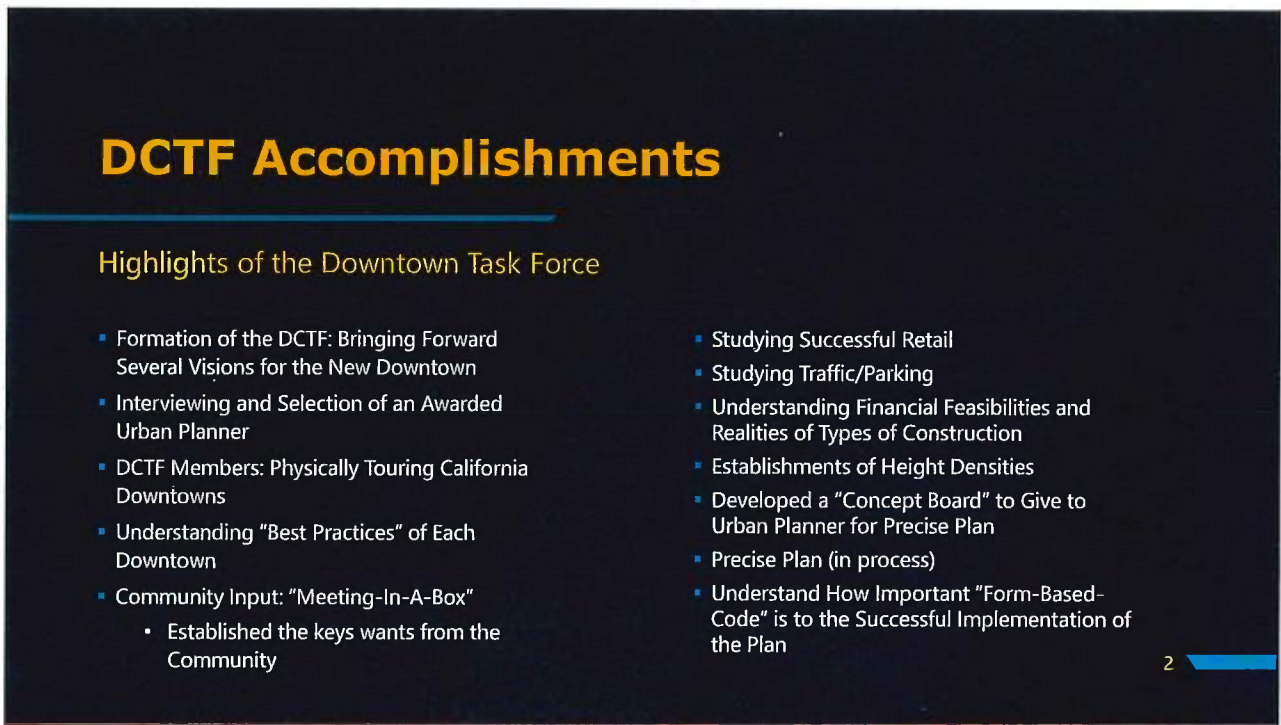




1



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Next Steps

- We have invested \$500,000 and, after six attempts, are close to Realizing a Downtown.
- These Next Services Will Get Us There

Santa Clara Downtown Precise Plan Potential Additional Services, March 29, 2021

Task	Fee	Timing	Priority
1 Form-based Zoning Code	\$92,500	4 to 6 months	Higher
2 Sign Ordinance for Downtown	\$18,200	3 months	Medium
3 Area Development Impact Fee Program	\$75,000 to \$100,000	4 to 6 months	Medium
4 Lafayette Street Design	\$67,800	4 months	Higher
5 Wayfinding Sign Program and Branding	\$59,300	3 months	Medium
6 Post-COVID Retail and Office Analysis + Recommendations	\$7,400	2 months	Medium
7 Early Activation	\$73,300	4 months	Higher
8 Downtown Management Entity	\$21,000	2 months	Medium
9 Project Design Review	\$3,900	Ongoing	Medium
10 Additional DCTF Meetings	\$4,300	Ongoing	Higher

