



# California Fair Political Practices Commission

May 20, 1993

George H. Eiser, III  
City Attorney  
1243 National City Boulevard  
National City, CA 92050-4397

Re: Your Request for Advice  
Our File No. A-93-076

Dear Mr. Eiser:

This letter is in response to your request for advice regarding the duties and responsibilities of National City Mayor George H. Waters and Councilmembers Michael R. Dalla, Ron Morrison, and Rosalie G. Zarate under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please note that nothing in this letter should be construed as pertaining to conduct that has already taken place.

#### QUESTION

Do the conflict-of-interest provisions of the Act prohibit Mayor George H. Waters and Councilmembers Michael R. Dalla, Ron Morrison, and Rosalie G. Zarate from participating in decisions expanding the existing project area through amendments to the National City Downtown Redevelopment Project Redevelopment Plan?

#### CONCLUSION

The conflict-of-interest provisions of the Act prohibit Mayor Waters and Councilmembers Dalla, Morrison, and Zarate from participating in decisions regarding the amendments to the National City Downtown Redevelopment Project Redevelopment Plan if it is reasonably foreseeable that an amendment to the existing redevelopment plan will have a material financial effect,

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000 *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

distinguishable from the effect on the public generally, on their financial interests as discussed below.

#### FACTS

National City has a population of approximately 55,000 and is 8.55 square miles in area. The city's land area is approximately 7.34 square miles, or 4,697 acres. National City is a general law city with a directly-elected mayor and four city councilmembers. The current city council is comprised of Mayor George H. Waters, Vice-Mayor Michael R. Dalla, Councilmember Ralph Inzunza, Councilmember Ron Morrison, and Councilmember Rosalie G. Zarate.

On April 11, 1967, the Redevelopment Agency of National City was created and the city council declared itself to be the Community Development Commission of National City (the "CDC"). Beginning in 1969, a series of redevelopment projects were adopted in the community, namely, the E. J. Christman Business and Industrial Park I Redevelopment Project; the E. J. Christman Business and Industrial Park Redevelopment Project, Amendment No. II; the South Bay Town and Country Redevelopment Project; and the Center City Redevelopment Project. These projects were merged with additional land to form the National City Downtown Redevelopment Project on December 1, 1981. Minor amendments added additional property to the project, making the total area within the National City Downtown Redevelopment Project approximately 2,083 acres, constituting approximately 44 percent of the city's land area. In 1991, the city council amended the redevelopment plan again by enactment of Ordinance No. 91-2013.

Currently under consideration by the city council is the expansion of the existing redevelopment project area to include territory located to the west of Interstate 5. The new area would extend from 8th Street at the north to the southern city limit on the south and from Interstate 5 on the east to San Diego Bay and United States Navy lands on the west. The new area to be added will hereinafter be referred to as the "survey area."

The CDC is now at the point when it will be selecting a preliminary survey area, which presumably will include all or part of the territory of the survey area. After the survey area is chosen, it is anticipated that the CDC will take additional actions, and finally, amend the existing redevelopment plan or approve a new plan to include the survey area.

You stated there are 917 commercial and industrial buildings in National City. There are 712 commercial and industrial buildings in the redevelopment project area and 131 commercial and industrial buildings in the survey area.

National City has 6,652 single-family residences and 8,335 multiple-family residences. Of these, it is estimated that approximately 4,524 single-family residences and 5,564 multi-

family units are within the redevelopment project area. There are approximately 13 single-family residences and 66 multi-family units within the survey area. Combined, the existing project area and the proposed survey area have 4,537 single-family residences and 5,630 multi-family units.

In addition, you have determined that there are 3,030 businesses with sales tax permits in the city. There are 2,387 businesses in the existing project area and 109 businesses in the survey area with sales tax permits. Combined, the existing redevelopment project area and the survey area have 2,496 businesses with sales tax permits.

Four of your city councilmembers have economic interests that may be affected by the redevelopment decisions. These interests are as follows:

1. Mayor George H. Waters

Mayor Waters owns the following interests within the boundaries of the existing redevelopment project area. None of Mayor Waters' interests are located within the survey area, or within 2,500 feet, thereof.

