

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

JOAN L. CASSMAN
PARTNER
DIRECT DIAL 415 995 5021
DIRECT FAX 415 995 3414
E-MAIL jcassman@hansonbridgett.com



December 9, 2008

John McEnery IV
c/o Urban Markets
P.O. Box 68
San José, CA 95103

Re: **Complaint Before the City of San Jose Elections Commission**
Respondent: John McEnery IV, Tom McEnery, Urban Markets LLC
Nature of Complaint: Violation of Lobbyist Ordinance
Complaint Filed: December 8, 2008
Complainant: Anonymous

Dear Mr. McEnery,

The City of San Jose has retained our firm pursuant to Chapter 12.04.080 of Title 12 of the San Jose Municipal Code to serve as Evaluator for the Elections Commission and we have been assigned the above-referenced complaint. A copy of the complaint, without the voluminous set of exhibits, is attached. We have arranged with the City Clerk to make these exhibits available to you and you may contact her if you would like to obtain copies.

We are conducting a preliminary investigation of the allegations of the Complaint and will contact you to schedule a time to discuss this matter further. Please contact my associate, Steven Miller, at 415 995 5831 to let us know how we may be in touch with you when we are ready to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan L. Cassman", written over a horizontal line.

Joan L. Cassman

cc: Lee Price
Steven Miller
M.D. Moye

EXHIBIT F (1)

M. D. MOYE
PARTNER
LABOR
DIRECT DIAL 415 995 5092
E-MAIL mmoye@hansonbridgett.com

January 22, 2009

VIA EMAIL

Kenneth J. Machado, Jr.
33 North San Pedro Street
San Jose, CA 95110

Re: ***Complaint Before the City of San Jose Elections Commission***
Respondent: John McEnery IV, Tom McEnery, Urban Markets LLC
Nature of Complaint: Violation of Lobbyist Ordinance
Complaint Filed: December 8, 2008
Complainant: Anonymous

Dear Mr. Machado,

The City of San Jose Elections Commission ("Commission") has retained our firm pursuant to Chapter 12.04.080 of Title 12 of the San Jose Municipal Code ("Municipal Code") to serve as Evaluator for the above-referenced Complaint. As your letter to the Commission of January 16, 2009 concerns procedural matters related to the Complaint and to our duties as Evaluator, the City Attorney has requested that we provide a response to you.

The Commission's procedures are set forth in Resolution No. 72457 ("the Resolution"). Paragraphs E.4 and F.2 of the Resolution provide that "every" complaint shall be forwarded to the Evaluator and that the Evaluator shall review each complaint to determine if an investigation should be conducted. Our review includes determining compliance with procedural requirements of the Municipal Code and the Resolution as well as applying the standard set forth under paragraph F.2 of the Resolution. Under the Commission's established procedures, the Chair is informed of the filing of a complaint and is advised generally as to the status of pending investigations, but the Commission does not review the complaint until we file a report either recommending against an investigation or upon conclusion of an investigation.

In this instance, we determined that the Complaint alleged specific facts, which if proven, would be a violation of the Municipal Code. We also determined that the Complaint substantially complied with the applicable procedural requirements. Accordingly, we have commenced an investigation and anticipate filing a report of our findings with the Commission.

As you note, the Complaint was filed "anonymously" in that the name of the complainant was not provided. As neither the Municipal Code, nor the Resolution require a complainant to have personal knowledge of the facts purporting to underlie the complaint, the identity of the complainant typically does not impact the decision as to whether an investigation is warranted.¹ Rather, the filing of an anonymous complaint raises the question of whether an adequate

¹ For example, any person could file this same complaint, listing themselves as the complainant. Because, as noted above, the Complaint meets the substantive requirement for conduct of an investigation, an investigation would be required; thus, the anonymity of the complainant, in and of itself, is insufficient reason to forego an investigation.

investigation can be conducted. Consequently, as part of our evaluation we consider the extent to which the complainant appears to have personal, and/or exclusive, knowledge of facts relevant to the complaint that could impede the investigation or cause the investigation to be incomplete because a key witness - the complainant - could not be questioned. Similarly, we would consider the likelihood that the opportunity to evaluate the credibility of the complainant is a necessary element in resolving disputed evidence. To the extent either of these issues is raised, the next step would be to determine whether "good cause" for anonymity of the complainant exists such that protection of the identity of the complainant outweighs any potential prejudice to the impartiality of the investigation or the parties to the matter.

In this instance, the nature of the allegations indicate the identity of the complainant is not essential to a complete investigation that is fair and impartial. The Complaint alleges no violation that appears to depend upon the personal or exclusive knowledge of the complainant; in fact, the allegations are premised largely on objective facts ascertainable from public records and third-party interviews. We do not foresee any circumstance where obtaining information directly from the complainant would be critical to this investigation. Although the "motive" behind the filing of a complaint may relate to the credibility of a witness who purports to have personal knowledge of facts relevant to the complaint, that is not the case here. In sum, the identity of the complainant in this matter is not essential to conducting the investigation and to providing the Commission with a complete factual record for consideration of the merits of the Complaint.

As our evaluation concludes that an investigation is warranted, your proposals concerning the Commission's procedures can be addressed to the Commission in conjunction with its review of our report in this matter, or separately, as provided for under the Municipal Code. Likewise, the issue posed by the question in the first part of your letter concerning the identity of the complainant can be addressed to the Commission at the time it considers the report in this matter.²

Let me know if you have any questions concerning the foregoing.

Very truly yours,



M. D. Moye

cc: San Jose City Attorney
San Jose City Clerk
Chair, San Jose Elections Commission

² Paragraph E.6 of the Resolution provides that "[t]he Evaluator and the Commission may consider the anonymous nature of the complaint, and the reasons given for anonymity in their considerations of such complaint."

EXHIBIT F (2)

Memorandum

TO: San Jose Elections Commission
FROM: Hanson Bridgett, LLP
DATE: April 7, 2009
RE: Supplemental Information Report

I. INTRODUCTION

Pursuant to a complaint filed on December 8, 2008 ("Complaint"), we have commenced an investigation to determine whether John McEnery IV, Tom McEnery, Urban Markets, LLC (collectively "Respondents") violated Title 12 of the San Jose City Municipal Code ("Municipal Code") by failing to register as lobbyist according to the timelines set forth in the Municipal Code and/or failing to disclose contacts with City Officials as required by the Municipal Code.

The Complaint in this matter indicated the complainant was "Anonymous."¹ In our initial evaluation of the Complaint we determined that an investigation was warranted and that the anonymous filing would not interfere with conducting a fair, complete and impartial investigation. After commencing the investigation, the Respondents raised the issue of whether "good cause" exists for the anonymous filing. In a letter to counsel for Respondents on January 22, 2009 ("January 22 letter," a copy of which is attached to the Agenda) we explained the procedure for evaluating the complaint and resolving the question of due process concerns in light of the anonymous filing.

