



HILDA CANTÚ MONTÓY
City Attorney

June 8, 1999

MEMORANDUM

TO: City Councilmembers
Redevelopment Agency Board Members
Planning Commission Members
Housing and Community Development Commission Members
Daniel Fitzpatrick, Executive Director
Jeffrey Reid, City Manager
Becky Klisch, City Clerk
Yvonne Quiring, HNR Director
City and RDA Employees

RE: URGENT MATTER - Redevelopment Conflict and Disclosure Requirements for Proposed Project Areas¹

A recent conflict of interest inquiry led to our review of the City and Agency's practices regarding the California Community Redevelopment Law² ("CRL") conflict of interest and disclosure requirements ("CRL disclosure requirements"). These requirements relate specifically to proposed and existing redevelopment project areas. **DISCLOSURE COMPLIANCE UNDER THE CRL IS IN ADDITION TO THE ANNUAL DISCLOSURE FORMS YOU FILE WITH THE CITY CLERK.** Those annual disclosure forms are designed to comply with the Political Reform Act ("PRA"), administered by the Fair Political Practices Commission ("FPPC").

This memorandum is multi-purposed. First, it is to inform those persons who may be subject to the CRL disclosure requirements. Next, it is to ensure that those persons who are subject to the requirements, will comply with the specific CRL requirements for the four

¹ *Proposed Redevelopment Project Areas:* (1) Central City Commercial Revitalization Redevelopment Project Area, (2) Airport Area Revitalization Redevelopment Project Area, (3) South Fresno Industrial Revitalization Redevelopment Project Area, and (4) Southeast Fresno Revitalization Redevelopment Project Area.

² Health and Safety Code Sections 33000 - 34160.

redevelopment project areas being proposed.³ Finally, it is to let affected persons know that a disclosure form is needed for each existing redevelopment project area,⁴ though he or she may not have specifically complied with this requirement before. A separate memorandum will be distributed or posted on the City's web site regarding disclosures for existing projects.

Health and Safety Code Section 33130⁵ (1) prohibits acquiring any property interest in any redevelopment project area,⁶ and (2) requires immediate disclosure of any existing property interest, direct or indirect, within a redevelopment project area. The disclosure must be in writing and delivered to the Agency Board and the City Council. The disclosure must also be entered in the minutes of the Agency Board and City Council.⁷ Failure to make the disclosure constitutes misconduct in office.⁸

A. The prohibitions and disclosure requirements apply to persons who participate in formulating or approving redevelopment plans or policies.

³ See footnote 1, supra.

** ⁴ *Existing Redevelopment Projects Areas:* (1) Roeding Business Park Redevelopment Project Area, (2) Fresno Air Terminal Redevelopment Project Area, (3) Central Business District Project Urban Renewal Area, (4) Southwest Fresno General Neighborhood Renewal Area Urban Renewal Project Area, (5) Convention Center Redevelopment Project Area, (6) Fulton Redevelopment Project Area, (7) Chinatown Expanded Redevelopment Project Area, (8) Jefferson Area Redevelopment Plan Area, (9) Fruit/Church Redevelopment Project Area, (10) West Fresno Project I Urban Renewal Project Area, (11) West Fresno Project II Urban Renewal Project Area, (12) West Fresno Project III Urban Renewal Project Area, (13) Mariposa Project Urban Renewal Project Area, (14) South Van Ness Industrial Redevelopment Project Area. See comment below re current list.

⁵ A copy of Section 33130 is attached for your reference.

⁶ The prohibition may include indirect and direct property interests, such as, as an example only, any property interest acquired by a councilmember, board member, or commission member's spouse or dependent child.

⁷ Affected persons will file the disclosures with the City Clerk. We recommend that the City Clerk prepare a summary of the persons having property interests in project areas, an address/description of the properties, and the name of the relevant project area. The summary will be placed on the agenda for a joint Council-Agency Board meeting, received by the Board and Council (this could be formally, as a joint resolution), and entered in the Board/Council minutes/placed on the record. The Clerk would also deliver a copy of the summary to the Agency Director and to the City Attorney for consideration as part of all redevelopment activities requiring a vote of the Board or Council.

⁸ No cases construe this section regarding the sanction for misconduct in office. However, other laws and cases suggest that the sanction may be removal from office, disqualification for future public office, and possibly fines or imprisonment. See California Constitution Article IV §18 regarding the impeachment of state officials; sanctions for violations of Government Code §1090, which may constitute misconduct in office; sanctions of judges for misconduct in office.

** fn 4: This RDA Project list is not current. Please check with RDA for the current list of existing Redevelopment Projects Areas.