**A. Commercial Property Leased to a Dentist:** An interest in real property located at 1436 Highland Avenue which has a fair market value greater than \$100,000. The property is improved with a commercial building which is rented to Dr. Rudolfo Picazo, a dentist. Dr. Picazo is a source of income to Mr. Waters of annual income between \$1,000 and \$10,000. The lease to Dr. Picazo ends on December 31, 1993, and is renewable for an additional one-year term upon mutual agreement.

**B. Residential Rental Property:** An interest in real property located at 1440 Highland Avenue which has a fair market value greater than \$100,000. The property is improved with a residence, which is rented, producing annual income of between \$1,000 and \$10,000. The tenant of the single-family residence is a source of income to Mr. Waters.

**C. Commercial Property Leased to A Money Exchange:** An interest in real property located at 1442 Highland Avenue which has a fair market value greater than \$100,000. The property is improved with a commercial building, which is rented to Maniflo Money Exchange, a money exchange which buys and sells foreign currency, producing annual income to Mr. Waters of between \$1,000 and \$10,000. Thus, this business tenant is also a source of income to Mr. Waters. The lease to Maniflo Money Exchange ends on December 31, 1993, and is renewable for an additional one-year term upon mutual agreement.

**D. Commercial Property:** An interest in real property located at 1444-1446 Highland Avenue which has a fair market value greater than \$100,000. The property is improved with a commercial building, which is used as the place of business for a commercial office machines sales and service business of which Mayor Waters is the proprietor. This business entity produces annual income to Mr. Waters in excess of \$10,000, therefore, the business and the clients of the business are sources of income to Mr. Waters.

2. Councilmember Michael R. Dalla

Councilmember Michael R. Dalla owns the following interests within the existing boundaries of the redevelopment project area. Neither of Councilmember Dalla's properties are located within the survey area, or within 2,500 feet thereof.

**A. Residential Rental Property:** An interest in real property at 1020 "C" Avenue which has a fair market value greater than \$100,000. The property is improved with a residence, which is rented to individual tenants on a one-year lease, producing an annual income of less than \$10,000. The tenants are a source of income to Mr. Dalla.

**B. Personal Residence:** A personal residence located at 2502 "K" Avenue.

3. Councilmember Rosalie G. Zarate

Councilmember Rosalie G. Zarate owns the following interests in real property within the existing boundaries of the redevelopment project area. Neither of Councilmember Zarate's properties are located within the survey area, or within 2,500 feet thereof.

**A. Rental Property:** An interest in real property at 1735 Plaza Boulevard which has a fair market value greater than \$100,000. The property is improved with an apartment building which is rented to individual tenants on month-to-month tenancies, producing an annual income of over \$10,000. The tenants are sources of income to Councilmember Zarate.

**B. Personal Residence:** A personal residence located at 1730 East 12th Street, acquired in 1964.

4. Councilmember Ron Morrison

Councilmember Ron Morrison was a nonmanagement employee of Western Lumber Company until May, 1992. Mr. Morrison's annual income from the lumber company exceeded \$10,000. Western Lumber Company is located at 2605 Tidelands Avenue, National City. Western Lumber Company sells lumber and other construction supplies on a wholesale basis, with some retail sales. According

to city business license records, Western Lumber Company's gross sales for 1991 were \$24,454,700.00. Western Lumber Company is located within the survey area. Mr. Morrison has no other financial interest within the existing redevelopment project area, or within 2,500 feet, of the National City Downtown Redevelopment Project.

#### ANALYSIS

##### Conflicts of Interest, Generally

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.

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 the official or on a member of the official's immediate family,<sup>2</sup> or on:

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

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

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

Section 87103(a) - (d).

Members of the city council are public officials. (Section 82048.) Accordingly, they may not make, participate in making, or

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<sup>2</sup> An official's "immediate family" are his spouse and dependent children. (Section 82029.)

attempt to use their official position to influence a governmental decision if the decision will have a reasonably foreseeable<sup>3</sup> and material financial effect, distinguishable from the effect on the public generally, on their economic interests.

We note that your facts indicate that none of the officials' financial interests, except Councilmember Morrison's former employer, are located within the survey area or within 2,500 feet thereof. Thus, it would appear that if the city decided to create the proposed area as an entirely new area, as opposed to amending the existing redevelopment project area, the officials, except for Mr. Morrison, would not have disqualifying financial interests.

