

IRWINDALE COUNCIL CHAMBER
REMOTELY ACCESSED
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706

August 18, 2021
Wednesday
6:33 P.M.

The Irwindale **PLANNING COMMISSION** met in regular session at the above time and place.

PLEDGE OF ALLEGIANCE I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

INVOCATION
COMMISSIONER
GOMEZ Father Lord, we thank you for this day. We thank you for your protection. We pray for all those in the Nation of the United States that you would protect them as well. Protect the children and the helpless. Lord. We pray, this amen.

CHAIR TAPIA Roll call.

ROLL CALL: Present: Commissioners; Robert E. Hartman; Richard Chico; Suzanne E. Gomez; Chair Arthur R. Tapia

Absent: Vice-Chair Enoch Burrola

Also present: William Tam, City Manager; Adrian Guerra, City Attorney; Jamie Traxler, Assistant City Attorney; Lisa Chou, Associate Planner; Berlyn Aguila, Administrative Secretary.

CHAIR TAPIA There is no announcements today so we go to Spontaneous Communications?

**SPONTANEOUS
COMMUNICATIONS**

CHAIR TAPIA This is the time set aside for members of the audience to speak on items that are not on this agenda. Does anyone in the audience that wants to speak on something that they are concern or whatever might be on your mind now is the time to do so. As long as it is not on this agenda.

ADMINISTRATIVE
SECRETARY AGUILA Thank you Chair, we do have two members of the public who have raised their hands. I will now be unmuting Dena.

DENA ZEPEDA Thank you Chair. First of all many thanks from the community to our Commissioners. Thank you so very much, for supporting all our residents around the Vincent/Allen project. They really appreciate you. Thank you Enoch, for going that extra mile for us. We really appreciate it. The people have been speaking for a while and they were heard. They want me to give you the thanks because without you guys we don't think we could have gotten this far. With that, thank you so very much. We do appreciate all of you. Every one of you. Thank you.

CHAIR TAPIA I just want to address the audience. Is it open for me to address it?

ADMINISTRATIVE
SECRETARY AGUILA Yes.

CHAIR TAPIA Just in case, well obviously you know that there was a meeting but just in case you were wondering, the denial of resolution for the Vincent Project is not on this agenda. I guess it will probably be on the next meeting. I just wanted to clarify that, in case you are out there listening and wanted to participate, and thought that this item was going to be in today's agenda. It is not thank you.

ADMINISTRATIVE
SECRETARY AGUILA The next individual that I will be unmuting is Fredrick Barbosa. Mr. Barbosa you are now unmuted.

FREDRICK BARBOSA Good evening Chair Tapia, Commissioners, Staff, and residents. Being that this is not on the agenda, I would like to speak about the project on Vincent Avenue. I've gone through the EIR and the DEIR multiple times and there is not one sentence in there that says air quality will improve with this project, just the opposite. The EIR is slated towards the developer, benefiting him. I will give you multiple examples. If you took this project by itself it is not that bad with proper medication measures, but they failed to mention the accumulation effects this will have in Irwindale and the San Gabriel Valley. The project is located on Vincent Avenue, southwest on Irwindale an unincorporated community in Los Angeles County. Vincent Avenue is a busy residential street and single-family homes across the project. Additional single-family homes are on the west, along with the Irwindale Park, Irwindale City Hall, Public Library, the pool, the ball diamond, the skate park, Music in the Park during the week, and the Movies in the Park. Additional family homes are west of Irwindale Park and a public library. Alice E. Elementary School is less than one thousand feet from the east and thirteen other schools are located within approximately 1.5 miles of this project. Pediatricians call these projects diesel death zones. Fumes will come all over Irwindale 24/7, for the rest of our lives and that of our children's children. Do you want to be personally responsible for ruining Irwindale and harming the children? The surrounding community is already highly burdened by pollution. That is what they do not mention in their study. They want to isolate it and just make it this one project, but according to CalEnviroScreen 4.0, which was done on May 3, 2021, it is a screening tool that ranks each Census tract in the state for population and social economic vulnerability. The project census tract ranks worse than ninety-five percent the risk of the state overall. The census tract is one hundred percentile of pollution burden. Meaning it is more polluted than almost all of the Census tracts in the entire state. The project has more solid waste, ground water threats, toxic releases, hazardous waste sites and traffic more than eighty-five percent of the state. The community surrounding the project has a higher portion of babies born with low birth weights than eighty-two percent of the state, which makes those

children vulnerable to asthma and other health issues. We have to tell the developers we are not anti-business, not anti-development, just pro-life. We cannot tolerate anymore. It is literally killing us and it is telling us in writing. We cannot ignore that fact. Like I said the City failed to analyze.

ADMINISTRATIVE
SECRETARY AGUILA

Mr. Barbosa, you have been donated two additional minutes from Dena.