4/6/21

Item #7

Buchalter

55 Second Street
Suite 1700
San Francisco, CA 94105
415.227.0900 Phone
415.227.0770 Fax

April 1, 2021

415.227.3508 Direct
aguerra@buchalter.com

VIA E-MAIL (MAYORANDCOUNCIL@SANTACLARACA.GOV)

Mayor Lisa M. Gillmor
and Members of the City Council of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Downtown Gateway Project – PLN2020-14457
April 6, 2021 City Council Meeting Regarding Downtown Precise Plan

Dear Mayor Gillmor and City Council Members:

Buchalter, A Professional Corporation, represents Lamb Partners regarding the proposed Downtown Gateway Project involving the residential mixed use redevelopment of the properties located at 906, 930, 940 and 950 Monroe Street (the “Project”) in the City of Santa Clara. I understand that the Downtown Task Force recently submitted a letter to the City Council concerning the processing of the entitlement applications for my client’s Project because of its location in the Downtown Precise Plan area.

According to their letter, the Downtown Task Force has requested that the City Council allow the Downtown Precise Plan to be completed “prior to any project proposal being considered within the 10-block area.” Notwithstanding the Task Force’s request, the Planning Department has confirmed that the purpose of the April 6th meeting is to update the Santa Clara City Council regarding the status of the Downtown Precise Plan. As part of that discussion, the Council certainly may discuss my client’s Project as an informational item, but the item before you pertains to the Downtown Precise Plan, not Lamb Partners’ 950 Monroe Street Project.¹

¹ The City Council terminated the former gatekeeper-early consultation process effective in January 2021.

POST MEETING MATERIAL

buchalter.com

Los Angeles
Napa Valley
Orange County
Portland
Sacramento
San Diego
San Francisco
Scottsdale
Seattle

Mayor Lisa M. Gillmor

April 1, 2021

Page 2

Lamb Partners submitted its Project application on May 8, 2020 (*before* the Precise Plan boundaries were apparently changed to later include the Lamb Partners' Project). The City is required under State Planning and Zoning Law to accept entitlement applications, review the applications, and process them to completion. The City may not defer to other applicants' requests (even if it is a City Task Force) that the City delay or withhold the processing of a particular developer's application just so the Task Force (in this case) has priority to the detriment of other applicants with pending applications.

City Departments offered comments on the application on August 11, 2020. Since that time, my client has revised its Project applications to address each and every comment from City Departments and the public. Earlier this year, my client presented its project to the Downtown Task Force both for informational purposes but also to elicit feedback for our resubmittal. On March 26, 2021, my client resubmitted their revised application in accordance with Planning Department comments and direction, after it addressed the comments from the neighbors, DTF and surrounding community. Based on my phone discussions two weeks ago with Andrew Crabtree, Community Development Director, the Planning Department will continue processing the Project entitlement applications (PLN2020-14457), as required by State law and the City's own rules, notwithstanding the Task Force's request that the City Council suspend the Project's application process pending completion of the Downtown Precise Plan.

We appreciate that the Downtown Task Force is interested in finishing its planning process first, and is struggling with how the City might accommodate their plans first before the City processes other development applications. State Law requires however, that the City accept a development project application and review it to completion. As you know, the City cannot arbitrarily choose to process one applicant's project (even if it is the City's own project) to the detriment of another applicant's project application. Thus, the City must process both projects – fairly and equitably- in accordance with State Law and your rules and procedures.

During this time when a crippling housing crisis continues to affect the Bay Area, it is imperative that the City not delay the development entitlement process for more housing projects in Santa Clara. My client's residential Project is promoting more badly needed housing opportunities in the Downtown area. We respectfully request that the City Council continue encouraging and supporting – not discouraging and opposing – housing projects in the Downtown.