However, it appears the governmental decision to either create the survey area or amend the existing redevelopment plan are one and the same. A decision to create the survey area will in effect be a decision to reject the amendment of the existing redevelopment project area. Thus, if there would be a material financial effect on the financial interests of the officials within the redevelopment project area as a result of an amendment to the redevelopment plan, as discussed below, disqualification is required unless the "public generally" exception applies.

Moreover, the effects of the decision are one and the same. To allow circumvention of the express terms of the regulation by merely treating the area by name as a new area would not be consistent with the purposes of the Political Reform Act.<sup>4</sup>

Regulation 18702 sets forth the guidelines for determining whether an official's economic interest in a decision is materially affected by a decision. If the official's economic interest is directly involved in the decision, then Regulation 18702.1 applies to determine materiality. On the other hand, if the official's economic interest is indirectly affected by the

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<sup>3</sup> The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. To be foreseeable, the effect of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817; In re Thorner (1975) 1 FPPC Ops. 198.) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

<sup>4</sup> We note that the Commission has no jurisdiction over redevelopment law. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.) If, in fact, this new area would be a totally separate redevelopment area, independent financially, and in all other aspects, arguably the city might treat its creation as a separable decision after any amendment to the existing plan is rejected.

decision, then Regulations 18702.2 to 18702.6 (copies enclosed) would apply to determine whether the effect of the decision is material.

According to your facts, all the officials except Councilmember Morrison have real property interests in the existing redevelopment project area. An official has a conflict of interest in a decision if the decision will have a material financial effect on any economic interests. For example, Regulation 18702.1(a)(3)(D) provides an official's real property interest is directly involved in a decision and the financial effect is material if:

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(Emphasis added.)

If it is determined that an official's real property interest will be affected by any amount, the official's disqualification is required. Thus, a decision to add territory to the existing redevelopment plan is presumed to have a material financial effect on the officials who have real property interests, and they are prohibited from participating in the decision unless the redevelopment decisions affect the "public generally."

Additionally, some of the officials are also indirectly affected by the decisions. You should consult the applicable regulations discussed below to determine whether these economic interests are disqualifying:

1. Mayor Waters

The tenants in Mr. Waters' commercial buildings are sources of income to the mayor. These tenants are also business entities which would be affected indirectly by redevelopment decisions. When a business entity which is a source of income to a public official is indirectly affected by a decision, the applicable standard for determining materiality is that of Regulation 18702.2. For all but the largest business entities, subdivision (g) of Regulation 18702.2 would apply.

Mr. Waters also has an investment interest of \$1,000 or more in his business and has received income aggregating \$250 or more from the business during the past 12 months. The applicable standard for determining materiality as to his business is also Regulation 18702.2.

Mr. Waters has tenants in a single-family residence and clients of his business who are also considered sources of income to him in excess of \$250 in the redevelopment area. The mayor's tenants and clients are individuals who are sources of income indirectly affected by the decision. The appropriate standard for determining materiality as to an individual is that of Regulation 18702.6. Furthermore, since Mr. Waters' tenant has a leasehold interest in Mr. Waters' single-family residence, Regulation 18702.4 would also be applicable.

We have no information regarding the tenants and clients. As previously advised, the tenants might own real property within the redevelopment area, or they might be doing business or employed in the redevelopment area. (Eiser Advice Letters, Nos. A-90-559a and A-91-098.) Thus, if it is determined that it is foreseeable that the effect of redevelopment decisions regarding the proposed amendments will affect the individual tenants in the amounts stated in Regulation 18702.6, disqualification is required. The applicable standards for determining materiality as to the clients of the business are Regulation 18702.2 and Regulation 18702.6.

2. Councilmember Dalla

Councilmember Dalla has rented his previous residence on a one-year lease. The analysis with respect to the application of Regulation 18702.6 to Mr. Waters' tenant in the single-family dwelling as a source of income is applicable. Furthermore, since Mr. Dalla's tenant has a leasehold interest in Mr. Dalla's single-family residence, Regulation 18702.4 would be applicable.

