

February 15, 2022

City Council
City of Santa Ana
20 Civic Center Plaza
P.O. Bo 1988, M31
Santa Ana, CA 92701

Re: Item 25: Strengthen Housing Opportunity Ordinance and Affordable Housing Funds Policies and Procedures

Dear Mayor and City Council Members,

Born of the War on Poverty, Community Action Partnership of Orange County (CAP OC) has worked to enhance the quality of life here since 1965. Through our broad network of community partners, we boldly address the root causes of poverty and advocate for change through systemic reforms, social justice, and racial equity. We live and work in the neighborhoods we so passionately serve—coming together from all backgrounds and experiences to stabilize, sustain and empower individuals and families so they may build stronger communities.

Every two years, we conduct a Community Needs Assessment (CNA) to capture the problems and conditions of poverty in Orange County. Our last CNA conducted in 2021 determined the *lack of access to affordable housing* to be a top concern for our respondents. With many respondents feeling as if they were "one check away from homelessness".

We are writing to support the amendments to the Housing Opportunity Ordinance and Affordable Housing Funds Policies. The changes will ensure that development in the City addresses housing needs for all residents in a balanced manner. Many working families in Santa Ana continue to be impacted by the rising cost of housing and the scarce housing opportunities available at rents they can afford. In addition, many continue to face economic uncertainty because of the ongoing COVID-19 pandemic. The creation of housing at all income levels is vital to our recovery and will provide stability for the majority of Santa Ana residents that are struggling with housing availability and cost that existed long before the pandemic. It is crucial that the City strengthen the Housing Opportunity Ordinance (HOO) to ensure that housing opportunities are available for all residents in Santa Ana along with new housing options being created in the City.

The City of Santa Ana is a renter majority city and despite the City's progress towards meeting its Regional Housing Needs Assessment (RHNA) allocation for very low- and low- income housing, there continues to be a great need for housing that is affordable to its residents. The current pandemic has increased the economic and housing pressures on low-income families in Santa Ana. As incomes are decreasing and jobs are being lost, many low-income families are struggling to remain housed. This is especially true for the majority of Santa Ana's low-income households that are suffering with the impacts of housing cost and economic uncertainty. According to the City's local data, 70 % of Santa Ana renters are low and very low-income renters. 80% of renters in Santa Ana fall into the moderate, low- and very low-income categories and 84 % of residents hold low-income occupations that pay less than \$53,500 per year¹. Santa Ana's households are predominantly families comprising 81% of households.² These households are also rent burdened and live-in overcrowded conditions³.

While the City has seen increased production of affordable housing there has been a disproportionate production of above moderate housing with a total of 3,274 above moderate units produced between 2013-2021, the City exceeded its RHNA allocation by 3,638% per the City's RHNA progress reports submitted to the state. With average rents of \$2000 - \$4000, none of these above market rental units are affordable to most of Santa Ana's working families. Housing costs in Santa Ana have been out of reach and will continue to be out of reach in this current economic climate. Households in Santa Ana must earn \$44.83 an hour to afford two-bedroom housing.⁴ The proposed amendments further incentivize housing units with market rate rents and are not affordable to the majority of the City's residents.

The Commission supports the amendments to update the in-lieu fee to \$15 per sq ft to be in line with a fee that is fair and allows the City to fund much needed affordable housing for Santa Ana residents. We also support the wider application of the Housing Opportunities Ordinance in the City of Santa Ana. This will continue to facilitate the development of affordable housing in various areas of the city. The Commission also recommends that the HOO apply to all residential developments in the City. At a minimum the HOO affordable housing requirements should apply to all residential and mixed-use developments that are asking for zone changes, upzonings, following city initiated specific plans, general plan updates or those asking for other development incentives.

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The City must also ensure that the Inclusionary Housing Fund monies prioritize the construction of affordable housing for extremely low- and very low-income families. These are the families that have the most pressing needs in the City of Santa Ana. In addition, the fund should also prioritize addressing housing insecurity, eviction prevention, and housing legal assistance for residents that would directly help current Santa Ana residents with the exception of code enforcement. Diversion of these funds to other programs unrelated to housing and direct help for families would not increase or improve the supply of affordable housing.

We urge you to take into consideration the amendments and proposed recommendations to the Housing Opportunity Ordinance. These recommendations will help the city increase affordable housing options for residents and help the city meet equitable housing production goals.

Sincerely,



Curtis Gibbs
Director of Planning

February 15, 2022

Mayor and City Council
City of Santa Ana
20 Civic Center Plaza
P.O. Bo 1988, M31
Santa Ana, CA 92701

Re: Item 25: Housing Opportunity Ordinance

Dear Mayor and City Council Members,

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We urge you to take into consideration the amendments and proposed recommendations to the Housing Opportunity Ordinance. These recommendations will help the city increase affordable housing options for residents and help the city meet equitable housing production goals.

Sincerely,

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Cesar Covarrubias
Executive Director

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2/15/2022

Mayor Sarmiento and City Council
City of Santa Ana
20 Civic Center Plaza
P.O. Bo 1988, M31
Santa Ana, CA 92701

Re: Item 25: Strengthen Housing Opportunity Ordinance and Affordable Housing Funds Policies and Procedures

Dear Mayor and City Council Members,

I write on behalf of Chispa to **express our support for the amendments to the Housing Opportunity Ordinance and Affordable Housing Funds Policies**. The changes will ensure that development in the City addresses housing needs for all residents in a balanced manner. Many working families in Santa Ana continue to be impacted by the rising cost of housing and the scarce housing opportunities available at rents they can afford. In addition, many continue to face economic uncertainty because of the ongoing COVID-19 pandemic. The creation of housing at all income levels is vital to our recovery and will provide stability for the majority of Santa Ana residents that are struggling with housing availability and cost that existed long before the pandemic. It is crucial that the City strengthen the Housing Opportunity Ordinance (HOO) to ensure that housing opportunities are available for all residents in Santa Ana along with new housing options being created in the City.

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We urge you to take into consideration the amendments and proposed recommendations to the Housing Opportunity Ordinance. These recommendations will help the city increase affordable housing options for residents and help the city meet equitable housing production goals.