Buchalter

Mayor Lisa M. Gillmor
April 1, 2021
Page 3

We appreciate your consideration of our request and look forward to working with you and staff to move this Project forward to create more housing opportunities for the Santa Clara community.

Regards,

BUCHALTER
A Professional Corporation



By

Alicia Guerra

AG:nj

cc: Andrew Crabtree
Randy Lamb
Salvatore Caruso

4/6/21

Item # 7

Julie Minot

From: Bob <bob11401@aol.com>
Sent: Tuesday, April 6, 2021 10:36 AM
To: Mayor and Council; City Attorney
Cc: Bob
Subject: Councilmember Jain's recusal
Attachments: jain letter.rtf; 18703.pdf; income conflict.pdf

Councilmember Jain,

Thank you for holding your monthly meeting last night via Zoom, I do think it is important that out elected officials are available and listening to the public. I am concerned that you brought up the downtown project and held an open discussion about it. The law is very clear in this manner, as a public official you must not participate in any action that might lead to a financial effect on any personal interest. You have two issues that conflict you on the downtown; first your residence is within one thousand feet of the downtown precise plan boundary and second your wife is employed by Santa Clara University who owns a large parcel within the precise plan boundary and will be developed within the plan. The University is also the only private property owner to be officially represented on the City's Downtown Community Taskforce. Any future development of this parcel would undoubtedly have a material effect of the University.

Under California conflict of interest laws, you have correctly reported your wife's employment on your FPPC 700 form and any income from that employment is considered community property under the disclosure laws and in itself would require you to recuse yourself from any official proceeding or discussion that involves a material effect on the University, as previously stated that would include the Downtown Precise Plan.

Secondly, the proximity of your residence, (within 1000') also requires you to recuse yourself from the downtown plan. As you are aware, California Code of Regulations section 18703 the "Public Generally" rule was recently updated. The new section 18703 (b) CCR requires you to recuse yourself if your property is under twenty five percent of the significant segment other residential properties, I believe that the latest count you requested from the city showed that your property was at approximately 16%. As you have previously referenced section 18703 (b) (2) lowers that percentage to 15 % but only if the sole interest in the matter is the primary residence of the official. In your case you have two interests, your residence and your wife's employment so the lower standard of 15% is not applicable and you are well under the 25% significant segment of the public.

On December 14, 2020, you received an advice letter from the FPPC, in that letter they found that although your residence did present a potential conflict of interest they applied the lower standard of 15% unaware of the second conflict of your wife's employment with the University which you or your attorney J. Byron Fleck failed to mention when communicating with the City or the FPPC. I have attached a copy of that letter highlighting the fact that their advice is solely based on the information provided to them being correct. I have also attached the updated section 18703 CCR and the source of income rules from the CA attorney General as to conflicts of interest.

Tonight, April 6, 2021, there is a City Council meeting with an update from the Downtown Community Taskforce, I expect that you will do the right thing, follow the law and recuse yourself from this item and all future official involvement from the Downtown Plan until a time that your conflicts of interest change.

I am also forwarding this to the City Attorney due to their prior involvement in the matter.

Bob O'Keefe,
Santa Clara Resident

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§ 18703. Public Generally.
2 CA ADC § 18703
BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations [Currentness](#)
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 7. Conflicts of Interest
Article 1. Conflicts of Interest; General Prohibition (Refs & Annos)

2 CCR § 18703
§ 18703. Public Generally.

(a) General Rule. A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment.

(b) A significant segment of the public is:

(1) At least 25 percent of:

(A) All businesses or non-profit entities within the official's jurisdiction;

(B) All real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) All individuals within the official's jurisdiction.

(2) At least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence.

(c) A unique effect on a public official's financial interest includes a disproportionate effect on:

(1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.

(2) The official's business entity or real property resulting from the proximity of a project that is the subject of a decision.