In recent correspondence to the Commission on March 19, 2009 ("the March 19 letter"), Ken Machado, counsel for the Respondents, requested that the Commission "rule upon whether or not good cause for anonymity has been shown." Mr. Machado advises that "[i]f it is then determined that there was not good cause shown for the anonymous filing, then following its own rules, the matter should be dismissed." Mr. Machado also states "[w]e think that Resolution 72547, and specifically paragraph E(6), makes it the commission's [sic] job" to determine good cause for anonymity. Mr. Machado clarifies that it is his view that the "good cause" finding should be made before the complaint is sent to the Evaluator. Mr. Machado describes the referral of the complaint to the Evaluator as "step number two" in the processing of complaints..

The purpose of this supplemental information report is to address issues related to complaints filed anonymously and the impact, if any, on the conduct of an investigation of such complaints. The following questions and accompanying discussion, premised on the requests

¹ Although it appeared that the intent was to file the Complaint anonymously, the Complaint lists the McManis Law Firm under the section for address and other contact information for the complainant. Mr. McManis has advised the Commission that his firm represents the individual responsible for the Complaint, but the identity of the complainant has not been disclosed.

set forth in the March 19 letter, are relevant to determining both the procedures to be followed by the Evaluator for handling complaints generally and the specific issues in the pending Complaint:

- Is it the role of the Commission to determine “good cause” for an anonymous filing before a complaint is referred to the Evaluator?
- If a complainant gives reasons for seeking anonymity, is the “good cause” standard satisfied for the purposes of initiating an investigation, even if those reasons are subject to dispute?
- If a complainant fails to give reasons for seeking anonymity or such reasons are determined to be insufficient, under what circumstances should a Complaint be dismissed?
- Was the “good cause” standard satisfied in this case?

II. EXECUTIVE SUMMARY

Is it the role of the Commission to determine “good cause” for an anonymous filing before a complaint is referred to the Evaluator?

No, see Sections III.A and III.B,2, below. The Resolution expressly provides that the Evaluator shall review the complaint and determine whether an investigation is warranted. Logically, this provision of the Resolution encompasses determination of substantive and procedural requirements set forth in the Resolution. The Resolution specifically permits the Evaluator to determine whether a complaint satisfies such requirements by empowering the Evaluator to initiate an investigation.

The Resolution has no provision requiring the Commission to determine the need for an investigation or the adequacy of a complaint except in its review of the report and recommendations submitted by the Evaluator. The Resolution specifically limits disclosure of the complaint and the investigative file before a report is presented to the Commission. Consequently, this express provision of the Resolution would appear to preclude the Commission reviewing a complaint, before it is referred to the Evaluator, for the purpose of determining “good cause.”

If a complainant gives reasons for seeking anonymity, is the “good cause” standard satisfied for the purposes of initiating an investigation, even if those reasons are subject to dispute?

Generally yes, as questions concerning the “adequacy” of the good cause can be addressed in conjunction with consideration of the merits of the complaint. See Section III.B, below. The Resolution provides no special standard for determining “good cause” and the term is generally defined as subject to the context in which it is used. The plain language of the Resolution requires no more than a reason to support the anonymous filing.

If the “good cause” is challenged, the language of the Resolution anticipates that issue being addressed when a report and recommendations are submitted to the Commission. The Resolution does not specify that such consideration goes to determination of the need for or appropriateness of an investigation (see next section). And, as noted above, the Resolution does not define a particular role for the Commission when a complaint is first filed or before receiving the Evaluator’s report. Consequently, the Resolution appears to provide that

Memorandum To:
San Jose Elections Commission
April 7, 2009
Page 3

challenges to the "adequacy" of the "good cause" is an issue to be determined in conjunction with consideration of the merits of the complaint.

If a complainant fails to give reasons for seeking anonymity or such reasons are determined to be insufficient, under what circumstances should a Complaint be dismissed?

See Sections III.B and III.C, below. A determination that the "good cause" provision has not been satisfied is a factor to consider in determining whether an investigation is warranted, but that fact alone would not appear to preclude initiating an investigation. Typically a failure to comply with an administrative requirement or a defect in compliance is viewed as either "jurisdictional" (i.e., one that deprives the Commission of authority to consider and to act on the complaint) or "procedural" (i.e., one that may be excused subject to due process considerations). The Resolution appears to treat it as a procedural defect.

The decision regarding dismissing the complaint or proceeding with an investigation is subject to the requirements of paragraphs F.2, F.3 and F.4. However, even if the complaint is proper for investigation under one of those sections, the anonymous filing raises the question of due process in the conduct of an investigation and that issue would have to be resolved before an investigation is commenced. See, January 22 letter.

Was the "good cause" standard satisfied in this case?

Yes, see Section III.C, below. The complainant cites "fear of retaliation" as the reason for the anonymous filing. While there may be some dispute as to the credibility or reasonableness of this assertion, "good cause" in this context is by its nature a subjective standard. Thus, any challenge to the reasonableness of the complainant's belief/perception must take into account the complainant's reasons for that belief. Practically speaking, inquiring into the state of mind of the complainant on this issue would require waiver of the anonymity that the Resolution permits. As there is no basis to declare the complainant's belief/perception unreasonable absent such inquiry there is insufficient basis to sustain the allegation of inadequacy at this point. Because the complaint does in fact meet the standard for conducting an investigation, the issue of good cause can be addressed in considering the report and recommendations on the complaint.

As this scenario potentially poses a risk that a respondent may be prejudiced by the anonymous filing or the purposes of the Municipal Code frustrated (because the complainant is in fact using anonymity for improper motives), the proper consideration is whether investigating the complaint can be accomplished without prejudice or violation of interested parties' rights to due process. This issue was addressed in our January 22 letter.

III. DISCUSSION

A. There Are Procedures Under Resolution 72547 and A Past Practice For Determining Whether An Investigation Should Be Conducted.

1. Procedures under the Resolution vest the Evaluator with authority to conduct the initial review of a complaint and the determination if an investigation is warranted.

Resolution 72547, which implements Title 12 of the Municipal Code, provides that "all complaints which are filed" shall be forwarded to the Evaluator. (See, Paragraph E.4)² The Resolution provides further at paragraph F.2:

The Evaluator shall review every complaint to determine whether sufficient cause exists to conduct a preliminary investigation. Sufficient cause shall exist when a complaint identifies specific facts, which if proven, would be a violation of the Municipal Code. No investigation shall be conducted if the complaint does not contain sufficient facts to demonstrate a potential violation, if the facts would not amount to a violation of law or if identical allegations have already been addressed in a prior investigation.