A handwritten signature in black ink, appearing to read "Bulmaro Vicente", written in a cursive style.

Bulmaro 'Boomer' Vicente
Policy Director

January 18, 2022

Mayor and City Council
City of Santa Ana
20 Civic Center Plaza
P.O. Bo 1988, M31
Santa Ana, CA 92701

Re: Item 8: Housing Opportunity Ordinance

Dear Mayor and City Council Members,

The Kennedy Commission (the Commission) is a broad-based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$27,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with Orange County jurisdictions to create effective housing and land-use policies that has led to the new construction of homes affordable to lower-income working families.

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January 14th, 2022

Mayor Sarmiento and City Council Members
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Item 8: Strengthen Housing Opportunity Ordinance and Affordable Housing Funds Policies and Procedures

Dear Mayor and City Council Members,

Chispa is a political home for young Latinx in Orange County. Chispa seeks to engage with excluded peoples to uproot systems of oppression and cultivate systems grounded in community accountability, solidarity, and self-determination for our communities to thrive.

We are writing to support the amendments to the Housing Opportunity Ordinance and Affordable Housing Funds Policies. The changes will ensure that development in the City addresses housing needs for all residents in a balanced manner. Many working families in Santa Ana continue to be impacted by the rising cost of housing and the scarce housing opportunities available at rents they can afford. In addition, many continue to face economic uncertainty because of the ongoing COVID-19 pandemic. The creation of housing at all income levels is vital to our recovery and will provide stability for the majority of Santa Ana residents that are struggling with housing availability and cost that existed long before the pandemic. It is crucial that the City strengthen the Housing Opportunity Ordinance (HOO) to ensure that housing opportunities are available for all residents in Santa Ana along with new housing options being created in the City.

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Bulmaro Vicente
Policy Director

Orozco, Norma

From: Alex Lee <alexlee1212@protonmail.com>
Sent: Tuesday, January 04, 2022 7:15 AM
To: eComment; Gomez, Daisy; Carvalho, Sonia R.
Subject: HOO and Additional Thai Phan Complaint
Attachments: Complaint Form 01-04-2022.pdf; Phan Complaint Addendum 12-08-2021.pdf; Phan Complaint Addendum 12-22-2021.pdf; Phan Complaint Addendum 12-16-2021.pdf

Please see attached. Contrary to Phan and/or the City Attorney's opinion, a conflicted official MAY NOT participate in any way including asking for a continuance.

Complaint Type

Electronic Complaint System

Complaint: If you suspect someone has violated the Political Reform Act, file a complaint with the FPPC's Enforcement Division using the Electronic Complaint System. To file, provide the requested information on the complaint below, attach all documents you have containing evidence of the violations using the document uploader, and click submit. You will receive an email confirming receipt of your complaint if you provide a return email address. If you file a sworn complaint, you will receive notifications regarding your complaint.

Referral: Filing officers can submit referrals to the Enforcement Division using the Electronic Complaint System. To refer a matter for prosecution by the Enforcement Division, provide the information requested below, attach the respondent's most recent statement or report and a copy of your conflict of interest code (if applicable), and click submit. You will receive an email confirming receipt of the referral and notification when the FPPC takes action on the referral.

If you have questions or problems submitting your complaint or referral, please email complaint@fppc.ca.gov and we will assist you.

Complaint Type

Complaint Type: Non-Sworn
Complaint

You will not receive any notifications regarding your complaint, but may be contacted for more information. Your complaint is a public document.

Complaint Details

Your Contact Information

First Name: Alex

Last Name: Lee

Email: alexlee1212@protonmail.com

Phone Number: email please

Please note that non-sworn complaints do not receive notice of the resolution of the complaint. In order to check the status of your complaint, you will need to email complaint@fppc.ca.gov.

Respondent Information

Position/Office Held (if applicable)	Jurisdiction	First Name	Last Name	Address	City	State	Zip Code	Email	Phone Number
City Council	Santa Ana	Thai	Phan	20 Civic Center Plaza	Santa Ana	CA	92701	tphan@santa-ana.org	(714) 647-5400
Committee or Organization Name		Committee ID		Address	City	State	Zip Code	Email	Phone Number
Entity Name	Entity ID	Address	City	State	Zip Code	Email	Phone Number		

Violation Information

Violation Type	Violation Code Section	Violation Comments
Conflict of Interest	Manner of Disqualification/Leave the Room Requirement (87105)	Please see letter and description in other violation allegation. Phan must not participate in the HOO hearings. She cannot make motions to continue with an unwaivable conflict of interest.
Conflict of Interest	87306.5 - Conflict of Interest Code; Local	Please see attached letter. Councilwoman Thai Phan has a conflict of interest in the issue of the Santa Ana Housing Opportunity Ordinance because she works for Rutan & Tuckler who represents many local developers. Rather than recuse herself, she has participated in three hearings.

ATTN - THE FPPC WILL NOT ACCEPT COMPLAINTS REGARDING THE FOLLOWING VIOLATIONS:

- Brown Act
- False or Misleading Campaign Materials
- Election Fraud
- Federal Campaigns
- Local Ordinance/Local Contribution Limits
- Vandalism to Campaign Signs
- Not Living in the Jurisdiction

These alleged violations are not enforced by the FPPC. Please contact your local jurisdiction (i.e. your city attorney, county counsel, or District Attorney).

Witnesses

First Name	Last Name	Street Address (including number)	City	State	Zip Code	Phone	Email	Information this Witness Can Provide
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Upload

Files

Document Name	Update Date/Time
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Phan Complaint Addendum 12-08-2021.pdf	1/4/2022 6:40 AM
Phan Complaint Addendum 12-16-2021.pdf	1/4/2022 6:40 AM
Phan Complaint Addendum 12-22-2021.pdf	1/4/2022 6:40 AM

Please click the **upload document** button after selecting your additional files.