FREDRICK BARBOSA

Thank you Dena, wherever you are. The City did not justify its conclusion in consistent with the Regional Air Quality Plan. Again, the DER, the primary due to the substantial emissions generated by the project vehicle. The DER found significant and unavoidable air quality impacts, specifically the DEIR, which is the final paper determined that the project's operational nitrogen oxide emissions would exceed the significant threshold established by the local air districts. Nitrogen oxide is a primary precursor to smog and a formation and an extended factor in the development of respiratory problems like asthma, bronchitis, and lung irritations. Never listed the DER failed to incorporate feasible mitigation, to reduce sensitive receptors exposure to the projects emissions. Again, this is benefiting the developer. Another thing I take issue with, is the traffic study. The traffic consultant tells us that they can mitigate congestion at the project site by adjusting all the signals surrounding the project, even starting at the freeway. The only problem is the City has no jurisdiction over signals, Caltrans and Department of Transportation are responsible for coordinating the flow of traffic. Again another misrepresentation by the developer. Caltrans also said that the numbers and the flow don't add up on their chart and their study. The numbers need justification.

ADMINISTRATIVE
SECRETARY AGUILA

20 seconds.

FREDRICK BARBOSA

I also take issue with their loading dock noise problem. I am going to read this from the EIR, "To determine typical noise levels associated with the most loading docks noise levels associated."

ADMINISTRATIVE
SECRETARY AGUILA

Your total 5 minutes have ended.

FREDRICK BARBOSA

Okay, well can I just say one more thing? The study done on the noise, they are talking about one hundred and fourteen base. The developer wanted.

ADMINISTRATIVE
SECRETARY AGUILA

That was a total of five minutes.

CHAIR TAPIA Okay thank you. Is there anyone else that wants to speak on Spontaneous Communications?

ADMINISTRATIVE
SECRETARY AGUILA No other members have raised their hands.

CHAIR TAPIA Okay then at this time we will close Spontaneous Communications and we will go into the Consent Calendar.

CONSENT CALENDAR

CHAIR TAPIA The Consent Calendar contains matters of routine business and it is to be approved with one motion unless members of the Commission request separate action on a specific item. At this time, members of the audience may asked to be heard regarding the item on the Consent Calendar. Today's items Number A is Minutes and we have no Minutes for today. We do not have any to be approved. Item B is the Planning Commission Resolution No. 806(21) denying Site Plan and Design Review (DA) No. 03-2021. What was the site? What was that denial because it doesn't have it here? What was the name of the business?

ASSOCIATE
PLANNER
CHOU Chair if I may, it is 5462 Irwindale Avenue.

CHAIR TAPIA Okay and what was the name of the business?

ASSOCIATE
PLANNER
CHOU It is Georg Fischer Signet.

CHAIR TAPIA And what they want?

ASSOCIATE
PLANNER
CHOU It is an exterior renovation.

CHAIR TAPIA Okay that was for that exterior renovation that was denied, due to there was not enough designs pertaining to the Design Guidelines. We are going to make a motion right now to either approve or deny. Make sure that it is in the resolution that was send to us. So it is open again for a final motion of the denial.

COMMISSIONER
CHICO Motion to approve the resolution denying the project.

COMMISSIONER
HARTMAN Second.

PLANNING COMMISSION MINUTES
REGULAR MEETING

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CHAIR TAPIA	Roll call. Oh wait a minute. Is there anyone out there in the audience that wishes to say anything regarding the denial of the project?
ADMINISTRATIVE SECRETARY AGUILA	No members of the project have raised their hands.
CHAIR TAPIA	Okay, thank you very much. We already have a motion and we have a second. Roll Call
ADMINISTRATIVE SECRETARY AGUILA	Commissioner Hartman.
COMMISSIONER HARTMAN	Yes.
ADMINISTRATIVE SECRETARY AGUILA	Commissioner Gomez.
COMMISSIONER GOMEZ	Yes.
ADMINISTRATIVE SECRETARY AGUILA	Commissioner Chico.
COMMISSIONER CHICO	Yes.
ADMINISTRATIVE SECRETARY AGUILA	Chair Tapia.
CHAIR TAPIA	Yes.

NEW BUSINESS

CHAIR TAPIA	There isn't any.
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PUBLIC HEARINGS

CHAIR TAPIA	There are none.
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**DISCUSSION ITEMS/
PRESENTATIONS**

CHAIR TAPIA	Discussion Items/Presentations, there is two items to be presented by legal counsel. Item A is Conflict of Interest and Item B is the Brown Act.
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ITEM NO. 4A
ITEM NO. 4B

CONFLICT OF INTEREST
BROWN ACT

CHAIR TAPIA

Is the audience still out there?

ADMINISTRATIVE
SECRETARY AGUILA

Yes.

CHAIR TAPIA

Okay, I want to say something just before we get started. The Vice-Chair, Enoch Burrola, has been ill since the last meeting the 9th, and I do not know if he was ill before. I just want the audience to keep him in mind, late at night when you are retiring, just lift up a little if you want to call it prayer, if you want to call it mediation, whatever you call it just keep him in mind so that he can recover from whatever it is that got into his system. Okay, thank you. Go ahead please.