Section 33130 requirements apply to any agency or city officer or employee who, as part of his or her duties, is required to participate in formulating or approving plans or policies for project area redevelopment. All of the following persons so participate: (a) members of the City Council, Redevelopment Agency Board, Planning Commission, and the Housing and Community Development Commission (HCDC), (b) the Agency's Executive Director, (c) the City Manager, (d) the HNR Director, (e) City and Agency staff involved in the process, and (e) some Agency consultants.⁹ The HCDC, as required by the Fresno Municipal Code, reviews and prepares recommendations to the Council and Agency on redevelopment matters, including plans, projects, and housing. The City contracts with the Agency for HNR to administer the Agency's 20 percent housing set aside funds and carry out the Agency's affordable housing obligations. HNR personnel and City personnel assigned to the Agency are under the direction of the City Manager.

The City Manager and Agency Director would deliver copies of the disclosure requirements to staff and consultants who participate in formulating or approving plans and policies for redevelopment project areas. Staff and consultants would include, for example, redevelopment planners and project managers, the redevelopment administrator, and plan adoption consultants, such as Lew Pond, Bruce O'Neal, individuals from Keyser Marston & Associates, and HNR personnel who participate in formulating programs and policies for the expenditure of the Agency's 20% set aside funds.

B. The disclosure must be made to the Agency Board and to the City Council in writing soon after the project area boundaries are selected.¹⁰

Those persons who own or have any direct or indirect financial interest in any property in a project area, must *immediately* disclose the interest in writing to the Agency Board and the City Council. "Immediate" means as early in the plan adoption process as possible. The earliest time that the project area boundaries are at least tentatively set, is when the Planning Commission designates the project area boundaries. Thus, persons who have such financial interests are to disclose the interests to the Agency Board and the Council immediately after the Planning Commission designates project area boundaries.

The Planning Commission originally designated project area boundaries for the four proposed project areas as follows: (1) Central City Commercial Revitalization Project

⁹ Agency consultants would disclose interests related to the project areas for which the consultant was providing advice and consultation to the Agency.

¹⁰ See footnote 6, *supra*.

Area - October 21, 1998, with boundary revisions February 17, 1999, (2) Airport Area Revitalization Redevelopment Project Area - December 2, 1998, with boundary revisions February 17, 1999, and April 7, 1999, (3) South Fresno Industrial Revitalization Redevelopment Project Area - December 16, 1998, with boundary revisions April 7, 1999, (4) Southeast Fresno Revitalization Redevelopment Project Area - December 16, 1998, with boundary revisions April 7, 1999.

- C. **Failure to disclose existing property interests, whether direct or indirect, constitutes misconduct in office.** Our office was unable to find any cases specifically referencing misconduct in office under these CRL provisions. However, the sanctions for a violation may be the same as the sanctions available for misconduct in other public offices, such as the state legislature, or the judiciary. These sanctions may include removal from office, disqualification for future public office, and fines or imprisonment.¹¹
- D. **Some property interests are excepted from the prohibition and disclosure requirements.**
1. **Limited acquisition exception for owner participation and reentering business.** An officer or employee is not prohibited from acquiring a property interest in a project area *if, all the following apply:* (a) the purpose of acquiring the property interest is either (i) to participate in the project area as a property owner, or (ii) reenter into business as the Community Redevelopment Law permits, and (b) the officer or employee has *owned, (i) for at least three years before the project area is selected,*¹² (ii) a financial interest substantially equal to the one being acquired.
 2. **An officer or employee is not prohibited from acquiring a rental agreement or leasehold interest if the agreement meets the statutory requirements.** To be outside the prohibition requirements of the statute, the rental agreement or lease must meet all the following conditions:
 - a. The agreement must contain terms that are substantially equivalent to the rental or lease terms available to the general public for comparable project area property.

¹¹ See California Constitution Article IV §18 regarding the impeachment of state officials; sanctions for violations of Government Code §1090, which may constitute misconduct in office; and sanctions against judges for misconduct in office.

¹² Interpreted as the date that the Planning Commission selects the survey boundaries.

