in his personal retirement plan (Keogh) from which income is derived. Subject property is approximately ten years old and is in average condition for its age.

4. One Councilperson owns and lives on property that is zoned R-2 and upon which another unit exists. One unit is approximately 30 years old and the other unit is about 10 years old. Both are in average condition for their age. Currently, the entire property is treated by the owner as single family.

5. One Councilperson owns and lives on property that is zoned R-2. It consists of a house that is approximately 40 years old and a separate garage apartment complex that is about 20 years old. The latter is usually rented out. Both properties are in average condition for their age.

All of the above properties exceed \$1,000.00 in value and are in Newport Beach.

Pursuant to Government Code Section 87100 should any of the above Councilpersons be disqualified from the process of considering the condominium conversion amendments? Please advise if you need additional information or a further explanation as to any of the above. Also, I have conferred on two occasions with attorney Robert E. Leidigh of your staff who is now familiar with the background and question posed.

Depending on your conclusions regarding the above, it may also be necessary to address the following questions:

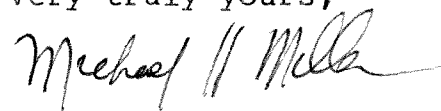
1. As a 7-person City Council what happens if more than a quorum are disqualified?² What happens if disqualification evolves into a tie vote?

I would appreciate your expediting this advice. Of course, if necessary, the hearing could be continued pending receipt of your written advice.

The enclosed City Housing Element contains information as to the population and housing characteristics of Newport Beach. e.g. see p. 4.

Thank you for your consideration. Please call if there are any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael H. Miller".

Michael H. Miller

MHM/pr
Enclosures