ASSISTANT
CITY ATTORNEY
TRAXLER

Thank you Mr. Chair, good evening Commissioners, members of the public, Staff. At the Board's meeting on July 21, 2021 the Board requested the City Attorney's Office to come back, specifically with a conflicts of interest training. However, with a new Commissioner, Commissioner Gomez, we thought it would be a good idea to give an overview of the Brown Act as well as Conflicts of Interest. With that I will get started. The first part is the Brown Act. The Brown Act is known as the Open Meeting Laws and it covers virtually every type of local government body, elected or appointed, decision making or advisory type of body. It requires that, "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency." The purpose of the Brown Act is to aid in the conduct of the people's business and the proceedings of public agencies must be conducted openly so that the public may remain informed about the business that is being carried on. All City business must be conducted at open meetings and that requires all meetings to be open and public, including meetings of the City Council, City Commissions, and any committee bodies. That also requires a majority of specifically in this case, Planning Commissioners, not consult outside a properly noticed meeting open to public. There are narrow exceptions to this rule which are; individual contacts between a member of the legislative body and any other person, a conference or similar gathering open to the public that addresses general issues, community meetings held by another organization, other legislative body meetings, standing committees, or social or ceremonial events. It is important to note that this law does not apply to Staff; City Staff, agency Staff, but they can facilitate a violation by acting as a conduit for a gathering. This also includes communication, by phone, fax, e-mail, text messaging, or similar means of communication. Under the Brown Act, a meeting is defined as any gathering of a majority of the members of a legislative body to hear, discuss, or deliberate upon any item which is within the board's subject matter jurisdiction. It is aimed at prohibiting non-public

meetings about City business. For example, if the commissioners were having a personal conversation, it wouldn't really be in violation of the Brown Act as long as City business was not discussed. A meeting includes any use of direct communication that includes email, text messaging, Facebook, Twitter, and social media. A meeting is deemed to have taken place if a quorum of the legislative body receives information on, discusses, or deliberates on any item on which the body may legally act. The purpose here is to collect a collective concurrence, a collective decision on an issue before it comes to the board in an open meeting. There can also be serial meetings, a meeting that at one time involves only a portion of a legislative body, but eventually involves a majority. There are generally two ways in which a serial meeting can occur. That is either by a "daisy-chain" or a "hub-and-spoke". Those are the common refer to names. In the daisy-chain scenario, for example it would be as if Commissioner Gomez spoke to Commissioner Hartman, and then Commissioner Hartman spoke to Chair Tapia, and Chair Tapia spoke to Commissioner Chico, and eventually everyone was discussing the same item and came to a consensus on that item. Basically it is a game of telephone. The hub-and-spoke violation involves, for example, one member or a City Staff person that reaches out to each individual person, gives them information or develops a consensus about a decision and that would also be qualified as a serial meeting. Included in this are emails, like I said email and text messages. It doesn't matter if you are emailing or text messaging from a personal device or personal email account, those may be subject to public disclosure under the Public Records Act. It is really important that if you are emailing you do not reply all. You just reply individually to whoever you are speaking with because if you reply all and a majority of the Commissioners are on the email that would be a violation of the Brown Act. Okay, Agenda requirements. A written agenda must be prepared for every meeting and it must be posted 72 hours in advance. It must include all matters to be transacted or discussed. No action can be taken if an item is not on the agenda. Each item must include a brief description, sufficient to inform the public of the nature of the business that will be occurring. All matters on the Agenda must be discussed. It must include reasonable period of time for public to comment on each item that is going to be taken place. If for some reason a new matter needed to be added to the Agenda after it's posted, so within the 72 hour period. The legislative body must find on the public record that the matter arose after agenda was posted, immediate action is necessary to be taken at that meeting, and there must be a 2/3 vote of everyone in order for the matter to be heard. It can be unanimous if there is less than 2/3 people present. An example of this would be Staff just learned of an opportunity for a state grant that needed approval in two days, and needed authorization to submit the application for the grant. If everyone agreed that it was necessary for that action to be taken, in this case it would be since they had two days, they could vote on it and put it on the agenda. So that is how that would work. Like I said no

discussion of any item not on the agenda except for; brief responses, statements or questions, questions for clarification, reference to Staff or other resources for factual information, and request Staff to report at a subsequent meeting. The key here is brief, there can be no deliberations on items that are not on the agenda. Public participation anyone can attend open meetings. The commission can encourage, but not require names, or really any conditions to attendants of the meeting. The public can record the proceedings and if the meeting is willfully interrupted and cannot be restored by only removing the disrupting individuals, the commission could order the room cleared. In this instance since the emergency, Coronavirus rules apply, all of the meetings are being held remotely so it is not really much of an issue. During the public comment period the public has the right to talk about anything that's not on the agenda. Members of the public get to speak on each and every item of the agenda before any deliberations has been made. During the public comment period it is recommend that you don't engaging in a debate with public because it can kind of go off track and enter into discussion of items that are not on the agenda. Closed Sessions are not really applicable to the Planning Commission because they typically only apply to City Council but under the Brown Act there are four grounds for holding a Closed Session. That is pending/anticipated litigation, real property negotiations, labor negotiations, and personnel matters. For Closed Session, those conversations are privileged and do not get disclosed to the public other than a simple discloser statement. Penalties for failing to comply with the Brown Act result in a decision being nullified. Intentional violations can result in criminal misdemeanor charges if convicted up to 6 months in jail or a \$1,000 fine. Someone can bring a suit for injunction, mandamus & declaratory relief, which would prevent in this case the Planning Commission from further action or declare the decision void. All of that must happen within a small window, any corrective action, any litigation would have to be initiated within 90 days of the action, or if there is an issue with the agenda it would have to be done within 30 days. Important takeaways for the Brown Act; all discussions, deliberations and recommendations should be made in open session, public comment is a crucial part of the process because the public needs to know what is going on and what is being discussed, and if it's not on the agenda, don't talk about it. Okay, part two, Conflicts of Interest. The Political Reform Act of 1974 referred to as the "PRA," regulates Conflicts of Interest. This is kind of covered by the Fair Political Practices Commission, and they have adopted detailed regulations implementing the PRA that sets forth what constitute a conflict. Those regulations can be found in Title 2 of the California Code of Regulations, starting at Sections 18700. The General Rule under the PRA for Conflicts of Interest is that no public official at any level of state or local government shall make, participate in making, or in any way use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. So what this means is that