Submit

Submit

December 22, 2021
(sent January 3, 2022)

Fair Political Practices Commission
Enforcement Division
1102 Q Street, Suite 3000
Sacramento, CA 95811
Also sent via email to complaint@fppc.ca.gov

Santa Ana City Clerk
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to dgomez@santa-ana.org

Santa Ana City Attorney
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to scarvalho@santa-ana.org

Regarding: Complaint regarding Conflict of Interest by City Councilwoman Thai Phan

To Whom it May Concern,

This letter is an addendum to the letters dated December 1, 2021 and December 8, 2021 regarding the same conflict. On December 21, 2021, after receipt of that letter and with full knowledge of the issues outlined, Councilwoman Thai Phan continued to participate in the HOO amendment matter and quadrupled down on her violation of the code by making a motion to continue the HOO amendment item.

The video of the hearing can be found at <https://youtu.be/BJM5QCPIOds> (Santa Ana Council, Dec 21, 2021-English, published by City of Santa Ana).

At Hour 4, minute 42, Mayor Sarmiento asks the Council if there are any items they would like to pull from the consent calendar. Councilwoman Thai Phan made the following comment:

Thank you Mayor, I would like to ask that we again continue Item number 17, that's regarding the Housing Opportunities Ordinance. Last time this item came up I asked for a similar continuance in order to receive advice from the FPPC subject to a complaint or referral comment from the public. I also did confirm with Madam City Attorney that a request to continue an item is not a violation of FPPC regulations so that is one item. And the other is I'd like to specifically state that I have a conflict of interest on Item 29 only as to the contract for Item 1 which is relating to Atkinson, Adelson, Loya, Ruud, AALR, as they are client of my employer Rutan & Tucker. So I will be able to vote on the remaining items on Item 29, but not that particular Agreement.

So, Councilwoman Phan does apparently understand what a conflict of interest based on her employment at Rutan & Tucker is. It is hard to ascertain how she believes she still has the right to participate on the HOO item under any circumstances.

At Hour 4, minute 46, Councilwoman Phan makes a motion on Item 17, the HOO

I would move to continue it.

As previously stated, the proper procedure for Councilwoman Phan would have been to recuse herself from the item completely and, if the City Attorney felt that a continuance was in order, for the City Attorney to provide the option to the City Council to continue the item until a response of the conflict of interest was received. IT IS A SEPARATE AND ADDITIONAL VIOLATION OF THE STATE LAW AND MUNICIPAL CODE FOR COUNCILWOMAN THAI PHAN TO MAKE A MOTION TO CONTINUE ON A VOTE WHERE SHE HAS A CONFLICT OF INTEREST. There is no exception in the law for participation in a matter where an official has a conflict of interest to obtain a continuance of the item and certainly no ability to make a motion of any kind where a conflict exists. The common sense reasoning for this would be if Councilwoman Phan wanted to block the HOO amendment from being adopted for the benefit of her Rutan & Tucker builder and developer clients, she could continually make motions to continue the item thereby preventing the adoption of the item. The fact that the City Attorney requested an opinion from the FPPC does not create a safe harbor for the conflicted official to continue to participate in the matter in any way, even to continue it.

We ask the Fair Political Practices Commission to take this blatant disregard into consideration when considering the investigation against Councilwoman Phan. As a professional municipal lawyer, she knows the law and cannot plead ignorance. She has clearly let her political aspirations cloud her professional judgement. Councilwoman Phan and the Santa Ana City Attorney are acting with a blatant disregard for the public by continuing to allow her to participate on this item.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alex'.

Alex Lee

On behalf of numerous concerned Santa Ana residents

alexlee1212@protonmail.com

Enc: Package dated 12/1/2021
Package dated 12/8/2021

Orozco, Norma

From: Alex Lee <alexlee1212@protonmail.com>
Sent: Thursday, December 16, 2021 10:10 AM
To: Gomez, Daisy; Carvalho, Sonia R.; eComment
Subject: Re: FPPC Complaints filed Against Councilwoman Phan and Commissioner Ramos and Agenda Item 9
Attachments: Phan Complaint Addendum 12-16-2021.pdf

The attached addendum was sent to the FPPC.

We are working with legal council and intend to take action against the City of Santa Ana unless this issue is properly dealt with.

Alex

----- Original Message -----

On Tuesday, December 7th, 2021 at 12:10 PM, Alex Lee <alexlee1212@protonmail.com> wrote:

Hello,

I am writing on behalf of many concerned Santa Ana citizens. We feel that the HOO amendments put forward by Commissioner Ramos and Councilwoman Phan have been a coordinated effort to reward their political benefactors and that the votes taken by these two officials have been violations of State and City code.

We call on the City Attorney, Mayor, and City Manager to cure this issue at once and to send the HOO back to the Planning Commission (as several Councilmembers requested) for a hearing of the new items raised by the conflicted members and a fair and impartial process without Commissioner Ramos or Councilwoman Phan involved.

The referral to the FPPC is a referral and not a complaint yet. A sworn complaint will be filed if the Council votes on the item tonight. The violation has already occurred regardless of the vote tonight, however, Councilwoman Phan and the rest of the Council should not commit an additional violation by voting on this item this evening.

Furthermore, the item is NOT appropriate for a second reading on the consent calendar because the item has changed so materially from the original item that a full presentation of the change MUST be presented before approval.

Legal issues of this approval include but are not limited to:

1. Improper Vote at Planning Commission with a conflict of interest and a pre-written motion drafted by sources of income to Ramos.
2. Improper Vote at City Council with a conflict of interest and illegal conditions presented by Councilwoman Phan.
3. Improper Vote on second reading at City Council with the same conflict of interest, illegal conditions, and an improper placement of the item on consent calendar when the item had material additional amendments.

The residents of Santa Ana deserve better representation than this. If the Council proceeds with this vote tonight on the consent calendar, the Council will be improperly approving an already improperly reviewed ordinance, drafted in a flawed process, by conflicted officials who should have recused themselves from this item. There are several flaws in the process which WILL subject the City to costly litigation.

