
SUBJECT: Select replacement Planning Commission representative for the Downtown Specific Plan Update Task Force

BACKGROUND

At its July 19, 2016 meeting, the City Council authorized an update to the Downtown Specific Plan and the creation of a ten member Task Force to guide that process.¹ Thereafter, in August 2016, the City Attorney's Office, at the request of city officials, began correspondence with the Fair Political Practices Commission (FPPC) staff counsel regarding Task Force membership and potential conflicts of interest.

At the Planning Commission's meeting of September 14, 2016, you appointed two members (Nancy Allen and Herb Ritter) and one alternate (Justin Brown) to serve on the Task Force. The Task Force membership was subsequently ratified by the City Council at its October 4, 2016 meeting.

In on-going correspondence with the FPPC, its staff counsel determined that financial conflicts of interest require that replacement appointees to the Task Force be selected for one of the representatives for the Planning Commission (Nancy Allen) and one representative from the Economic Vitality Committee (Olivia Sanwong).

DISCUSSION

Conflicts of interest involving the Downtown Specific Plan are not a new occurrence. In 2002, when the Downtown Specific Plan was last significantly amended, Mayor Pico and Councilmember Michelotti both had to abstain from participation due to their conflicts of interest.

Membership on the Task Force alone does not make a representative subject to the Political Reform Act and conflict of interest laws. The FPPC has advised that since the Task Force is a new advisory body that does not have a history of having its recommendations regularly adopted, its members are not currently subject to the Act based on their appointment to the Task Force.

However, the FPPC has stated that if a Task Force member is also a "public official" in another capacity, then that Task Force member who is also a public official is subject to conflict of interest provisions. And, that could make the public official ineligible to serve on the Task Force if a financial conflict of interest is present.

¹ The Task Force has ten (10) representatives comprised of: (A) two councilmembers and one alternate; (B) two planning commissioners and one alternate; (C) two Pleasanton Downtown Association members and one alternate; (D) one Economic Vitality Committee member and one alternate; and (E) three at-large members.

State law and Pleasanton's local Conflict of Interest Code designate the following as public officials subject to conflict of interest rules:

- Mayor and Councilmembers
- Planning Commissioners
- Members of the Civic Arts Commission; Bicycle, Pedestrian and Trails Committee; Committee on Energy and the Environment; Economic Vitality Committee; Housing Commission; Human Services Commission; Library Commission; Parks & Recreation Commission
- Specified city staff

Financial interests that may give rise to a disqualifying conflict of interest include:

- Business investment (of \$2,000 or more), employment or management in business entity located in, or doing business with persons in the Downtown
- Real property ownership (and some leasehold interests²) worth \$2,000 or more (either directly or through an interest in a business entity which owns the real property)
- Sources of gross income of \$500 or more in the past 12 months (either directly to a public official or through a business entity in which the official has an interest or an employment position)
- Sources of gift(s) of \$460 or more in the past 12 months
- Personal finances

If a public official has a statutory financial interest in real property located within the Downtown Specific Plan Area, that official is disqualified from participating in specific plan decisions (including serving on the Task Force).³ Similarly, if a public official's source of income operates within the specific plan area, the FPPC verified that since Task Force decisions may affect businesses in the Downtown by making improvements in the surrounding neighborhood, traffic/road improvements, or parking changes, then such public official also has a disqualifying conflict of interest.⁴

City staff have had discussions with the remaining Planning Commissioners regarding conflict of interest regulations and their eligibility to serve on the Task Force and make decisions regarding the Downtown Specific Plan. Commissioners Balch, Nagler and O'Conner can each describe their interests at the meeting.

As noted above, these conflict of interest rules apply to persons who are public officials. As the rules are not triggered simply by appointment to the Task Force alone, some of the Task Force members who are not public officials may have business investments, real property interests, operate a business, or be perceived to have a financial interests in decisions involving the Downtown.

² A lease of month-to-month is not considered a financial interest. See 2 Cal. Code of Regulations (CCR) 18233.

³ See CCR §18702.2 (a)(1): "...the reasonably foreseeable financial effect of a governmental decision ...on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision: (1) Involves the adoption of amendment to a general ... or specific plan, and the parcel is located within the proposed boundaries of the plan; ..."

⁴ See CCR §18702.1 Materiality Standard: Financial Interests in Business Entities, Subsection (b)(4).

STAFF RECOMMENDATION

Staff recommends that the Commission take the following action:

1. Determine if Commissioner Brown, current alternate for the Task Force, should be designated as a representative;
2. Select a new representative for the Task Force (who may serve as representative or alternate, depending on 1, above) to serve in place of Commissioner Allen.

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