officials must refrain from participating in the decision-making process when it is reasonably foreseeable that the decision will have a material financial effect on the Official's financial interest that is distinguishable from that of the public generally. It is important to note that these rules also apply to the public official and his or her immediate family, such as spouse or children. There are steps that should be followed to determine if a public official has a conflict of interest, which may prevent them from participating in a decision. Step one: are you a public official? Step two: Are you making participating in, or influencing a governmental decision? Step three: Do you have a disqualifying financial interest involved in the decision? Step four: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests? Step five: Will the reasonably foreseeable financial effect be material? Step six: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally? Step seven: Is the public official making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision? It is important to note, if at any one of the steps that the answer is no, then the inquiry ends and there is no conflict of interest. Okay applying the steps. Are you a public official? "Public official" is defined broadly so Planning Commissioners are public officials subject to the Conflict of Interest Rules because it includes every member, officer, employee, or consultant of a state or local government agency. Are you making, participating in or influencing a governmental decision? A governmental decision is any action taken by a government agency that has a financial effect on any person other than the governmental agency. This applies not only when you are making a decision, but when you participate in a decision such as giving advice or making recommendations to the Commission or influencing a decision such as communicating with other decision makers or City Staff. There are five categories of economic interests which constitute a financial interest. Those are; economic interests in business entities, economic interests in sources of income to the public official, economic interests in gifts, personal and financial effects, and economic interests in real property. For business entities there are two rules. First is which you have an economic interest in a business entity in which you, your spouse, your children or anyone acting on your behalf has invested \$2,000 or more, or if you are a director, officer, partner, trustee, employee, or hold any position of management in the business. Sources of Income. If you received \$500 or more in income within 12 months prior to the decision then you have an economic interest in a source of income. It is important to note here that sometimes Planning Commissioners are appointed to the Commission after an election in which they ran for City Council. So in that case if a Planning Commissioner for example received a campaign donation, from a certain person or a business entity then that would be a financial conflict of interest, and the Commissioner would be disqualified from participating in a decision

because they had accepted campaign contributions. A person who has given or promised you gifts which total \$520 or more within 12 months prior to the decision is an economic interest in a source of gifts, so you would be disqualified in participating in that decision. Personal finances such as personal expenses, income, assets, or liabilities, as well as those of your immediate family is an economic interest in personal finance. If these are likely to go up or down, having a positive or negative effect as a result of the decision then it would constitute an economic interest in personal finance. Real Property, if you or anyone in your immediate family or anyone acting on your behalf has an interest in real property worth \$2,000, or more, and also if you have certain leasehold interests then you would have an economic interests in real property. Once you identified what type of financial interest then you move on to step four. Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests? Reasonably foreseeable does not need to be likely. It just needs to be a realistic probability that there will be a financial effect more than hypothetical or theoretical. There are two ways to look at this. The first is a Direct Financial Interest and that would be the actual financial interest whatever is the subject itself of the action and that includes the issuance of the permit on the property that you own for example. An Indirect Financial Interest which would be as we discussed previously an action which could theoretically enhance or decreased property would be an indirect financial interest, and that requires a list of six factors to be considered. Those are; the extent to which the occurrence of the financial effect is contingent upon intervening events, whether anticipation of a financial effect is a potential outcome under normal circumstances using appropriate due diligence and care, the financial interest is the type that would typically be affected by the governmental decision or would affect businesses and individuals similarly situated to those in which the public official has a financial interest, whether the financial effect might compromise an official's ability to act in the best interests of the public, whether the decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, and lastly whether the public official has the type of financial interest that would cause a similarly-situated person to weigh the advantages and disadvantages of the governmental decision in formulating a position. Step five, will the reasonably foreseeable financial effect be material? This is kind of where it gets a little bit complicated and the factors for determining materiality are pretty complex, and those can all be found in Section 18702. I won't go through all of them for each of the financial interest because we would be here all night, but specifically focusing on real property interest. There are three specific categories on materiality based on the location of the real property and there are different standards of materiality for each location. When the interest in real property is 500 feet or less, there is presumed to be a conflict unless that presumption is rebutted by clear and convincing evidence. Clear and Convincing Evidence requires a finding of high probability, or

evidence so clear as to leave no substantial doubt. That is a legal standard and requires that the proof be really strong, so that pretty much any reasonable person would agree that there is clear and convincing evidence that there is no material effect on the property. A question was raised on what would be an example of clear and convincing evidence sufficient to overcome this standard. To be honest there is not much. What would happen usually someone would hire an appraiser to go look at the property and do an appraisal of the property against the project, and determined whether there would be any financial effect. It is a pretty high standard to overcome. The second category is real property interest that is between 500 and 1,000 feet of the property line and there is no presumption, there are a complicated set of factors which I have gone over with you before. Those are the development potential, the income-producing potential, the highest and best use, the market value, or if it would change the properties character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. And lastly, if the property is over 1,000 feet from the property line there is presumed not to be a conflict, unless there is evidence to the contrary.