Paragraph E.6 provides that a Complaint may be filed anonymously and that the "complainant must state good cause for anonymity." That section of the regulation also provides that "[t]he Evaluator and the Commission may consider the anonymous nature of the complaint, and the reasons given for anonymity in their considerations of such complaint."

Paragraph F.5 sets forth the procedure to be followed if "the Complaint, on its face does not warrant a preliminary investigation." Specifically, "the Evaluator shall advise the Chair [and] the Chair will schedule the Evaluator's report and recommendations." The Commission may direct that an investigation be conducted if it disagrees with the Evaluator's recommendation. (Paragraph F.6) With the exception of two other situations that are not germane here, the Resolution sets forth no other standard or procedure for not conducting an investigation and dismissing a Complaint.³

2. The past practice for initiating an investigation has relied upon the Evaluator to review the complaint and determine compliance with the standards set forth in the Resolution as well as general principles of due process.

Since 2002 every complaint filed alleging a violation of Title 12 of the Municipal Code has been filed with the City Clerk and the City Clerk has forwarded the complaint to the Evaluator.⁴ The Evaluator has reviewed each complaint in accordance with the requirements of

² A proposed change to this section of the Resolution provides that the Commission members will be notified "that a complaint has been filed, the date the complaint was filed and the general nature of the complaint." The Resolution does not provide for or require that the complaint be distributed to Commission members.

³ Paragraph F.3 provides that alleged violations occurring more than four years prior to the date of filing "will not be considered by the Commission." Paragraph F.4 provides that the Commission "shall take no further action" on a complaint identifying as a Respondent a City employee appointed by a City Council Appointee.

⁴ Typically, the Chair has been informed that a complaint was pending and was being investigated.

the Resolution and has initiated an investigation or reported to the Commission in writing that an investigation was not warranted, with a recommendation that the matter be closed.⁵ Upon commencement of an investigation, the Evaluator typically coordinates procedural matters (i.e., reports as to status of investigation, scheduling hearings and appearances before the Commission) as provided for under paragraph F.9 of the Resolution. However, under this section the Commission members are not entitled to review the complaint or investigative materials before receiving the Evaluator's report. Paragraph F.9 provides that:

No complaint, investigative file or information contained therein, shall be disclosed to any person other than a Respondent or Respondent's representative, the City Attorney, the District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to the presentation of the Report and Recommendations to the Commission. The Evaluator, however, may communicate with the Chair of the Commission on procedural matters relating to a pending complaint during the course of the investigation.

The Evaluator has also reviewed complaints that have been filed anonymously.⁶ As noted in a letter to Mr. Machado on January 22, 2009, the primary focus of the review of the anonymity issue is to insure that if an investigation is warranted, it can be conducted fairly and completely. Specifically, the consideration is whether the inability to question the complainant on key issues will result in an incomplete investigation or interfere with the respondent's opportunity to participate fully in the investigation.⁷

Practical considerations have guided the Evaluator's analysis of requirements under the Resolution. For example, because the Municipal Code anticipates lay persons filing complaints, a specific form as to allegations or statement of claims has not been required. Rather, complaints are reviewed to determine the specific facts alleged and whether those facts if proven warrant an investigation. On occasion, where the factual allegations or specified violations are unclear, the Evaluator has sought clarification from the complainant and/or considered other potential violations not specified in the complaint but implicated by the factual allegations.

B. The Resolution Does Not Define "Good Cause" and Typically the Term Is Subject to Interpretation In the Context In Which It Is Used.

Neither the Resolution nor the Municipal Code define "good cause" in the context of anonymous filing. The term "good cause" appears at several places in the Municipal Code, but it is not generally defined. In some instances where the term is used, the language of the section describes what is meant by "good cause." For example:

⁵ The Commission has approved such requests by the Evaluator.

⁶ At the March 11, 2009, Commission meeting, the Evaluator noted one complaint that had been filed anonymously. There is in fact only one other occasion where an investigation was conducted and a report was filed where the identity of the complainant was unknown. There is, however, another occasion where a complaint was filed by several complainants, some of whom were identified as "Anonymous" and in one instance a complaint was intended for anonymous filing but the complainant identified himself.

⁷ Even though the anonymity of the complainant may not impede an investigation, the Evaluator will not initiate an investigation if a complaint does not meet the standard under paragraph F.2. Thus, the issue of anonymity is typically not addressed unless an investigation is warranted in the first instance.

- In Section 7.30.330: "The administrator may grant . . . a fifteen (15) day extension for good cause such as evidence of a good faith effort to comply and circumstances beyond the control of the dog owner/guardian . . ."
- In Section 17.20.1080: "The city manager may, on the basis of a violator's good faith efforts to correct a condition of noncompliance or for other good cause shown . . ."
- In Section 17.78.280: "The fire chief may extend this time at the request of a responsible person for a maximum of two years if the fire chief makes a written determination that hardship, unique circumstances, or other good cause exists."
- In Section 25.08.730: "Unless director determines that, due to the size of the ground transportation provider's fleet or for other good cause, such requirement creates an undue hardship . . ."

"Good cause" is generally defined as a "legally sufficient reason why a request should be granted or an action excused." (*Blacks' Law Dictionary*, 8th Ed.) Based on this definition and the manner in which the term is used in other sections of the Municipal Code, the definition appears to be a relative one, dependent upon the circumstances of each individual case.

1. The Resolution appears to permit a complaint to be filed anonymously for a variety of reasons.

The Resolution permits a complaint to be filed anonymously. Past experience shows anonymous filings to be the exception, rather than the rule. In this instance the question concerns grounds to excuse a complainant from identifying themselves.

As indicated in the discussion at the March 11, 2009, meeting, a key consideration for this provision appears to have been protection for a City employee fearful of retaliation as the result of filing a complaint alleging a violation of the Municipal Code. Notwithstanding this history, the Resolution does not limit "good cause" to this particular circumstance.

It would seem that there are circumstances for filing a complaint anonymously similar to the employee fearful of job retaliation. For example, a citizen may fear retribution from a political figure, a citizen (not an employee) may be concerned that a complaint against a city official may adversely affect business that they conduct with the City, and it is possible that given the publicity that is likely to surround this type of complaint, a citizen may wish to maintain privacy for reasons other than fear of retribution or retaliation. In a prior complaint (referenced in footnote 6), the complainant alleged that a former employer had engaged in conduct in violation of the Municipal Code. Although the complainant's employment had ended, he nonetheless requested anonymity, wishing to raise the issue, but not wanting to be associated with the complaint. As the complaint met the requirements of paragraph F.2 an investigation was initiated and the allegations were partially sustained. However, if an investigation had been abandoned because the complainant's "fear of retaliation" was not based on job loss, the violation would not have been addressed.