Sincerely,

Alex Lee

December 8, 2021

Fair Political Practices Commission
Enforcement Division
1102 Q Street, Suite 3000
Sacramento, CA 95811
Also sent via email to complaint@fppc.ca.gov

Santa Ana City Clerk
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to dgomez@santa-ana.org

Santa Ana City Attorney
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to scarvalho@santa-ana.org

Regarding: Complaint regarding Conflict of Interest by City Councilwoman Thai Phan

To Whom it May Concern,

This letter is an addendum to the letter dated December 1, 2021 regarding the same conflict. On December 7, 2021, after receipt of that letter and with full knowledge of the issues outlined, Councilwoman Thai Phan continued to participate in the HOO amendment matter and tripled down on her violation of the code by making a motion to continue the item.

The video of the hearing can be found at <https://www.youtube.com/watch?v=bFtvMIUmKnM> (Santa Ana Council, Dec 7, 2021-English, published by City of Santa Ana).

At Hour 1, minute 27, before public comments, Councilwoman Thai Phan made the following comment:

Thank you, Mayor. So, this afternoon, the City and I received a correspondence from an alleged resident stating that, or alleging that I have a conflict of interest, calling in my ethical reasoning and my judgement. This is regarding an alleged conflict on the Housing Opportunity Ordinance. I do not believe that I have a conflict of interest, however, out of an abundance of caution, I have asked the City Attorney's office to seek a formal opinion letter from the FPPC regarding the Housing Opportunity Ordinance. As a result, and related thereto, I will move and ask the Council to continue Item 9 regarding the Housing Opportunity Ordinance and again, out of an abundance of caution, Item 37, the General Plan Amendment until the City receives a response from the FPPC.

The proper procedure for Councilwoman Phan would have been to recuse herself from the item completely and, if the City Attorney felt that a continuance was in order, for the City Attorney to provide the option to the City Council to continue the item until a response of the conflict of interest was received. IT IS A SEPARATE AND ADDITIONAL VIOLATION OF THE STATE LAW AND MUNICIPAL CODE FOR

COUNCILWOMAN THAI PHAN TO MAKE A MOTION TO CONTINUE ON A VOTE WHERE SHE HAS A CONFLICT OF INTEREST. There is no exception in the law for participation in a matter where an official has a conflict of interest to obtain a continuance of the item and certainly no ability to make a motion of any kind where a conflict exists.

We ask the Fair Political Practices Commission to take this blatant disregard into consideration when considering the investigation against Councilwoman Phan. As a professional municipal lawyer, she knows the law and cannot plead ignorance. She has clearly let her political aspirations cloud her professional judgement.

Attached is an analysis which our attorney prepared in preparation for challenging the decision should the City of Santa Ana refuse to remedy this situation.

Sincerely,



Alex Lee

On behalf of numerous concerned Santa Ana residents

alexlee1212@protonmail.com

Enc: Package dated 12/1/2021
Legal Analysis

This letter serves as a follow up to the December 1, 2021 “Complaint regarding Conflict of Interest by City Councilwoman Thai Phan” (the “Complaint”). The facts and allegations stated in the Complaint are incorporated herein.

As a member of the Santa Ana City Council (“City Council”), Ms. Phan is prohibited by Government Code Section 87100 of the Political Reform Act of 1974 (the “PRA” or the “Act”) from making, participating in making, or attempting to use her official position to influence any governmental decision in which she knew, or had reason to know, she had a financial interest. By making governmental decisions in which she had a financial interest, Ms. Phan violated Government Code Section 87100. The only acceptable remedy is for the City Council to formally rescind its November 16, 2021 approval of the Housing Opportunity Ordinance (“HOO”) and convene a new vote among eligible, non-conflicted members of the City Council.

I. Introduction to the Law

When the PRA was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Government Code § 81001(h).) Government Code Section 81003 requires that the Act be “liberally construed to accomplish its purposes.” As such, the Act sets the floor, but not the ceiling, for the conduct of public officials.

The goal of the State’s conflict-of-interest laws is to promote public confidence in public agencies. The Act is intended to ensure that “[p]ublic officials, whether elected or appointed . . . perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them[.]” (Government Code § 81001(b).)

Section 87100 prohibits public officials from making, participating in making, or attempting to use their official positions to influence any governmental decision in which they knew, or have reason to know, they have a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a “material financial effect” on a recognized economic interest of the official. (Government Code § 87103.)

An analysis on this issue requires six steps to determine whether a public official has a conflict of interest in a governmental decision.¹ That analysis follows:

1. The public official must be one as defined in the Act.

Government Code Section 82048 defines “[p]ublic official” to mean every member of a “local government agency.” Government Code Section 82041 defines “[l]ocal government agency” to include a city council, which is “any department, division, bureau, office, board, commission or other agency” of a city.

2. The public official must make, participate in making, or attempt to use their official position to influence a governmental decision.

A public official “makes a governmental decision” when the public official votes on a matter. (Regulation § 18704(a).)

¹ The Public Generally Exception (Regulations § 18703(a)) does not appear to apply here, nor does the Legally Required Participation Exception (Government Code § 87101).

3. The public official must have an economic interest that may be financially affected by the governmental decision.

A public official has an economic interest in any business entity from which they have received income aggregating \$500 or more within 12 months prior to the time when the relevant governmental decision is made. (Regulation 18700.1(a)(2).)

4. The economic interest of the public official must be directly or indirectly involved in the decision, or there must be a nexus between the public official's duties owed to the source of income and the official's public agency.

A nexus exists between the public official's duties owed to the source of income and the official's public agency if the public official receives or is promised the income to achieve a goal or purpose that would be achieved, defeated, aided, or hindered by the decision. (Regulation 18702.3(b).)

5. It must be decided what materiality standard applies to the economic interest of the public official.

Any reasonably foreseeable financial effect on a business entity that is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose that would be achieved, defeated, aided, or hindered by the decision. (Regulation 18702.3(b).)

6. Finally, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official.

If the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. (Regulation 18701(a), (b).) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

II. Application of the Law to the Facts

1. Ms. Phan was a Public Official.

At all times relevant to this matter, Ms. Phan was a member of the Santa Ana City Council, and was thus a public official under the Act.