CHAIR TAPIA

Up to what feet?

ASSISTANT
CITY ATTORNEY
TRAXLER

Anything over 1,000 feet.

CHAIR TAPIA

Anything?

ASSISTANT
CITY ATTORNEY
TRAXLER

Yes.

CHAIR TAPIA

5,000 feet?

ASSISTANT
CITY ATTORNEY
TRAXLER

Yes.

CHAIR TAPIA

On these three items, do you need a representative? Do you need a lawyer? To prove your point do you need an attorney? Does the person need an attorney? Say that I wanted to challenge the 500 feet, do I need an attorney to challenge that, and who determines what I am saying is valid or not?

ASSISTANT
CITY ATTORNEY
TRAXLER

To answer your first question, no you do not need an attorney. It would be a personal decision whether a Commissioner felt strongly enough about the project that they wanted to hire a personal attorney. As far as who would make the determination that information would be presented to the City Attorney's Office, and the City Attorney's Office would evaluate and give a recommendation based on the evidence provided. However, the ultimate decision lays on the hands of the Commissioners, whether to recuse themselves or not.

CHAIR TAPIA

So you just can't come to a meeting and say, I don't think that it pertains to me, I don't see how it could? I couldn't go on because I would have to go to the City Attorney first for him to make a decision?

ASSISTANT
CITY ATTORNEY
TRAXLER

It is recommended that you go to the City Attorney first but that is not required.

CITY ATTORNEY
GUERRA

If I may, one additional point. The City Attorney does not represent each of you in this respect. We provide guidance and our thoughts but in the end it is your decision as a Commissioner or, with the respect of the Council, as a Council Member. All we can do is provide our guidance.

CHAIR TAPIA

Who determines, say not that the business that you were saying is not going to affect them at all, now can they challenge you? Can they challenge my decision?

CITY ATTORNEY
GUERRA

We will get into that in the presentation, a little further.

CHAIR TAPIA

Okay, thank you.

COMMISSIONER
CHICO

Question, because you are both kind of toned it down when you were making the statement. Who is the final decision maker or makers as the case might be? The City Council? In other words we can have you review it, you are going to give an opinion to whom?

ASSISTANT
CITY ATTORNEY
TRAXLER

The City Attorney's Office would give an opinion to whoever had the conflict. For example, if you requested an opinion on whether you had a conflict, we would provide that analysis to you and give you a recommendation either to recuse yourself or not. The ultimate decision whether to recuse yourself would be your decision.

COMMISSIONER
CHICO

So that being the case, I am going to say me as an individual in any given case decides to proceed forward I would then be at risk, if you will, from the petition or from the applicant right? That would be what we are facing. At that point the applicant would probably say, no we don't agree with "me" you're in conflict, we want the decision reversed. What happens then?

CITY ATTORNEY
GUERRA

We will get into that.

COMMISSIONER
CHICO

Okay.

ASSISTANT
CITY ATTORNEY
TRAXLER

Okay, step six. Is the material financial effect indistinguishable from its effect on the public generally? The effect is indistinguishable when it has been established that a significant segment of the public is affected, and the effect on the official's financial interest is not unique. A significant segment of the public is defined as at least twenty five percent of all business or non-profit entities, real property, or individuals within the jurisdiction. There are also a list of factors to determine whether the effect on the financial interest is unique. Step seven, is the public official making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision? If the analysis has proceeded all the way to this step, and it is pretty likely that there is a conflict, so if it is reasonably foreseeable that a governmental decision will have a material effect on a financial interest of the public official, then the official cannot make, participate in making, or attempt to use his or her position to influence the government decision. It would be recommended that, that official recuse themselves. There are two exemptions to the conflict of interest rules. One of them we just discussed which is the public generally, if the financial effect would be indistinguishable from the effect on the public generally. The second is legally required participation, this applies as we also done here when there are no other means to get a decision. For example, if a majority of the Commissioners were conflicted out and there would be no legal way to render a decision, then it would be necessary to legally require the participation of at least one Commissioner, depending if there is a quorum or not. It requires a random selection of the participating Commissioner. Those are the only two exemptions. The mere existence of a conflict does not imply any wrongdoing unless you don't disqualify yourself when you should. Abstaining from a decision is what you do, when you feel like maybe there is a conflict you are not really sure, but you just feel like maybe it might look like there could be one so you abstain from that decision. However, a disqualification, if there is found a financial interest that is sufficient to disqualify you from the decision then that would be legally required.