In the absence of specifically limiting language in the Resolution it would appear reasonable to interpret "good cause" as it is used in the Resolution to encompass any of the scenarios noted above. The obvious purposes behind permitting an anonymous filing are encouraging enforcement of Title 12 of the Municipal Code and in so doing protecting the complainant from actual or perceived retaliation or similar adverse consequences.

2. "Good cause" is peculiar to the person filing the complaint.

Significant to the example upon which the anonymity provision is based, is the notion that fear of job retaliation is largely a subjective consideration.⁸ Though there are circumstances where the fear of job retaliation may appear obvious and, thus, objectively determinable, in most circumstances the desire to maintain anonymity will be peculiar to the individual complainant and based on subtle or indirect concerns. Similarly, privacy concerns or fear of other types of retribution is peculiar to the complainant. As the Resolution does not specify an objective standard for determining "good cause," the context in which it appears indicates a subjective standard is to be applied.

The complaint states "fear of retaliation" as the reason for requesting anonymity. On its face "fear of retaliation" is typically the scenario under which an anonymous act might be pursued. While there are any number of other reasons anonymity might be sought, "fear of retaliation" is not in and of itself unreasonable in this circumstance. "Good cause" as it is used in the Resolution should require no more. Any question of whether the complainant's reasons are true, are believable, are reasonable, are the only reasons - or any similar challenges - can only be addressed by the complainant.

It seems that it would be inconsistent to require a particular statement of such cause given the general wording of the Resolution. Furthermore, it seems that the general wording recognizes the fact that from a practical standpoint it is not clear how a challenge to the statement of cause would be resolved. Any inquiry into the reasons for the anonymous filing must fairly take into account the complainant's perspective. However, because the complainant is "anonymous" he/she cannot appear at a hearing to explain or defend his/her reasons without waiving the right to remain anonymous. As this course does not appear to be consistent with the intent reflected in the Resolution to permit an anonymous filing, any statement setting forth a perceived need for anonymity should satisfy the requirements of the Resolution.

Although this approach leaves open the possibility that a complainant might seek to file a complaint anonymously citing reasons that are without merit, there are at least three significant safeguards for the integrity of the process. First, if the complaint fails to allege facts that are sufficient to constitute a violation of the Municipal Code, no investigation will be conducted under the procedures currently in place. Second, even if the complaint alleges a violation warranting investigation, an investigation would not be conducted if it would result in prejudice to the respondent (discussed in our letter of January 22, 2009). Finally, there is adequate opportunity to assess the importance (or lack of importance) of the identity of the complainant to the merits of the complaint as part of the consideration of whether the allegations are proven,

⁸ A "subjective" standard is a legal standard that is based on conduct "peculiar to a particular person and based on the person's individual views and experiences." (*Black's Law Dictionary*, 8th Ed.)

the seriousness of any proven violation, and/or what corrective action is warranted if a violation is proven. This approach appears to be consistent with both paragraphs E.6 and F.9.⁹

C. The Resolution Has No Specific Provision To Dismiss A Complaint Because "Good Cause" Has Not Been Shown.

Ultimately the Municipal Code and Resolution seek to insure that potential violations of Title 12 are investigated and its requirements fairly enforced. Overlooking or ignoring evidence of a potential violation as the result of a *possible* procedural deficiency, which deficiency does not go to the substance or merits of the allegations, appears to be counter to the intent of the ordinance:

- The Resolution sets forth specific circumstances under which an investigation is not warranted or investigation should not be conducted and lack of "good cause" for an anonymous filing or a complaint filed with "improper motive" are not one of those circumstances.

- Although the Resolution requires "good cause," the Resolution is silent as to what happens if that requirement is not met. On the other hand, there are several requirements for a complaint that are similar in nature to the "good cause" requirement and the Resolution specifically states in which of those instances an investigation should not be conducted and the Complaint dismissed, because the requirement was not satisfied. Thus, the overall scheme of the Resolution indicates dismissal of a Complaint is not contemplated if the sole deficiency is failure to state "good cause."

The question of whether lack of "good cause" for an anonymous filing is a jurisdictional defect (i.e., one that deprives the Commission of authority to consider and to act on the complaint) or "procedural" (i.e., one that may be excused subject to due process considerations) is not addressed directly by the language of the Resolution. Two factors suggest the Resolution treats the "good cause" requirement as a procedural issue. First, nothing in the Resolution requires dismissal of an anonymous complaint for failure to state "good cause" for the anonymous filing and the Resolution is silent as to a particular course of action if the "good cause" requirement is not satisfied. Second, the Resolution specifically identifies three circumstances/defects which if present preclude the Commission from considering and acting upon a complaint: paragraphs F.2, F.3, and F.4. As lack of "good cause" for an anonymous filing is not one of these enumerated circumstances, it would appear that this type of defect was not intended to be jurisdictional.

⁹ This approach is also consistent with past practice. We note that in the past there have been many more instances in which a complaint has been filed - by a named complainant - under circumstances that raised questions, as to the "motive" for filing the complaint. For example, the late filing of a complaint just before an election or a complaint filed by candidate A (or his/her supporters) against candidate B immediately after candidate B (or his/her supporters) files a complaint against candidate A. In these situations, provided the complaint met the standard of paragraph F.2, the Commission has addressed the issue of "motive," if at all, in its consideration of the report and recommendations. To the extent that the Resolution is construed to require the Commission to determine whether an improper "motive" underlies an anonymous filing before an investigation is initiated, it would appear that these other circumstances, where an improper motive is also alleged, would also require a similar pre-determination. The result is the requirement for every complainant to justify or to explain his/her reasons for filing a complaint, a requirement that does not appear in the Resolution.

EXHIBIT G

City of San Jose
200 E. Santa Clara, St
San Jose, Ca. 95113

Chalm

<input type="checkbox"/> Not Deliverable as Addressed	
<input type="checkbox"/> Unable To Forward	
<input checked="" type="checkbox"/> Insufficient Address	
<input type="checkbox"/> Moved, left no address	
<input type="checkbox"/> Unclear <input type="checkbox"/> Refused	
<input type="checkbox"/> Attempted - Not Known	
<input type="checkbox"/> No Such Street <input type="checkbox"/> Number	
<input type="checkbox"/> Vacant <input type="checkbox"/> Illegible	
<input type="checkbox"/> No Mail Receipt	
<input type="checkbox"/> Box Closed - No Order	
<input type="checkbox"/> Returned For Better Address	
<input type="checkbox"/> Postage Due _____	