2. Ms. Phan made a Governmental Decision.

On November 16, 2021, Ms. Phan, in her official capacity as a member of the City Council, not only voted on the HOO, but lead the discussion. When Ms. Phan voted on the matter, she made a governmental decision.

3. Ms. Phan had an Economic Interest.

During the 12 months before November 16, 2021, Ms. Phan received over \$10,000 of income from the law firm of Rutan & Tucker (the "Firm"). Ms. Phan's 2021 Form 700 shows over \$100,000 from the Firm, where she remains employed as of the date of this letter. She therefore had an economic interest in the Firm on November 16, 2021.

4. There was a Nexus between Ms. Phan's Duties owed to the Firm and to the Council.

Ms. Phan's duties as an attorney within the "Builders and Land Developers Team" of the Firm includes advocating on behalf of the Firm's real estate client base, which includes developers of projects in Santa Ana. Upon information and belief, the Firm represents real estate developer Centennial in the re-entitlement of the 49-acre Main Place Mall as well as the developer(s) of the One Broadway Plaza project, which is being re-entitled to include 14 floors of residential apartments. Both are major redevelopment projects in Santa Ana. Centennial's Santa Ana Main Place Mall and the One Broadway Plaza project developer(s) could be two of the "vested" projects specifically carved out of the HOO legislation approved by Ms. Phan. Because Centennial, the One Broadway Plaza developer(s), and likely other developers of Santa Ana residential projects are clients of the Firm, and Ms. Phan's duties as an associate attorney within the "Builders and Developers Team" includes representing developer clients and promoting the financial interests of the Firm, Ms. Phan's votes on the HOO created a nexus between her duties owed to the Firm and her duties owed to the public via the City Council. (Regulation 18702.3(b).)

It takes little imagination to foresee a situation where a Firm client might directly, and significantly, benefit from certain changes to the HOO.

5. Any Reasonably Foreseeable Financial Effect on the Firm met the Materiality Standard.

Because there existed a nexus between Ms. Phan's duties to the Firm and its clients and to the City Council, any reasonably foreseeable financial effect on the Firm is deemed material. (Regulation 18702.3(b).)

6. It was Substantially Likely that Ms. Phan's Decisions would have a Financial Effect on the Firm.

Upon information and belief, it was substantially likely that Ms. Phan's decisions would result in benefits to Centennial, the developer(s) of One Broadway Plaza, and potentially other Firm clients who have projects within the City. It is also substantially likely Ms. Phan's decisions could increase or enhance those clients' ties to and business with the Firm, or attract new clients to the Firm. As such, it was reasonably foreseeable at the time of the decision that the decision would have a financial effect on the Firm.

III. Conclusion

Based on the above, by making governmental decisions in which she had a financial interest, Ms. Phan violated Government Code Section 87100. As stated above, the only acceptable remedy is for the City Council to formally rescind its November 16, 2021 approval of the Housing Opportunity Ordinance and convene a new vote among eligible, non-conflicted members of the City Council.

* * *



www.kennedycommission.org
17701 Cowan Ave., Suite 200
Irvine, CA 92614
949 250 0909

December 7, 2021

City Council
City of Santa Ana
20 Civic Center Plaza
P.O. Bo 1988, M31
Santa Ana, CA 92701

Re: Item 9: Strengthen Housing Opportunity Ordinance and Affordable Housing Funds Policies and Procedures

Dear Mayor and City Council Members,

The Kennedy Commission (the Commission) is a broad-based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$27,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with Orange County jurisdictions to create effective housing and land-use policies that has led to the new construction of homes affordable to lower-income working families.

We are writing to support the amendments to the Housing Opportunity Ordinance and Affordable Housing Funds Policies. The changes will ensure that development in the City addresses housing needs for all residents in a balanced manner. Many working families in Santa Ana continue to be impacted by the rising cost of housing and the scarce housing opportunities available at rents they can afford. In addition, many continue to face economic uncertainty because of the ongoing COVID-19 pandemic. The creation of housing at all income levels is vital to our recovery and will provide stability for the majority of Santa Ana residents that are struggling with housing availability and cost that existed long before the pandemic. It is crucial that the City strengthen the Housing Opportunity Ordinance (HOO) to ensure that housing opportunities are available for all residents in Santa Ana along with new housing options being created in the City.

The City of Santa Ana is a renter majority city and despite the City's progress towards meeting its Regional Housing Needs Assessment (RHNA) allocation for very low- and low- income housing, there continues to be a great need for housing that is affordable to its residents. The current pandemic has increased the economic and housing pressures on low-income families in Santa Ana. As incomes are decreasing and jobs are being lost, many low-income families are struggling to remain housed. This is especially true for the majority of Santa Ana's low-income households that are suffering with the impacts of housing cost and economic uncertainty. According to the City's local data, 70 % of Santa Ana renters are low and very low-income renters. 80% of renters in Santa Ana fall into the moderate, low- and very low-income categories and 84 % of residents hold low-income occupations that pay less than \$53,500 per

year¹. Santa Ana's households are predominantly families comprising 81% of households.² These households are also rent burdened and live-in overcrowded conditions³.

While the City has seen increased production of affordable housing there has been a disproportionate production of above moderate housing with a total of 3,274 above moderate units produced between 2013-2021, the City exceeded its RHNA allocation by 3,638% per the City's RHNA progress reports submitted to the state. With average rents of \$2000 - \$4000, none of these above market rental units are affordable to most of Santa Ana's working families.

The need will be much greater as the COVID-19 pandemic has exacerbated housing needs that were already existing in our communities. Housing costs in Santa Ana have been out of reach and will continue to be out of reach in this current economic climate. Households in Santa Ana must earn \$44.83 an hour to afford two-bedroom housing.⁴ The proposed amendments further incentivize housing units with market rate rents and are not affordable to the majority of the City's residents.

The Commission supports the amendments to update the in-lieu fee to \$15 per sq ft to be in line with a fee that is fair and allows the City to fund much needed affordable housing for Santa Ana residents. We also support the wider application of the Housing Opportunities Ordinance in the City of Santa Ana. This will continue to facilitate the development of affordable housing in various areas of the city.