COMMISSIONER
CHICO

Will you go back to step six. I believe about four screens back. Right there. I am interested in the way that this is worded because as I understand it, if the effect on the official is the same as it would be on his neighbors then he is not in conflict. Am I saying the correctly?

ASSISTANT
CITY ATTORNEY
TRAXLER

Depending on the type of decision, it would have to be twenty five percent of the public generally. That could include your neighbors but it wouldn't necessarily only apply to your neighbors.

COMMISSIONER
CHICO

I understand. That is what I mean when I complain about this because it is so vague. What it is saying is that twenty five percent of the population of the City of Irwindale, and twenty five percent is not going to be affected, obviously. One hundred percent of the people within 500 feet of me are going to be affected, however, this law does not recognize that.

ASSISTANT
CITY ATTORNEY
TRAXLER

For distinguishing effect on the public as a whole, which is what step six is referring to?

COMMISSIONER
CHICO

I understand that, yes as a whole. It should not be as a whole it should be the area.

ASSISTANT
CITY ATTORNEY
TRAXLER

Fully noted.

COMMISSIONER
CHICO

But anyways there is nothing we can do about that.

ASSISTANT
CITY ATTORNEY
TRAXLER

Blame the State.

COMMISSIONER
CHICO

If I were smart enough to be an attorney, I would use that as my argument to challenge this law.

ASSISTANT
CITY ATTORNEY
TRAXLER

Okay so going back to disqualification. What to do if you are disqualified? Immediately prior to the consideration of the matter, the Commissioner should publicly identify the financial interest that gives rise to the conflict, recuse himself or herself from discussing and/or voting on the matter, and leave the room until after the discussion, vote, or whatever happens to the item. There are two new requirements under the PRA. If an official leaves a meeting in advance of the item in which they are disqualified, they have to publicly identify the agenda item and the financial interest prior to leaving the meeting. If it is the first thing on the calendar and the official joins after consideration of the item, once the Commissioner comes back into the

room they still must publicly identify the item and the financial interest immediately upon joining the meeting. If you are disqualified don't discuss or influence Staff or your colleagues. You are required to identify nature of the conflict, leave the room, do not vote or discuss the matter, and a disqualification means that you are not counted towards a quorum. There must be a majority of the members that are legally required without the disqualified Commissioner. And I will just note on this that, this does not preclude any Commissioner from speaking on any item as a member of the public. The Commissioners still retain their First Amendment rights to speak on any item as a member of the public that they wish. Penalties for failing to disqualify yourself when it is legally required. A person would challenge the decision in a court and if it's found that you had a disqualifying conflict of interest and you failed to disqualify yourself, then they would invalidate the decision. This could also result in a, how do I say this, a penalty which would prevent you from holding public office in the future. It could also result in a misdemeanor, criminal conviction which would include jail time and penalties, criminal and civil fines, five thousand dollars to ten thousand dollars per violation, you could be sanctioned with attorney's fees, and it could be embarrassing both personally and politically.

CHAIR TAPIA

All this so that I can't have a vote.

ASSISTANT
CITY ATTORNEY
TRAXLER

Now that we are passed financial conflict of interest there are also Common Law Bias issues to be aware about. These are not any statute in the California Code they are just judge made laws insentiently. It is a Common Law rule made through Case Law. That says that a Common Law is violated if a decision maker is tempted by his or her personal or pecuniary interests. This could be a financial interests or a non-financial interests. Really what Common Law Bias is getting at is that all decisions that come before the Commissioners must be decided in a fair and impartial matter. Where a Common Law conflict of interest exists, the official is disqualified from taking any part in the discussion and vote regarding the particular matter. In this case, an example of that would be a case out of the City of Sacramento where a City Council member spoke on an item as a member of the public before it got to the City Council and then voted on the item, when it got to the City Council and denied the item. In that case the decision of the City Council was challenged. It was found that the City Council member violated the Common Law Bias Doctrine and the decision was reversed and set back to the Council to have another public meeting with the City Council member recusing himself, in order for there to be a fair and impartial hearing. That is kind of how that would work. Resources, if you have a question regarding whether you have a conflict of interest the FPPC, the Fair Political Practices Commission, gives free advice. You can either call the hotline or email the email address listed, and also the Institute for Local Government

has resources that would be available to you as well. Okay, I am available for questions if you have any.

CHAIR TAPIA

I think that you gave an excellent presentation. I do not agree with what is written and I would like to see if it can get it in printed form and give each one of us a copy.

ASSISTANT
CITY ATTORNEY
TRAXLER

Yes I can certainly do that.

CHAIR TAPIA

I know that the public can make comments on anything during the meeting. What I am wondering is if say that a member of the public is misinformed and they say a lot of things that are really not in target, at the end of the day when we have Commissioner comments, I have common sense to not ruffle up anyone's feathers, but could a person address a comment then? That someone made during the presentations of the public and be within the Commissioner's right to address that comment.

ASSISTANT
CITY ATTORNEY
TRAXLER

I am going to give you a classic answer it depends. If the item was on the agenda and it was just a few clarifying comments that would be not a big issue, however, if it was an item that was not on the agenda and the Commissioner engaged in a discussion, clarifying facts, putting issues out into the public record for an item that it not on the agenda then that could be a violation of the Brown Act, because it is discussing something that is not on the agenda.