San Jose Transit Village Partners
Att: David Neal
King&Dobbins
San Jose, CA

1A

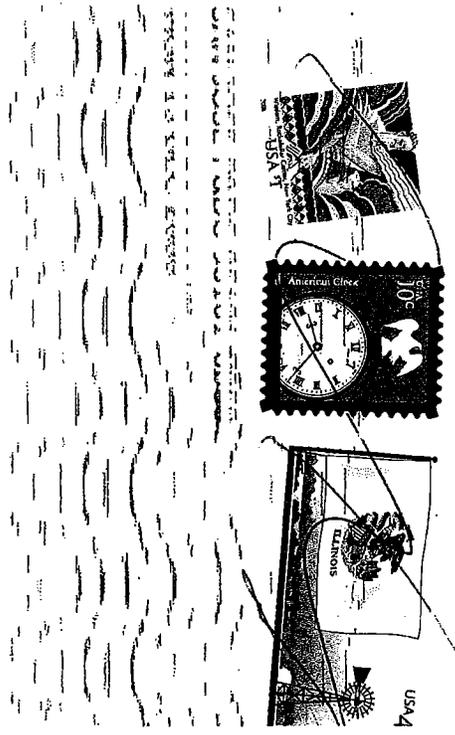


EXHIBIT H

POSTNET barcode



USA 42c
ILLINOIS

Neighbor of Tom McEnery
San Jose, Ca. 95110

EXHIBIT I

Form with Errors

CITY OF SAN JOSE LOBBYIST REPORT

SEE INSTRUCTIONS ON REVERSE
File Original with the City Clerk

Due in Clerk's Ofc by

RECEIVED
San José City Clerk
2008 JAN 15 P 4:37
For Official Use Only



Page 1 of 6

- This is a Registration Report.
- This is a Quarterly Report covering the period:
 - January 1-March 31, _____ (Due by Apr 15th)
 - April 1-June 30, _____ (Due by Jul 15th)
 - July 1-September 30, _____ (Due by Oct 15th)
 - October 1-December 31, 2007 (Due by Jan 15th)
- This is an AMENDMENT to the Lobbyist Report filed: _____
- This is a TERMINATION Report effective as of: _____

NAME OF LOBBYIST: (Q1'07) John Smith
(Q2'07) Smith Consulting, LLC
(Q1'08) J. S. Smith, Inc.

1. Be consistent
2. Reports filed / viewed by "Lobbyist Name"
3. Note if: "Previously reported as..."

BUSINESS ADDRESS: (Number and Street) (City) (State) (Zip Code)
1234 Fisher Street
Suite 300
San José, CA 95125

TELEPHONE NUMBER:
(415) 555-1212

FAX NUMBER:
(415) 555-1213

MAILING ADDRESS: (if different than above)

- List Filer email (minimum) up to all entity lobbyists
- Email is primary mode of program communication
- Entry point to our lobbyist distribution list
- May list related business partners, attorney, other

E-MAIL:
cjones@smithconsulting.com
mblanc@smithconsulting.com
tjerry@smithconsulting.com

REPORT FOR EACH CATEGORY OF LOBBYIST (Check all that apply)

CONTRACT LOBBYIST

Specify how the Contract Lobbyist is organized:

- Sole Proprietorship
- Partnership
- Non-Profit Corporation
- For-Profit Corporation
- Other _____

Name of each person working for the Contract Lobbyist that is engaged in lobbying activity: _____

- Individual
- No one lobbied this quarter
- Everybody in my company
- Blank

OK Charles Jones, Malcom Blanc, Tom N. Jerry

If the Lobbyist is a sole proprietor or partnership of fewer than five (5) persons, state the name(s) of the sole proprietor or persons with an ownership interest in the business: _____

If the Lobbyist is a corporation (for-profit or non-profit), state the names of Officers and Agent for Service of Process: _____

OK Charles Jones (President), Malcom Blanc (Vice President), Tom N. Jerry (Agent for Service of Process)

and the name of any other officers listed with the Secretary of State

IN-HOUSE LOBBYIST

Specify how the In-House Lobbyist is organized:

- Sole Proprietorship
- Partnership
- Non-Profit Corporation
- For-Profit Corporation
- Other _____

Name of each owner, compensated officer, or compensated employee engaged in lobbying activity on behalf of the In-House Lobbyist: _____

OK Charles Jones, Malcom Blanc

If the Lobbyist is a sole proprietor or partnership of fewer than five (5) persons, state the name(s) of the sole proprietor or persons with an ownership interest in the business: _____

If the Lobbyist is a corporation (for-profit or non-profit), state the names of Officers and Agent for Service of Process: _____

OK Charles Jones (President), Malcom Blanc (Vice President), Tom N. Jerry (Agent for Service of Process)

and the name of any other officers listed with the Secretary of State

EXPENDITURE LOBBYIST

Specify how the Expenditure Lobbyist is organized:

- Sole Proprietorship
- Partnership
- Non-Profit Corporation
- For-Profit Corporation
- Other _____

Name of each person working for the Expenditure Lobbyist that is engaged in lobbying activity (if applicable): _____

If the Lobbyist is a sole proprietor or partnership of fewer than five (5) persons, state the name(s) of the sole proprietor or persons with an ownership interest in the business: _____

If the Lobbyist is a corporation (for-profit or non-profit), state the names of Officers and Agent for Service of Process: _____

This page may be duplicated. If more space is needed, check box and fill out a duplicate continuation sheet.

SECTION I. CONTRACT LOBBYIST CLIENT INFORMATION

CLIENT INFORMATION

Client Name, Address and Telephone Number

ACME, Inc.

Need Address, Telephone #

Effective Date

X See Prev. Report

X On-File

Describe the nature and purpose of the Client's business.

OK Developer of mixed use residential and commercial projects

Need DATE

X Real Estate

THE LEGISLATIVE OR ADMINISTRATIVE ACTION(S) THE CONTRACT LOBBYIST SEEKS TO INFLUENCE

Describe in detail the legislative or administrative action(s) the Contract Lobbyist was retained to influence and the outcome sought.

1. X Various general issues related to real estate

2. OK Obtain a Planned Development zoning and permits from the City for real property located on the corner of Wile E. Drive and Albuquerque Avenue; To develop a mixed use residential and commercial complex. (PDC07-00)

CONTACT INFORMATION

City Official Contacted: Mayor Y

Individual Who Made Contact: Charles Jones

Identify Action: X Meetings...phone calls...or emails (Reference permits from (3) above)

Date(s) of Contact: List specific dates on this line

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted: Mr. Planning

Individual Who Made Contact: Malcom Blanc

Identify Action:

Date(s) of Contact:

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted: Individual Who Made Contact:

Identify Action:

Date(s) of Contact:

Contacts (1) (2-5) (6-10) (11 or more)

COMPENSATION

A disclosure (Form D) was filed with the Office of the City Clerk regarding all contingent compensation arrangements with this Client

by: Charles Jones (Name of Filer)

One box below must be checked

The total compensation promised or received from the Client for lobbyist services: (during preceding quarter)

Compensation ranges: \$0, \$1-\$500, \$1,001-\$10,000, \$100,001-\$200,000, \$300,001-\$400,000, \$501-\$1,000, \$10,001-\$100,000, \$200,001-\$300,000, Over \$400,001

This page may be duplicated. If more space is needed, check box and fill out a duplicate continuation sheet.