- b. The agreement prohibits subleasing the property for a rate higher than the one set in the original agreement.
 - c. The property subject to the agreement is used in the pursuit of the principal business, occupation, or profession of the officer or employee.
 - d. The officer or employee who obtains a rental or lease agreement must immediately disclose the agreement in writing to the Agency Board and City Council.
3. **Acquisition exception for personal residential use.**¹³ An officer, employee, consultant, or agent of the Agency or City may purchase or lease property in a project area for personal residential use subject to the following restrictions:
- a. The Agency must first certify that either (a) the improvements to be built or other work to be done on the property has been completed, or (b) that no improvements need to be constructed, and no work needs to be done on the property.
 - b. The person who purchases or leases the property must immediately disclose that fact in writing to the Agency and the City Council, and the disclosure must be entered in the minutes.¹⁴
 - c. The person is afterwards disqualified from voting on any matters directly affecting the purchase, lease, or residency.
 - d. A failure to disclose the interest constitutes misconduct in office.
- **Property interests that persons may not acquire, and interests that persons must disclose, include indirect interests.**

Direct interests are generally easily discernable. However, the statute also covers indirect interests. An indirect interest would include, for example, an interest held by a person's spouse or dependent child. Indirect interests would include interests covered by Government Code Section 1090.¹⁵ For instance, it would include a

¹³ Section 33130.5. Copy attached for information.

¹⁴ See footnote 6.

¹⁵ Government Code § 1090 et seq., establishes a ban on governmental contracts in which an official making the contract may be financially interested.


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property purchase or lease in a redevelopment project area by a bank in which a city councilmember has an interest if the interest would prevent the councilmember's participation in the decision making under Section 1090.¹⁶

Forms are attached for disclosing interests in the four proposed redevelopment project areas. With each form is a map showing the boundaries of the proposed project area. The HCDC will consider the four proposed plans at a special meeting Monday, June 14. The Planning Commission will consider the proposed plans June 16, and the Council and Agency Board, in a joint meeting, will consider the proposed plans at a joint public hearing June 22, 1999, it is important that Commission members, Councilmembers and Agency Board members determine any potential interests immediately. Please complete a form for each project area in which you have a financial interest to disclose, and file the completed forms with the City Clerk by Tuesday, June 15, 1999. If a member discloses a financial interest for any proposed project, the disclosure must be read into the meeting minutes for the relevant Commission or Council/Agency meeting, and the member disclosing the interest will excuse him or herself from the meeting during the consideration and vote on the project area plan in which he or she has a financial interest.

You may address any questions regarding the legal requirements for disclosure to Deputy City Attorney Sheila Smith at 498-1326. You may address project boundary or plan inquiries to Jerry Freeman, Project Manager, or to Dan Fitzpatrick, Agency Director, at 498-1885.

Respectfully submitted,


HILDA CANTÚ MONTOY
City Attorney

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¹⁶ 61 Ops.Atty.Gen. 243, 77-227 (May 23, 1978).

California Community Redevelopment Law Health and Safety Code

§ 33130. Conflicts of interest; acquiring interest to participate as owner or to reenter business; certain rental agreements or property leases not property interests under this section¹⁷

(a) No agency or community officer or employee who in the course of his or her duties is required to participate in the formulation of, or to approve plans or policies for, the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in property included within a project area, that officer or employee shall immediately make a written disclosure of that financial interest to the agency and the legislative body and the disclosure shall be entered on the minutes of the agency and the legislative body. *Failure to make the disclosure required by this subdivision constitutes misconduct in office.*

(b) Subdivision (a) does not prohibit any agency or community officer or employee from acquiring an interest in property within the project area for the purpose of participating as an owner or reentering into business pursuant to this part if that officer or employee has owned a substantially equal interest as that being acquired for the three years immediately preceding the selection of the project area.

(c) A rental agreement or lease of property which meets all of the following conditions is not an interest in property for purposes of subdivision (a):

(1) The rental or lease agreement contains terms that are substantially equivalent to the terms of a rental or lease agreement available to any member of the general public for comparable property in the project area.

(2) The rental or lease agreement includes a provision which prohibits any subletting, sublease, or other assignment at a rate in excess of the rate in the original rental or lease agreement.

(3) The property which is subject to the rental or lease agreement is used in the pursuit of the principal business, occupation, or profession of the officer or employee.

(4) The agency or community officer or employee who obtains the rental or lease agreement immediately makes a written disclosure of that fact to the agency and the legislative body.

§ 33130.5. Property within project area purchased or leased by employee of agency or community; written disclosure

Notwithstanding any other provisions of law, an officer, employee, consultant, or agent of the agency or community, for personal residential use, may purchase or lease property within a project area after the agency has certified that the improvements to be constructed or the work to be done on the property to be purchased or leased have been completed, or has certified that no improvements need to be constructed or that no work needs to be done on the property. Any such officer or employee who purchases or leases such property shall immediately make a written disclosure to the agency and the legislative body, which disclosure shall be entered on the minutes of the agency. Any such officer or employee shall thereafter be disqualified from voting on any matters directly affecting such a purchase, lease, or residency. *Failure to so disclose constitutes misconduct in office.*

¹⁷ (West LawDesk 1997-1998 Reg. Sess. and 1st Ex. Sess. and the Nov. 3, 1998 election.)