CHAIR TAPIA

Common sense basically.

ASSISTANT
CITY ATTORNEY
TRAXLER

Correct, yes.

CHAIR TAPIA

What if a business person or a resident talks to all five members of the council, or all five members of the commission, or all ten members? So where are we there? As long as the five people don't start talking to each other. Or the ten people don't start taking to each other. Now you got a businessman that wants to put a business here, but he wants to get a little insight on how that councilmen votes. He wants to read between the lines to see what he has to say or what he needs to do to maybe get a favorable vote. He kind of talks to each of the members about the same thing. Where are we there?

ASSISTANT
CITY ATTORNEY
TRAXLER

So if the purpose of that, I am going to use your business person example, if the purpose of that business person is to get a consensus of the Commissioners that would be the hub-and-spoke example, where he talks to each Commissioner or each council member individually and through those communications gathers a consensus. The caveat to that is if this is just a one on one communication between a Commissioner and a member of the public, or a Commissioner and a business owner just a one off or even multiple conversations where you are not really discussing anything specifically and you are just communicating about personal issues, life, or whatever that would not be an issue. The issue is when you are getting information trying to make a decision discussing an item that should be agendized and discussed on the public record.

CITY ATTORNEY
GUERRA

One thought, my recommendation is, if you ever do get a business person coming to you for insight, not to give them any insight.

CHAIR TAPIA

How about a resident?

CITY ATTORNEY
GUERRA

It could be a resident as well. I recommend that you are welcome to take in information but I would not disclose any information, what your thoughts are, what you think the Commission is going to do, or what you are going to do. Because imagine if that comes out at a meeting, "Well you said this," "Well you told me this" then it looks like you already made a decision or you are participating in a decision before it even comes to the Commission. My recommendation is, if a resident comes to you or a business person comes to you, more than welcome to listen but I would not provide them any information.

CHAIR TAPIA

I am going to use an example here, let's say that a business initially started off and now five years have elapsed, and the business has brought in different developments and they have not been improved. In those five years, you may have the same Commissioners or the same councilmen that initially were there when that started. How many times can a Commissioner or a councilman talk to another Commissioner during those years? It was the same company but now it is a different project. We are talking about the same applicant but not the same project, not what was brought to light. How do we deal with that? As far as talking to each other, say that I talked to Councilman Chico and Councilman Hartman the first year and then I don't talk to them about it the second year; I talked to Councilwoman Gomez and Councilman Burrola the second year, but the third year I talked to a couple more and so on and so forth. Now am I violating the Brown Act?

ASSISTANT
CITY ATTORNEY
TRAXLER

The way that I am understanding your scenario, yes that is a violation of the Brown Act because there are a majority of the Commissioners discussing the item that is not on the agenda. If your communications were done out in public during the public meeting there is no issue. If these were conversations in private that would be a violation of the Brown Act, each year that you described.

COMMISSIONER
GOMEZ

Mr. Chair, what if you were communicating as a resident outside of a meeting in conversation, in that scenario.

ASSISTANT
CITY ATTORNEY
TRAXLER

In this scenario, where City business is being discussed. In this scenario?

COMMISSIONER
GOMEZ

The scenario that the Chair spoke to.

ASSISTANT
CITY ATTORNEY
TRAXLER

Where one of the people was a resident?

COMMISSIONER
GOMEZ

You're a Commissioner but you are speaking as a resident.

CITY ATTORNEY
GUERRA

As a Commissioner you are always a Commissioner.

COMMISSIONER
GOMEZ

Earlier you indicated that you can speak when you are recused. If there is not a parallel when you are recused and you speak as a resident therefore, then that differs than speaking as a resident even though you are a Commissioner in private, at a conversation of City business that interests you. So that is what you are saying, even then you are a Commissioner you are not a resident?

CITY ATTORNEY
GUERRA

Correct. The example we gave regarding the public comment period, as a Commissioner you still have a free speech right to participate in the discussion, but only during the three minutes of the public comment period. That is during the actual preceding but otherwise the way the FPPC is going to look at it, the way the DA is going to look at it, is you are a Commissioner. Whatever you do on the outside they are going to say Commissioner so and so did this, it isn't going to be resident so and so, it is going to be Commissioner so and so.

COMMISSIONER
GOMEZ

I appreciate that clarification.

CHAIR TAPIA

It is like a top secret clearance in the military. Ferme la bouche s'il vous plait.

CITY ATTORNEY
GUERRA

And again the example you gave of having discussions over the years, I agree with Jamie, it can be construed as a Brown Act violation, if you are having discussions about the subject matter. The other point is, it should be a subject matter that is within the Planning Commission's jurisdictions and something that would be coming to you at some point. That's where it gets a little tricky. If something came before you, absolutely, you can't discuss it with more than one Commissioner.

COMMISSIONER
HARTMAN

Even if you are talking to that one, would you say it is okay? You do not know if that other Commissioner is going to talk to somebody else and so on, which would be a violation.

CITY ATTORNEY
GUERRA

Correct.