SECTION I. CONTRACT LOBBYIST CLIENT INFORMATION

CLIENT INFORMATION

Client Name, Address and Telephone Number

Roadrunner, LLC

Need Address, Telephone #

Effective Date

X See Prev. Report

X On-File

Describe the nature and purpose of the Client's business.

OK Developer of mixed use residential and commercial projects

Need DATE

X Real Estate

THE LEGISLATIVE OR ADMINISTRATIVE ACTION(S) THE CONTRACT LOBBYIST SEEKS TO INFLUENCE

Describe in detail the legislative or administrative action(s) the Contract Lobbyist was retained to influence and the outcome sought.

X Various general issues related to real estate

OK Obtain a Planned Development zoning and permits from the City for real property located on the corner of Wile E. Drive and Albuquerque Avenue; To develop a mixed use residential and commercial complex. (PDC07-00)

CONTACT INFORMATION

City Official Contacted: Mayor Y

Individual Who Made Contact: Charles Jones

Identify Action: OK (Reference permits from (3))

Date(s) of Contact: OK 10/12/07 11/17/07 11/28/07 12/10/07

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted: Mr. Planning

Individual Who Made Contact: Malcom Blanc

Identify Action:

Date(s) of Contact:

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted:

Individual Who Made Contact:

Identify Action:

Date(s) of Contact:

Contacts (1) (2-5) (6-10) (11 or more)

COMPENSATION

A disclosure (Form D) was filed with the Office of the City Clerk regarding all contingent compensation arrangements with this Client

by: Charles Jones (Name of Filer)

The total compensation promised or received from the Client for lobbyist services:

0 \$1-\$500 \$1,001-\$10,000 \$100,001-\$200,000 \$300,001-\$400,000 \$501-\$1,000 \$10,001-\$100,000 OK \$200,001-\$300,000 Over \$400,001

This page may be duplicated. If more space is needed, check box and fill out a duplicate continuation sheet.

SECTION II. IN-HOUSE LOBBYIST

THE NATURE OF THE BUSINESS, ORGANIZATION OR ASSOCIATION

Describe the nature and purpose of the business, organization or association.

Development

Assist developers through the development process including [list actual services]

THE LEGISLATIVE OR ADMINISTRATIVE ACTION(S) THE IN-HOUSE LOBBYIST SEEKS TO INFLUENCE

Describe in detail the legislative or administrative action(s) the In-House Lobbyist seeks to influence and the outcome sought.

1. **Development Issues**

2. **Construction Issues**

3. **General Plan amendment to provide for higher density developments**

4.

CONTACT INFORMATION

City Official Contacted: Mayor Y Individual Who Made Contact: Malcom Blanc

Identify Action: **General Plan development referenced above**

Date(s) of Contact: **10/3/07 10/14/07 11/5/07 11/16/07 12/1/07 12/13/07**

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted: Mr. Planning Director Individual Who Made Contact: Malcom Blanc

Identify Action: **General Plan development referenced above**

Date(s) of Contact: **2/10/2008 3/15/2008 3/28/2008**

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted: Thomas Council Individual Who Made Contact: Charles Jones

Identify Action: **General Plan development referenced above**

Date(s) of Contact: **2/9/2008 3/2/2008 3/17/2008 3/28/2008**

Contacts (1) (2-5) (6-10) (11 or more)

City Official Contacted: _____ Individual Who Made Contact: _____

Identify Action: _____

Date(s) of Contact: _____

Contacts (1) (2-5) (6-10) (11 or more)

CONTINGENT COMPENSATION DISCLOSURE

A disclosure (Form D) was filed with the Office of the City Clerk regarding all contingent compensation arrangements with owners, officers and employees engaged in lobbying activity on its behalf. This disclosure was filed by Charles Jones (Name of Filer)

This page may be duplicated. If more space is needed, check box and fill out a duplicate continuation sheet.

IV. ADDITIONAL DISCLOSURES

have reviewed the schedules and forms and I have nothing to report.

Attached to this Report is/are the following Schedule(s) or Form(s): (check all that apply)

Schedule A – Campaign/Officeholder Contributions, Independent Expenditure, Fundraising, Donation

Schedule B – Payment for Consultant or Other Services

? Schedule C – Activity Expenses

Form D – Lobbyist Disclosure of Contingent Compensation (May File Separately)

Form E – Lobbyist Annual Registration and Client Renewal

Form F – Contract Lobbyist Client Notice of Termination (May File Separately)

Form G – Contract Lobbyist Notice of New Client (May File Separately)

V. FEES DUE

Lobbyist Registration Fee (January 1 – June 29) (\$350) Initial Registration fees here ↑ \$ _____

Pro -Rated Registration Fee (June 30 – December 31) (\$175) ↓ \$ _____

Contract Lobbyist Client Fee (\$60) x Number of Clients (_____) ↓ \$ _____

Form E: Annual Lobbyist Registration Renewal (\$350) Annual Renewal fees here ↑ \$ 350.00

Form E: Annual Contract Lobbyist Client Fee Renewal (\$60) x Number of Clients (2) ↓ \$ 120.00

Total Payment Due With Report \$ 470.00

Note: Consult with the Office of the City Clerk to determine if you are subject to late fees in addition to the payment due above.

VERIFICATION

I certify that I have been authorized by the Lobbyist identified above to make this verification. I have reviewed the requirements of the provisions of the San Jose Municipal Code (Chapter 12.12). I certify under penalty of perjury under the laws of the State of California that I have reviewed this Lobbyist Report and to the best of my knowledge the information contained herein is true and complete.

Print Name _____

Title _____

Signature _____

Executed On _____

(month, day, year)

No modifications may be made to the Verification section. Reports will be incomplete if verification is modified.

