DATE: March 14, 1991

TO: Salvatore Giametta, Assistant to the Mayor
FROM: City Attorney
SUBJECT: Potential Conflict of Interest/Item 330 of Council Docket of March 19, 1991

This is in response to your memorandum of March 8, 1991, in which you ask whether the Mayor and three of her staff have a potential conflict of interest in Item 330 of the Council Docket of March 19, 1991. The question arises because you and two other members of the Mayor's staff (Doug Byrns and La Donna Hatch) own and live in units in Columbia Place, a condominium complex across the street from the site that is the subject of docket Item 330. That docket item is a noticed hearing on an appeal of Watermark Ltd., by John D. Thelan of Odmark and Thelan, from the decision of the Planning Commission in approving Conditional Use Permit CUP-90-0907 (Teen Quest), with modifications.

BACKGROUND FACTS

A complete statement of facts surrounding this docket item is found in a memorandum dated March 11, 1991, to the Mayor and City Council from Pamela M. Hamilton, Executive Vice President of the Centre City Development Corporation ("CCDC") and in Planning Report No. 91-077 dated March 12, 1991, to the Mayor and City Council. (Both documents are on file with the City Clerk.) The project is succinctly described in the Planning Report, as follows: "The proposed project, "Teen Quest," is a request from the Catholic Diocese of San Diego (DBA St. Vincent de Paul) to locate a transitional housing facility for 30 homeless boys and girls. The teenagers will be housed in an existing, converted warehouse building located at 633 State Street in the Marina Redevelopment Area." On January 10th, the Planning Commission approved the CUP with certain modifications. On March 8th, the CCDC Board of Directors voted to recommend denial of the CUP to the Council.

In addition to the facts provided in the memorandum and report cited above and in your memorandum, you reported orally that the Mayor herself owns no property in the vicinity of the proposed CUP site. This fact is borne out by the Mayor's Statement of Economic Interests (SEI) covering the year 1989 (SEI for 1990 is not due to be filed until April 1, 1991).

The map attached to Ms. Hamilton's memorandum cited above confirms that the Columbia Place condominium complex is across the street from the proposed CUP site. It is therefore within

300 feet of the proposed project.

You also reported orally that you have informed the Mayor that three of her staff members own condominiums at Columbia Place, but none of you has advised her in any way on the docket item.

APPLICABLE LAW

The applicable law is located in the Political Reform Act of 1974 (the "Act"), codified at Government Code section 81000 et seq. Disqualification from participation in certain governmental decisions is governed by Government Code section 87100, which reads as follows:

> Section 87100. Public Officials; State and Local.
>
> No public official at any level of state or local government shall make, 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.

The term "financial interest" as used in Government Code section 87100 is defined in Government Code section 87103, as follows:

> Section 87103. 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 a member of his or her immediate family 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 ($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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty ($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.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agent, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

ANALYSIS AND CONCLUSIONS

A. Potential Conflicts of Interest of Mayor's Staff

Because you are employees of the City, all three members of the Mayor's staff are all "public officials" within the meaning of Government Code sections 87100 and 82048. Assuming that you, Doug Byrns and La Donna Hatch have at least $1,000 invested in your condominiums in Columbia Place, you each have a real

property interest in that complex within the meaning of Government Code section 87103(b). The facts show no other kinds of economic interests present as defined in Government Code section 87103. Given the analysis and conclusions reached in the March 11th memorandum from CCDC, each of your real property interests would reasonably and foreseeably be affected financially by the City Council's action on the CUP appeal.

The next issue is whether that financial effect would be material. Since Columbia Place is located within 300 feet of the CUP site, the burden would be on each of you to show that there would in fact be no financial impact on your property in order to establish that the financial impact was not material. 2 California Code of Regulations section 18702.3(a)(i). Unless you three can show that there will be "no financial effect" on your interest in Columbia Place, the financial effect of the Council's decision on the CUP will be material within the meaning of Government Code section 87103 and 2 California Code of Regulations section 18702.3(a)(i). Therefore, each of the three staff members would be precluded from advising the Mayor, attempting to influence her action on the CUP appeal, or otherwise participating in the CUP appeal.

Critically, however, you inform me that no one of the three staff members has attempted to influence the Mayor or is participating in any fashion in advising the Mayor on this docket item. Another Mayoral assistant normally advises her on land use matters and is doing so in this instance. Unless you have attempted to influence the Mayor or otherwise participated in this CUP appeal, no one of the three staff members, including you, Doug Byrns, or La Donna Hatch, has violated the statutory prohibition against participating in governmental decisions because of your financial interest in Columbia Place. You should, however, continue to refrain from participating in or advising on this CUP appeal.

B. Potential Conflict of Interest of Mayor

According to the facts, the Mayor has no property in the vicinity of the CUP site. The fact that three of her staff members live in a condominium complex across the street from the site is of no legal import. Under the Fair Political Practices Commission ("FPPC") regulations defining the term "personal interest," only the public official or his or her immediate family, not staff members, must be considered for purposes of determining whether disqualification is required. 2 California Code of Regulations section 18700.1.

The fact that her staff has financial interests that may be

affected by the Council's decision on a matter is not imputed to her. She has no legal obligation either under the Act itself or under FPPC regulations to refrain from participating in or voting on this CUP matter or any other governmental decision merely because her staff has financial interests that may be affected by the decision.

JOHN W. WITT, City Attorney
By
Cristie C. McGuire
Deputy City Attorney

CCM:jrl:011(x043.2)
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