COMMISSIONER
HARTMAN

So zip it.

CITY ATTORNEY
GUERRA

So legally yes, you can talk to one person, that doesn't mean you should. So you hit a good point there. You can, but you shouldn't. If I give you a recommendation, because you are correct, you send an email to one person you do not know where that email is going to go. Same thing with a conversation.

CHAIR TAPIA

I would like to have a discussion similar to what we had here, a presentation about the businesses and the Brown Act. A business can get aid. They can get help around the world for whatever they want, from whoever they want. They can speak to all the Planning Department, everyone in the department of the City. They can go to every city. They can look up all the laws and everything and they can get aid from any attorney they want, that is willing to help them. But we cannot talk to more than two people about the same business that wants to find a way to put a wrench in the game, or do what they can for themselves. I would like to see, are they subject to any laws besides ethics? Is there any such a thing, a tool that they need to abide by besides the ethics and of course once they get in besides the governmental requirements and all that? I am not talking about none of that. If they can get advice from around the world, in a year or two how much insight can they get in a year or two, and then it is presented to us. In four days we have to come up with a decision that it took a Staff and a business and everyone else around them to help them. Two years it took them to come up with the Final EIR or the final analysis and all we have to do is. What is that word it escapes me? Where you have to find that they don't meet a certain standard, that's the only way you can challenge it. What is that?

ASSISTANT
CITY ATTORNEY
TRAXLER

Findings?

- CHAIR TAPIA Findings, right. If you can't find the findings, hey baby you are sailing smooth. If there is not one finding that you can use to say I don't think that fits here then it doesn't matter. I would like to get some more insight on how that works.
- ASSISTANT CITY ATTORNEY TRAXLER We can certainly look into that and bring something back for the Commission. As far as the Brown Act, specifically in this scenario the Brown Act only applies to legislative bodies, governmental entities, and so if it is a private business, in this scenario, the Brown Act and any violations or penalties would not apply to that private business.
- CHAIR TAPIA But Robert's Rules of Order, does that include business?
- CITY ATTORNEY GUERRA There is no requirement that anybody subscribes to Robert's Rules of Order that is normally what public agencies and legislative bodies use. There is another one Rosenberg's but that is just how meetings are conducted. Private businesses usually do not, maybe their board of directors will but that is optional.
- CHAIR TAPIA Alright thank you. Anyone else? No? Thank you very much. Are we going to have the second presentation or do you want to include that on another day?
- CITY ATTORNEY GUERRA We did both?
- CHAIR TAPIA Oh we did both? Oh okay, I must have been in Hawaii somewhere. Okay well again that was a great presentation and very informative. I always thought that each presentation that is brought to us should be copied and put in a library in our Planning Department, so that anytime we want to refer to something we can just go and go check it out or get a copy of it. Okay, well thank you. Commissioner Comments.

**COMMISSIONER
COMMENTS**

- CHAIR TAPIA Any Commissioner Comments?
- COMMISSIONER HARTMAN I don't have a comment, I have a question. What is going with the bank property over here? I see a lot of activity going on over there. They are cleaning it up, doing some roofing.
- ASSOCIATE PLANNER CHOU A new business, a security company, will be using it as office and they have received their Occupancy Permit, so they will be occupying the building soon.
- COMMISSIONER HARTMAN Thank you.

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CHAIR TAPIA Anything else? Any other comments? Okay Legal Council

LEGAL COUNCIL

CITY ATTORNEY Nothing for tonight, thank you.
GUERRA

CHAIR TAPIA Staff any comments?

**COMMUNITY
DEVELOPMENT
MANAGER/CITY
PLANNER'S REPORT**

CITY MANAGER Nothing for tonight.
TAM

CHAIR TAPIA Okay, you are representing the Community Development Director. Do
you have anything to report today?

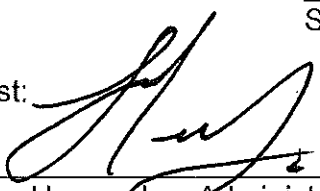
ASSOCIATE Nothing for tonight, thank you.
PLANNER
CHOU

CHAIR TAPIA Okay, again, I just have a burden for Commissioner Burrola and I just
want to close this meeting with a thought of healing. Anyone else have
anything before I adjourn? Okay thank you very much this meeting is
now adjourned.

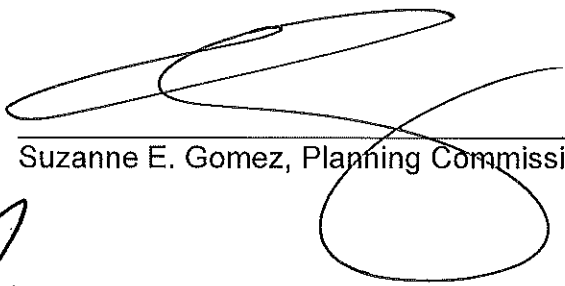
ADJOURNMENT

There being no further business to conduct, the meeting was
adjourned at 7:49 p.m.

Attest:



Jesus Hernandez, Administrative Secretary



Suzanne E. Gomez, Planning Commission Chair

Approved as presented at the meeting held January 19, 2022