EXHIBIT J

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

MEMORANDUM

TO: HONORABLE MAYOR, CITY COUNCIL, AND REDEVELOPMENT AGENCY	FROM: HARRY S. MAVROGENES DEBRA FIGONE
SUBJECT: SEE BELOW	DATE: FEBRUARY 10, 2009

SUBJECT: BUILDING REHABILITATION AND LOAN AGREEMENT WITH URBAN MARKETS, LLC, FOR IMPROVEMENTS RELATED TO THE SAN PEDRO SQUARE URBAN MARKET

RECOMMENDATION

It is recommended that:

- (a) The Redevelopment Agency Board approve a Building Rehabilitation and Loan Agreement (Agreement) with Urban Markets, LLC (Developer), in an amount not to exceed \$5,000,000 for private improvements and \$1,000,000 for off-site public improvements related to the San Pedro Square Urban Market generally located in the vicinity of 87 North San Pedro and 196 West Saint John Street and authorize the Executive Director to negotiate and execute all documents necessary to implement the transaction described in the Agreement.
- (b) The Agency Board adopt resolutions approving an adjustment to the FY 2008-09 Adopted Capital Budget and Two-Year Spending Plan shifting \$4,000,000 from FY 2009-2010 to FY 2008-2009 for the San Pedro Square Urban Market project line in the Merged Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolutions as detailed in Attachment A.
- (c) The City Council direct the City Attorney and City Administration to draft appropriate ordinances and/or documents for Phase 1 of the Project to allow:
 - (1) Revocable license to use City streets and rights of way for kiosks and carts for the Project;
 - (2) Master vendor permit for multiple vendor sites within the Project;

- (3) Renaming of the Market Street Garage to reflect the new project;
and,
 - (4) Joint use of the Peralta Adobe and Fallon House properties by
History San Jose and Developer.
- (d) The Agency Board and City Council provide direction to staff to discuss with the Developer the alternatives for the future acquisition and/or use of the parking lot located directly west of the Fallon House ("West Parking Lot") and the property referred to as the North Garage Space.

OUTCOME

Approval of the Agreement will assist in the creation of an urban public market centered on the historic Peralta Adobe and Fallon House in the San Pedro Square area of Downtown San Jose.

BACKGROUND

On June 24, 2008, the City Council and Redevelopment Agency Board approved an Exclusive Negotiations Agreement (ENA) with Urban Markets, LLC, for a planned urban market in the San Pedro Square District of the Downtown core, in the Strong Neighborhood Initiative Project Area. (Site map attached) Urban markets have become successful downtown revitalization tools in many central cities in North America including: the Ferry Building in San Francisco, Rockridge Market Hall in Oakland, Emerybay Public Market in Emeryville, The Grove and Chapman Market in Los Angeles, and the Granville Island Marketplace in Vancouver, BC.

On November 7, 2008, staff provided the Agency Board with an Information memorandum updating the Board on the status of negotiations with the Developer and providing the preliminary fiscal analysis requested by the Board. On December 9, 2008, staff provided the Agency Board with a memorandum outlining and discussing the proposed business terms. After deliberation and public comment the Board approved the proposed business terms.

Additionally, in a December 2, 2008, memorandum, Mayor Reed and Councilmembers Liccardo, Pyle and Cortese recommended that staff work with area stakeholders to devise a Peralta Action Plan to identify other potential projects and methods to stimulate development and revitalization for the northwest portion of the Downtown core, centered on the San Pedro Square area. Agency and City staff have embarked on that process with a public meeting scheduled for

February 19, 2009 to solicit stakeholder input on possible actions which could be implemented to encourage planned development for the area. The area is included in the adopted Strategy 2000 San Jose Greater Downtown Strategy for Development plan dated February 2001. The Peralta Action Plan will attempt to provide action items to advance that strategy. Development of the proposed San Pedro Square Urban Market is a catalyst project giving rise to that larger plan.

On January 20, 2009 the Board conducted a study session on the proposed project. Agency staff presented an outline for the Peralta Action Plan and reviewed business terms for the San Pedro Square Urban Market. The Developer presented the proposed plan and City staff outlined the process and negotiations with the Developer to enable the use and maintenance of City-owned property. Keyser Marston Associates (KMA) described similar projects in the area and reviewed the project financial analysis. After deliberation, the Council and Agency Board directed staff (a) to bring forward for consideration as soon as possible an agreement on the San Pedro Square Urban Market and (b) after obtaining stakeholder input, to present the geographically broader Peralta Action Plan to the City Council/Agency Board for its deliberation in the early part of this year.

ANALYSIS

The Developer is proposing to create an urban market similar to those that have experienced success and played roles in the downtown revitalization of cities such as San Francisco, Oakland, Los Angeles and Vancouver. The Developer entity includes the McEnery family (dba Farmers Union) and Martin Menne, who is affiliated with Barry Swenson Builders. The plan is to expand the successful San Pedro Square entertainment and dining district to the north by renovating and retenanting two existing vacant buildings, adding shop space to the east side of San Pedro Street at the Market Street/San Pedro Square Garage and creating inviting public space around the Peralta Adobe and Fallon House. Future phases may include the development of several new buildings on City-owned land adjacent to the Fallon House and Market Street Garage.

Since the ENA was approved in June 2008, Agency and City staffs have worked with the Developer to refine the project concept, identify issues, develop a marketing concept, and determine the most suitable financial structure. The Agency retained the services of JRDV Architects to develop schematic design concepts for streetscape and other public improvements anticipated as part of the project and to study the options for urban market development to best enhance the

public realm and overall urban design of the district. JRDV has completed its work for the Agency and has since been retained by the Developer to advance schematic design plans for the urban market project.

CITY PROJECT ELEMENTS:

The Developer is proposing to open up the Peralta Adobe plaza with patios from the adjacent buildings spilling out into the plaza. Overall public visibility and accessibility would be improved and programming of the open space with entertainment is envisioned. The City is currently negotiating with the Developer to specify use rights for City property that may be granted in exchange for the Developer being responsible for the cost to maintain the grounds, streets and sidewalks around the Peralta Adobe and Fallon House area. City staff is working with the City Attorney's Office to define what legal documents, agreements, ordinances and other regulatory permits may be required to implement the uses intended in the Agreement.

As part of any agreement for maintenance and operation, such City documents may include obligating the Developer to pay into a sinking fund for capital improvements for the Peralta and Fallon buildings. Municipal Code amendments are necessary to allow the proposed kiosks and control of multiple vendors in the public right-of-way, and other steps may be needed to permit the renaming of the Garage and necessary signage under Municipal Ordinance and Council policies.

Additionally, History San Jose is a party to the discussions to ensure that its ongoing facility and program requirements, including historic tours and school programming, are not only maintained but are enhanced by the project. The City will work with History San Jose and the Developer to negotiate the joint use of the Fallon House and Peralta Adobe properties.

In addition to use of the Peralta Adobe grounds and adjacent sidewalks, the urban market plan includes the construction of retail kiosk shop space attached to the west side of the garage and placing signage on the garage identifying the urban market area. The Agreement is structured to enable the Developer to proceed with the urban market plan while the Developer attempts to obtain certain rights from the City. City staff projects that the negotiations and documentation will be completed and brought to the Council for consideration this spring.