3. Councilmember Morrison

Councilmember Morrison has received more than \$250 in income within the last 12 months from Western Lumber Company, his former employer, which is located within the survey area. Western Lumber Company is a business entity which had gross sales for 1991 in the amount of \$24,454,700. This business entity will be affected indirectly by the city's redevelopment decisions. As noted above, when a business entity which is a source of income to a public official is indirectly affected by a decision, the applicable standard for determining materiality is that of Regulation 18702.2.

Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect of the decision on the official's economic interests is distinguishable from the effect on the public generally. (Section 87103.) For the city, the public consists of all residents of the city. Thus, disqualification is required unless the decision will affect the councilmembers' economic interests in substantially the same manner as it will affect all residents of the city or a significant segment of the residents of the city. (Regulation 18702(c) and Regulation 18703.)<sup>5</sup> The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order for the "public generally" exception to apply, the population affected must be large in number and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops. 62; Flynn Advice Letter, No. I-88-430.)

1. Mayor George H. Waters

a. Real Property Interests

Mayor Waters owns three commercial buildings within the existing redevelopment area. These buildings are leased to local businesses which are sources of income to Mr. Waters in excess of \$250 in any 12-month period.

We have previously advised you that the "public generally" exception did not apply to Mayor Waters because we had no facts to indicate that a significant segment of the population of the city owned commercial buildings within the redevelopment area which would be affected in the same manner as Mr. Waters' interests. (Eiser Advice Letters, Nos. I-90-559, A-91-098, and I-90-559a.) Therefore, we concluded that his real property interests in the various commercial buildings were disqualifying. Your letter contains no new facts which would indicate that the "public generally" exception would now apply to the commercial buildings. Therefore, they would continue to be disqualifying.<sup>6</sup>

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<sup>5</sup> The Commission will be considering amendment to the public generally regulation (Regulation 18703) in the near future. Accordingly, the advice contained in this letter may change as a result of those amendments.

<sup>6</sup> Please note, if a decision will have a material financial effect which is distinguishable from its effect on the public generally on any economic interest of the official, the official must disqualify himself. We have gone on to analyze the mayor's other interests to provide guidance with respect to future decisions.

Mayor Waters also owns a potentially disqualifying interest in real property consisting of a single-family residence located within the existing redevelopment area which is rented. We have previously advised you that 67 percent of all single-family residences within the city constitute a significant segment of the city which will be similarly affected by a governmental decision. (Eiser Advice Letter, No. A-91-098.) Your facts indicate that approximately the same percentage of all single-family residences are currently situated within the existing project area and the proposed survey area (the proposed boundaries).<sup>7</sup> Thus, we reach the same conclusion and the single-family residence is not a disqualifying interest of Mayor Waters.

Moreover, despite the fact that the mayor holds the property for rental purposes, it does not appear that the enhancement of the value of the property caused by the decision will be different as to the mayor's rental property in contrast to other residential property in the area. Thus, since the decision will affect a significant segment in substantially the same manner as it will affect the mayor, the "public generally" exception would apply. (Eiser Advice Letter, No. I-90-559a.)

b. Sources of Income

The business tenants who lease office space in Mr. Waters' three commercial buildings and clients of the business tenants, as well as the tenant in his single-family residence, are sources of income in excess of \$250 in a 12-month period to Mr. Waters. Thus, these tenants are potentially disqualifying sources of income.

We advised you in the Eiser Advice Letter, No. I-90-559a, that the business tenants in these commercial buildings were not disqualifying sources of income. We advised you that in the context of redevelopment decisions, the Commission has applied the "public generally" exception to retail businesses located within the redevelopment project area. (In re Owen (1976) 2 FPPC Ops. 77.) In Owen, the Commission concluded that retail merchants within the redevelopment area constitute a major part of what is generally regarded as the business community which, taken as a whole, may reasonably be regarded as the "public generally." Thus, we concluded that the business tenants occupying Mayor Waters' commercial buildings in the redevelopment area, which constituted 78 percent of all businesses in the city, were diverse in nature and the "public generally" exception applied.