The Commission also recommends that the HOO apply to all residential developments in the City. At a minimum the HOO affordable housing requirements should apply to all residential and mixed use developments that are asking for zone changes, upzonings, following city initiated specific plans, general plan updates or those asking for other development incentives.

In addition, the HOO should apply to all developments taking advantage of City initiated land use and zoning changes, specific plans and general plan updates and amendments. Land use changes may create higher land values, profit, and incentives for market rate developers. At the same time many of these market developments are not affordable to the majority of Santa Ana's residents. In exchange for these development incentives, new affordable housing for Santa Ana residents must be created.

The City must also ensure that the Inclusionary Housing Fund monies prioritize the construction of affordable housing for extremely low- and very low-income families. These are the families that have the most pressing needs in the City of Santa Ana. In addition, the fund should also prioritize addressing housing insecurity, eviction prevention, and housing legal assistance for residents that would directly help current Santa Ana residents with the exception of code enforcement. Diversion of these funds to other programs unrelated to housing and direct help for families would not increase or improve the supply of affordable housing.

We urge you to take into consideration the amendments and proposed recommendations to the Housing Opportunity Ordinance. These recommendations will help the city increase affordable housing options for residents and help the city meet equitable housing production goals.

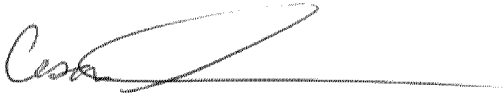
¹ City of Santa Ana General Plan Housing Element 2014-2021, p. 14, January 2014.

² City of Santa Ana General Plan Housing Element 2014 – 2021 page 11

³ City of Santa Ana General Plan Housing Element 2014 – 2021 page 20

⁴ National Low Income Housing Coalition. Out of Reach The High Cost of Housing 2021,pg.18. [Out of Reach 2021 \(nlihc.org\)](https://www.nlihc.org/out-of-reach)

Sincerely,

A handwritten signature in black ink, appearing to read 'Cesar', followed by a long, horizontal, slightly wavy line that extends to the right.

Cesar Covarrubias
Executive Director



Latino Health Access
450 W. Fourth Street, Suite 130
Santa Ana, CA 92701
714-542-7792
www.latinohhealthaccess.org

December 7, 2021

Mayor Sarmiento and City Council Members
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

RE: Support to adopt Agenda Item #9, Housing Opportunity Ordinance

Latino Health Access has been proudly working alongside community residents for over 27 years to improve the social determinants of health in our city. We provide services that address immediate health needs while providing information and facilitating opportunities to increase civic participation and impact policies that will improve those social determinants in the long term. **Therefore, we are writing in support of the adoption of the Housing Opportunity Ordinance.**

The COVID-19 pandemic has altered everyday life across the globe. Beyond the disastrous health consequences, the COVID-19 pandemic has disrupted the global economy with soaring income loss, underemployment, and unemployment rates. An impact that has worsened and aggravated the living conditions for many residents across the City of Santa Ana. The lack of affordable housing and the rising cost of housing for our low-income residents has forced people into overcrowded living conditions and rent-burden. Therefore, the City must strengthen the Housing Opportunity Ordinance (HOO) to ensure that housing opportunities are available for all residents in Santa Ana. Increasing affordable housing development opportunities along with market-rate housing will be crucial in creating new housing that residents in Santa Ana can truly afford. The creation of housing at all income levels is vital to our recovery and will provide stability for the majority of Santa Ana residents that are struggling with housing availability and cost.

While the city has seen increased production of affordable housing it has not been enough to address the past deficits and growing needs for affordable housing based on the population's housing needs and incomes of residents in Santa Ana. As an example, according to the City's local data, 80% of Santa Ana renters are moderate, low, and very low-income renters. Yet the most significant increase of housing has been in the above moderate housing category with a total of 3,274 above moderate units produced between 2013-2021, the City exceeded its RHNA allocation by 3,638% per the City's RHNA progress reports submitted to the state. Hence, the majority of these new rental housing units, with an above moderate average rent of \$2000- \$4000, are not available to address the housing needs of most working families in Santa Ana.

Housing costs in Santa Ana have been out of reach and will continue to be out of reach in this current



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economic climate. Households in Santa Ana must earn \$44.83 an hour to afford two-bedroom housing.¹ The proposed amendments further incentivize housing units with market-rate rents and are not affordable to the majority of the City's residents.

As such, we support the following recommendation to the Housing Opportunity Ordinance:

Housing Opportunity Ordinance Recommendation

- The proposed recommendations to Sec. 41-1904. Options to Satisfy Inclusionary Requirements

We support the recommendations to incentivize the use of a local skilled and trained workforce. These recommendations will not only prepare people for employment and help Santa Ana workers advance in their careers, but it will also ensure a skilled workforce exists to support local industry and the local economy. However, we do recommend the city to report an open and transparent data on the use of local skilled and trained workforce.

However, we strongly disagree with the following recommendations to the Housing Opportunity Ordinance:

- The proposed recommendation to Sec.41-1903. Exempt projects.

We believe that all the development projects that have not paid their in-lieu fees, regardless of their entitlement status should comply with the Housing Opportunity Ordinance's on-site affordability requirements and in-lieu fee requirements.

To add on, we urge you to reconsidered the Planning Commission recommendations to the Housing Opportunity Ordinance for the November 16, 2021 council meeting. The recommendations are as follows:

- The proposed amendment to Sec. 41-1902. Applicability and Inclusionary Unit Requirement

The City should ensure that affordable housing is built on new housing developments or allow for developers to pay their fair share of funds to provide Santa Ana residents with affordable housing. We support the Planning Commission's recommendations to increase the on-site requirement options as follows: 20% at low income, or 15% at

¹ National Low Income Housing Coalition. Out of Reach The High Cost of Housing 2021,pg.18. [Out of Reach 2021 \(nlihc.org\)](https://www.nlihc.org/out-of-reach)



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very-low income, or 10% at extremely-low income, or a blended option of 15% where 5% is at extremely low income, 5% very-low income and 5% low-income income.