REDEVELOPMENT AGENCY PROJECT ELEMENTS:

The Agreement provides total Agency assistance of up to \$5,000,000 for the project. Of that, up to \$2.5 million is proposed to be in the form of a grant for eligible improvements that include the structural upgrade and historic renovation of the existing vacant buildings at 87 N. San Pedro St and 196 W. St. John St, enhancements in and around the Peralta Adobe plaza and the installation of new retail kiosk shop space attached to the west side of the garage and at the southwest corner of N. San Pedro and W. St. John Streets. The buildings are owned by partnerships under common control with the Owner. The amount of kiosk space to be built in the first phase is dependent upon the cost of renovating the two existing buildings.

The remaining part of the \$5,000,000 is in the form of a loan of up to \$2,500,000 for interior and exterior improvements to the two vacant buildings. The term of the loan is for ten years at 3% simple interest. The loan term and interest-only monthly payments shall commence at the earlier of six months after certificates of occupancy for the two main buildings are issued or three years from the effective date of the Agreement. Lastly, \$1,000,000 is budgeted for off-site public improvements, specifically widening the sidewalk along the west side of the garage.

The Agreement requires the Owner to provide the first \$625,000 in cash equity to cover project costs and the Agency will obtain second position liens on the two existing buildings. Up to \$1,300,000 in Developer equity will be invested to complete the anticipated improvements, from which a developer fee of up to \$450,000 could be payable to the Developer. The Developer's total equity including cash and net value of the properties is approximately \$6,200,000. It is anticipated that upon completion of the private improvements and lease-up, the stabilized cash flow on the properties will enable the Developer to obtain conventional financing when the Agency loan matures in ten years.

As explained in the January 22, 2009 Information Memo from the Executive Director to the Council and Board, in response to a question at the January 20 study session, no Agency funds will be used to pay a developer fee or developer salaries. The Agency's grant and loan funds will be disbursed for "Eligible Grant Improvements" or "Eligible Loan Improvements" respectively, which are defined in the Agreement and specifically exclude Developer fees and salaries. It is typical, however, for a Developer to include a Developer fee in a pro forma. As any investor, they expect a financial reward. In this case, any Developer fee would have to be paid (if at all) from the Developer's own cash contribution to the

project. In other words, the Developer, not the Agency is responsible for contributing all funds necessary to complete the project in excess of the Agency's contributions. A budgeted Developer fee would have to be funded by Developer funds.

A future phase of the urban market is envisioned to include new buildings on the Fallon House parking lot and on the City-owned property on the north end of the garage, which would be available after the future realignment of W. St. John Street. The Developer and City staff anticipate entering into agreements outlining the terms of the disposition or use of those properties as part of the package to be presented to the Council for consideration this spring.

Other key provisions of the Agreement include:

- Developer shall provide the Agency with a comprehensive urban market marketing plan including a list of prospective tenants, at least three months prior to commencement of construction and shall provide marketing updates every six months thereafter.
- Developer shall obtain all necessary permits and governmental approvals to build the improvements prior to any disbursement of Agency funds.
- Developer shall obtain evidence of consent of the Agency's second lien position on buildings from existing lenders and building owner partners.
- Agency shall obtain covenants requiring that allowed uses shall be compatible with typical urban market environments and shall exclude nightclubs.
- Agency shall obtain covenants requiring that the historic building at 87 N. San Pedro St. shall be maintained and public access provided, including historic tours, to the extent such access and tours do not interfere with normal operations of the urban market uses.
- Developer shall spend not less than \$20,000 for public art for the Project
- Developer shall pay prevailing wages for all construction work performed on the Project.

EVALUATION AND FOLLOW- UP

A stakeholder meeting for the Peralta Action Plan is scheduled for February 19, 2009, after which Agency staff will prepare and present the plan to the Council and Board. Thereafter, Agency staff will provide progress updates as part of its Quarterly Report process and whenever significant milestones are reached.

POLICY ALTERNATIVES

Alternative #1: Elect not to proceed with the San Pedro Square Urban Market at this time.

Pros: Up to \$6 million in Agency funds would be made available for other projects or programs.

Cons: Opportunity to capitalize on a major downtown revitalization stimulus project with a willing developer would be deferred or lost.

Reason for not recommending: The urban market plan is one of the first significant economic stimulus projects presented to the Council and Board this year

Alternative #2: Provide greater funding for the proposed San Pedro Square Urban Market to enable the full anticipated build-out to be accomplished in a single phase

Pros: Completion of the entire urban market concept in one phase would have a larger overall revitalizing effect for the Peralta Plaza Area and would avoid construction impacts in the future.

Cons: Agency budget constraints and the possibility that reduced public investment may be needed for future phases once the first phase has proved to be successful.

Reason for not recommending: Budget constraints on financing options for future phases.

PUBLIC OUTREACH/INTEREST

The proposed actions meet Criterion 1 for added outreach efforts. This staff report was distributed to the Agency Board and posted on the Agency's website 14 days prior to the scheduled Agency Board meeting date. It was also made available for public review in the Agency's public lobby.

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.

- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

COORDINATION

This memorandum has been coordinated with the Office of Economic Development; General Services; Planning, Building and Code Enforcement; Public Works; Transportation; the City Attorney's Office and the Agency's General Counsel.

FISCAL IMPACT

The proposed adjustment to the FY 2008-09 Adopted Capital Budget and Two-Year Spending Plan, shifting \$4,000,000 from FY 2009-2010 to FY 2008-2009 for San Pedro Square Urban Market project line in the Merged Redevelopment Area will have zero impact to the Capital Reserve, as detailed in Attachment A. The proposed budget adjustment, in addition to the amount already approved in this Adopted Capital Budget, will provide the required funding in the amount of \$6,000,000 to fund the proposed Building Rehabilitation and Loan Agreement.

CEQA

Downtown Strategy 2000 Final EIR, Resolution No. 72767, Adopted on June 21, 2005, File No. PP08-262.



DEBRA FIGONE
City Manager



HARRY S. MAVROGENES
Executive Director

Attachments

Urban Market OPA

PROPOSED ADJUSTMENTS TO THE FY 2008-2009 ADOPTED BUDGET
& FY 2009-10 TWO YEAR SPENDING PLAN

Agency's Business Unit Number	Project	Adopted Budget FY 2008-09	Net Change	Revised Adopted Budget FY 2008-09
Merged Redevelopment Area (Fund: 090)				
0900947	San Pedro Square Urban Market	2,125,000	+4,000,000	6,125,000
	FY08-09			
	FY09-10	4,000,000	-4,000,000	0
CAPITAL RESERVE			+0	

San Pedro Square and
North San Pedro Housing
San Jose, California

© JRDY Architects
P.O. Box 70126, Oakland CA 94612
+1 510 295 4392
www.jrdy.com