(3) The official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.

(4) The official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

(5) A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.

(6) The official's personal finances or those of his or her immediate family.

(d) "Jurisdiction" means the jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected.

(e) Specific Rules for Special Circumstances. The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

(1) Public Services and Utilities. The decision sets or adjusts the amount of an assessment, tax, fee, or rate for water, utility, or other broadly provided public services that is applied equally, proportionally, or by the same percentage to the official's interest and all businesses, properties, or individuals subject to the assessment, tax, fee, or rate. This exception does not apply if the decision would impose the assessment, tax or fee, or determine the boundaries of a property, or who is subject to the assessment, tax, or fee. Under this exception, an official is only permitted to take part in setting or adjusting the amount of the assessment, tax, or fee, once the decisions to implement, and determine the property or persons subject to the assessment, tax, or fee, have already been made.

(2) General Use or Licensing Fees. The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction.

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§ 18703. Public Generally.

2 CA ADC § 18703

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(B) All real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) All individuals within the official's jurisdiction.

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(2) The official's business entity or real property resulting from the proximity of a project that is the subject of a decision.

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(2) General Use or Licensing Fees. The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction.

“Indirect investment” includes investments owned by an official’s spouse (as either separate or community property), by dependent children, or by someone else on behalf of the official (e.g., a trust arrangement). (§§ 82034 & 87103; Regulation, §§ 18234 & 18235; see also *In re Biondo* (1975) 1 FPPC Ops. 54.) “Indirect investment” also includes any investments held by a business entity in which the official, his or her spouse, and their dependent children collectively have a 10 percent or greater interest. (§ 82034.)

Positions with Business Entities

An official has an economic interest in any business entity in which he or she is an officer, director, employee, or holds any business position, irrespective of whether he or she has an investment in or receives income from the entity. (§ 87103, subd. (d).)

2. Interests in real property

An official has an “interest in real property” when the official, or his or her spouse or dependent children have a direct or indirect equity, option, or leasehold interest of \$2,000 or more in a parcel of property (e.g., ownership, mortgages, deeds of trusts, options to buy, or joint tenancies) located in, or within two miles of, the geographical jurisdiction of the official’s agency (e.g., within two miles of city boundaries for city officials). (§§ 82033 & 82035.) The \$2,000 threshold applies to the value of the official’s interest, based upon the fair market value of the property itself. There are special provisions for the disclosure of, or disqualification in connection with, leasehold interests. (See § 82033; Regulation, §§ 18233, 18707.9, subd. (b) & 18729; *In re Overstreet* (1981) 6 FPPC Ops. 12.)

3. Source of income

A public official has an economic interest in any source of income that is either received by or promised to the official and totals \$500 or more in the 12 months prior to the decision in question. A conflict of interest results whenever either the amount or the source of an official’s income is affected by a decision. (Regulation, §§ 18703.3, subd. (a), 18705.3, 18704.5 & 18705.5, subd. (a)); see also *Witt v. Morrow* (1977) 70 Cal.App.3d 817.) For example, a decision that foreseeably will materially affect an official’s employer would necessitate disqualification even if the amount of income to be received by the official were not affected. (*In re Sankey* (1976) 2 FPPC Ops. 157.) (See discussion post, regarding effects on an official’s personal finances.) Detrimental, as well as positive effects, on the amount or source of income can create a conflict of interest.

Income generally includes earned income such as salary or wages; gifts; reimbursements of expenses; proceeds from sales, regardless of whether a profit was made; certain loans; and monetary or nonmonetary benefits, whether tangible or intangible. (§ 82030, subd. (a).) Income also includes the official’s community property interest in his or her spouse’s income (the official would meet the \$500 threshold if the spouse received \$1,000 of income), but does not include dependent children’s income. (*In re Cory* (1976) 2 FPPC Ops. 48.) (Note: This differs from treatment of dependent children’s interests in a business entity or in real property as