Your facts now indicate that 82 percent of businesses with sales tax permits are in the existing redevelopment project area

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<sup>7</sup> We assume this percentage is representative of the segment of the population of the city in the area. (In re Legan, 9 FPPC Ops. 1.)

and survey area. For purposes of our analysis, we assume this represents 82 percent of the business community in the city. We conclude, therefore, that the business tenants occupying Mayor Waters' commercial buildings and other businesses in the area constitute a major part of what is considered the business community such that the "public generally" exception would apply.<sup>8</sup>

Mr. Waters also has a tenant who is a source of income in excess of \$250 in a single-family residence located in the redevelopment area. As noted above, a significant segment of the population of the city would be affected by a redevelopment decision and the "public generally" exception would apply to this economic interest. We conclude that this residence would not be a disqualifying financial interest.

c. Ownership Interest in a Business Entity

Mayor Waters is also the proprietor of a business which sells and services commercial office machines located within the redevelopment area. In addition, clients of this business are sources of income to Mayor Waters. Any source of income in excess of \$250 in the 12 months preceding the decision is potentially disqualifying. It would appear that the analysis discussed above with respect to In re Owen, supra, is applicable to the business and the "public generally" exception would apply.

Furthermore, Section 87103.5 and Regulation 18703.5 might apply to these sources of income. You should consult this section and regulation to make a determination on their applicability to future redevelopment decisions. (Eiser Advice Letters, Nos. I-90-559 and A-91-098.)

2. Councilmember Michael R. Dalla

Councilmember Dalla has an interest in his residence which is located within the existing redevelopment project area. As discussed above with respect to Mayor Waters' residence,

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<sup>8</sup> In the Eiser Advice Letter, No. I-90-559a, we focused on the retail nature of the businesses in the area, such as the business engaged in money exchange. Please note that the Commission's current advice is that a dental business is not a retail service for purposes of Section 87103.5 and Regulation 18703.5. (Arnoldsen Advice Letter, No. A-92-661.) However, the test at issue is whether the segment in question is large and heterogeneous in nature. In In re Owen, supra, the Commission found that retail merchants were a large and heterogeneous part of the business community and satisfied this test. We conclude, therefore, that 82 percent of the business community in the area is large in number and heterogeneous in nature such that the exception would apply.

Councilmember Dalla's residence is not a disqualifying interest in real property.

Councilmember Dalla has rented his previous residence on a one-year lease. The analysis above with respect to the application of the "public generally" exception to Mayor Waters' real property interests in a rented single-family dwelling and the tenant is also applicable, and, therefore, the public generally exception would apply.

3. Councilmember Rosalie G. Zarate

Councilmember Zarate has an interest in an apartment building which has at least four rental units in the existing project area. The "public generally" exception would not apply to this interest in real property and her disqualification is required. (In re Ferraro, supra and Eiser Advice Letter No. A-91-098.) No facts have been provided which would change this conclusion.

Councilmember Zarate also has an interest in her residence which is located within the existing project area. As discussed above with respect to Mayor Waters' and Councilmember Dalla's personal residence, and as previously advised in the Eiser Advice Letters, Nos. A-91-098 and I-90-559a, the "public generally" exception would apply to this interest in real property. This interest in real property, therefore, would not be disqualifying.

4. Councilmember Ron Morrison

Councilmember Morrison has received more than \$250 in income within the last 12 months from Western Lumber Company, his former employer, which is located within the survey area. The analysis discussed above with respect to In re Owen, supra, is applicable. Therefore, the "public generally" exception would apply and Mr. Morrison would not have a disqualifying interest. Furthermore, the retail business exception contained in Section 87103.5 and Regulation 18703.5 might apply to this source of income.

In summary, after analysis of the various real property and other interests of the four councilmembers, we conclude as follows:

1. Mayor Waters is disqualified from participating in redevelopment decisions because of his interest in commercial real estate in the area. We have no facts which would indicate that a significant segment of the population of the city owns commercial buildings within the redevelopment area which would be affected in the same manner as Mr. Waters' interests.

2. Councilmember Dalla's residence is not a disqualifying interest in real property. Furthermore, Councilmember Dalla's rented single-family residence is not a disqualifying interest.

3. Councilmember Zarate has a disqualifying interest in an apartment building which has at least four rental units in the existing project area. The "public generally" exception would not apply to this interest and Councilmember Zarate may not participate in the redevelopment decisions.

4. Councilmember Morrison would not have a disqualifying interest on the basis of his former employer's income.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Jeff Marschner  
General Counsel



By: Luisa Menchaca  
Counsel, Legal Division

Enclosures