- The proposed amendment to Sec. 41-1904. Options to Satisfy Inclusionary Requirements

We support the Planning Commission's recommendations to increase the in-lieu fees in the In-Lieu Fee Schedule as follows: \$10 sq. ft. for a residential project consisting of 5 to 9 units, \$11.66 sq. ft. for residential projects consisting of 10 to 14 units, \$13.32 sq. ft. for residential projects consisting of 15 to 19 units, and \$15 sq. ft. for residential projects consisting of 20 or more units. The \$15+ sq. ft. fee is in line with regional in-lieu fees and is further supported by a feasibility study of Santa Ana's housing and real estate market where a higher in-lieu fee range of \$17.10 sq.ft.- \$17.80 sq. ft. are recommended by the City's consultant.

We urge you to support the adoption of the Housing Opportunity Ordinance and reconsidered the Planning Commission recommendations to the Housing Opportunity Ordinance for the November 16, 2021 council meeting. The proposed amendments will help the city increase affordable housing options for Santa Ana residents.

Sincerely,

Nancy Mejía, MPH, MSW
Chief Program Officer

Orozco, Norma

From: Alex Lee <alexlee1212@protonmail.com>
Sent: Tuesday, December 07, 2021 12:10 PM
To: Gomez, Daisy; Carvalho, Sonia R.; eComment
Subject: FPPC Complaints filed Against Councilwoman Phan and Commissioner Ramos and Agenda Item 9
Attachments: Complaint re Phan.pdf; Complaint re Ramos.pdf

Hello,

I am writing on behalf of many concerned Santa Ana citizens. We feel that the HOO amendments put forward by Commissioner Ramos and Councilwoman Phan have been a coordinated effort to reward their political benefactors and that the votes taken by these two officials have been violations of State and City code.

We call on the City Attorney, Mayor, and City Manager to cure this issue at once and to send the HOO back to the Planning Commission (as several Councilmembers requested) for a hearing of the new items raised by the conflicted members and a fair and impartial process without Commissioner Ramos or Councilwoman Phan involved.

The referral to the FPPC is a referral and not a complaint yet. A sworn complaint will be filed if the Council votes on the item tonight. The violation has already occurred regardless of the vote tonight, however, Councilwoman Phan and the rest of the Council should not commit an additional violation by voting on this item this evening.

Furthermore, the item is NOT appropriate for a second reading on the consent calendar because the item has changed so materially from the original item that a full presentation of the change MUST be presented before approval.

Legal issues of this approval include but are not limited to:

1. Improper Vote at Planning Commission with a conflict of interest and a pre-written motion drafted by sources of income to Ramos.
2. Improper Vote at City Council with a conflict of interest and illegal conditions presented by Councilwoman Phan.
3. Improper Vote on second reading at City Council with the same conflict of interest, illegal conditions, and a improper placement of the item on consent calendar when the item had material additional amendments.

The residents of Santa Ana deserve better representation than this. If the Council proceeds with this vote tonight on the consent calendar, the Council will be improperly approving an already improperly reviewed ordinance, drafted in a flawed process, by conflicted officials who should have recused themselves from this item. There are several flaws in the process which WILL subject the City to costly litigation.

Sincerely,

Alex Lee

December 1, 2021

Fair Political Practices Commission
Enforcement Division
1102 Q Street, Suite 3000
Sacramento, CA 95811
Also sent via email to complaint@fppc.ca.gov

Santa Ana City Clerk
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to dgomez@santa-ana.org

Santa Ana City Attorney
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to scarvalho@santa-ana.org

Regarding: Complaint regarding Conflict of Interest in Planning Commission Decision

To Whom it May Concern,

On October 25, 2021, the Santa Ana Planning Commission amended Municipal Code Section 41-1900 (the "Housing Opportunity Ordinance" or "HOO").

On November 9, 2021 the attached letter was sent to Mayor Vince Sarmiento and carbon copied to the City Council, Planning Commission, and City Attorney asserting a Conflict of Interest between Planning Commissioner Isuri Ramos and several organizations. This letter outlined an un-waivable conflict of interest which should disqualify Ramos and require a re-hearing of the issue without the biased Commissioner's participation.

On November 16, 2021, the Santa Ana City Council considered the first reading of the amendment to the HOO. Amidst several other improprieties which will be the subject of a future complaint, the City Council erroneously dismissed the concerns regarding the alleged conflicts of interest and failed to properly investigate the issue.

The video of the hearing can be found at <https://youtu.be/Li6MTVMM9D0> (Santa Ana Council, Nov. 16, 2021-English, published by City of Santa Ana).

Testimony at November 16, 2021 Hearing

At hour 6, minute 4, Adam Wood of the BIA put several concerns regarding the process on the record and referred to the letter attached hereto.

At hour 6, minute 17, Cesar Covarrubias, Executive Director of the Kennedy Commission spoke in favor of the amendments and the Planning Commission changes. Notably, Commissioner Ramos lists the Kennedy Commission as a source of income on her Form 770 Statement of Economic Interests.

At hour 6, minute 19, the City Clerk referred to written communications, but failed to outline the concerns raised by the letter.

At hour 6, minute 20, Daisy Cruz from the Kennedy Commission spoke in favor of the amendments. See the notes above regarding the Kennedy Commission and Commissioner Ramos.

At hour 6, minute 22, Ana Charco, of Latino Health Access, another one of Commissioner Ramos' listed sources of income, spoke in favor of the amendments.

The City Attorney

At hour 6, minute 25, Mayor Sarmiento asks the City Attorney about the attached letter. The City Attorney states that there was no conflict of interest because "there was no economic interest at stake" and that there is a difference between a legislative decision and adjudicative decisions. It is stated that the HOO was a legislative act and therefore there is no bias. This legal opinion is not supported by the caselaw nor by common sense. This legal opinion appears to be the case of a City Attorney counting the votes on the Council and arriving at the legal opinion which supports the majority of the Council.

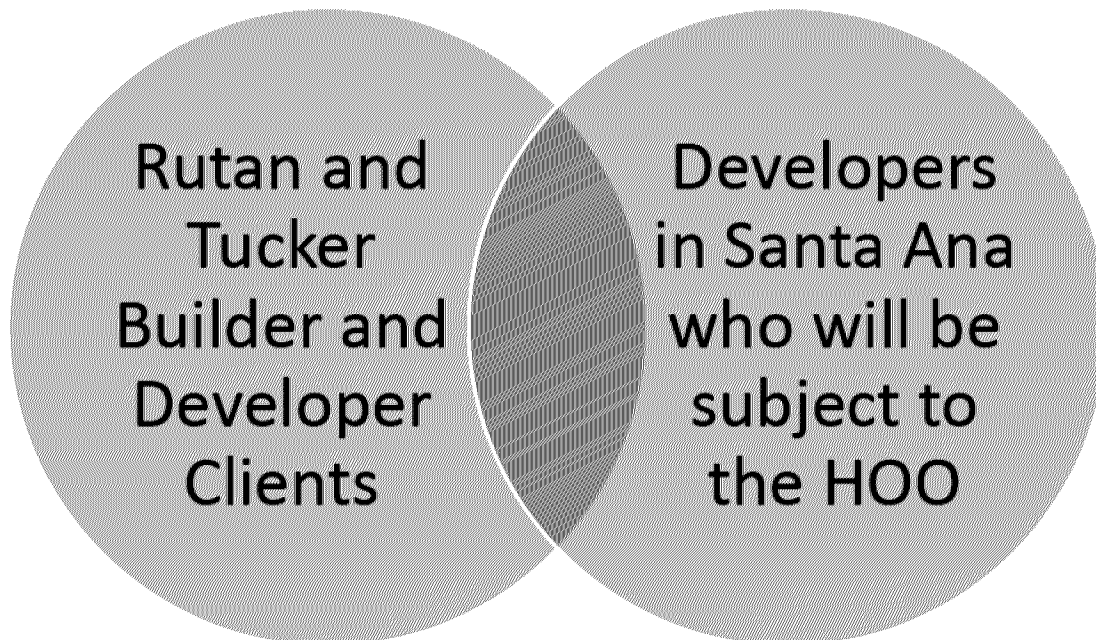
To argue that there is no economic interest at stake or bias is preposterous reasoning by the City Attorney and cannot withstand the simplest of common sense. At the City Council hearing on the amendments, there were only 8 total speakers on the item. 5 had comments about the process and the need for more input. Only 3 were in support of the amendments proffered by Commissioner Ramos. Of these, all 3 are the sources of income listed on Ramos' statement of economic interests. NOT A SINGLE PERSON NOT APPEARING ON RAMOS' STATEMENT OF ECONOMIC INTERESTS SPOKE IN FAVOR OF THE HOO AMENDMENTS AT THE NOVEMBER 16, 2021 MEETING. To call the HOO ordinance an issue of general interest is to misstate the facts of this issue. The HOO ONLY effects developers of housing in the City of Santa Ana. The fact that the exaction occurs before a specific project can negotiate the specifics of that particular project DOES NOT change the fact that this amendment to the HOO directly affects the due process of residential developers in the City of Santa Ana.

Councilwoman Thai Phan Doubles Down on the Conflicts of Interest

At Hour 6, minute 35, Councilwoman Thai Phan dismisses the conflict of interest and echoes the tortured logic of the City Attorney. A practicing City Attorney herself, Phan apparently doesn't understand that a conflict of interest is not excused based on an item being legislative rather than quasi-judicial. There is simply no premise for the concept that legislative acts do not have conflicts of interest and to argue such is to turn the entire Government Code section on its head.

As an aside, Councilmember Thai Phan is an attorney at the law firm of Rutan & Tucker which represents many residential developers directly affected by the HOO amendments. So, it comes at no surprise that she doesn't understand conflicts of interest because she herself likely has one which should separately recuse her from her participation in this matter. Conflicts of interest do not say that a decision maker with a conflict of interest can only participate if they vote against the interests of their clients, it is a total bar to participation. It would be unbelievable for Phan to argue that her firm's numerous developer clients would hypothetically have nothing to do with her cutting the fee to \$0 to benefit her clients, but she appears to believe that voting to increase the fee (and adding a completely illegal condition of mandating "skilled and trained workforce" for all housing beginning in 2025) has no economic impact on her firm's clients. Attached to this complaint and to the subsequent complaint

which will be filed is a print out of the Rutan & Tucker website showing that Thai Phan is a member of the firm's "Builders and Land Developers Team" page. Also attached is a copy of her Statement of Economic Interests form. While it is arguable whether a lawyer may list ONLY their law firm as a source of income over \$10,000 and thus shield their actual clients from disclosure to the public, it is simply not believable that Thai Phan derives income from representing builders and developers in the community. This source of income is a total bar to her participation on matters such as the HOO amendment and, while she may argue that it is a broadly applied ordinance in the City, the facts are that a Venn diagram showing the entities subject to the HOO and Rutan and Tucker's Builder and Developer clients would be largely the same group of people.



This action will be the subject of a subsequent complaint filed with the FPPC, but it is provided herein because it shows a) that the City Attorney's office of the City of Santa Ana does not adequately police conflicts of interest on the part of City of Santa Ana elected and appointed officials, b) that when presented with incontrovertible facts, the City Attorney and City Council will not conduct an appropriate investigation into the matter, and c) notwithstanding Councilwoman Thai Phan's employment as a municipal attorney, she is apparently unaware of how conflicts of interest work in practice (or more interested in political grandstanding than following the rules).

Mayor Sarmiento

At hour 6, minute 56, Mayor Sarmiento, an attorney himself, dismisses legal conflicts of interest as "baggage." Sarmiento goes on to say that he did research on the organization who drafted the letter and stated that they are latino market rate developers. He dismisses the petitioners as "biased themselves." This may be the low point of the discussion on the matter because there is absolutely no case law or code that suggests that a legal conflict of interest may not be asserted by people within a City who have interests. Commissioner Ramos' conflict on interest is a question of fact. To impugn the

people who pointed out that facts is irrelevant, inappropriate, and inflammatory and below the standard by which a Mayor of a major City should conduct themselves.

The code clearly states that to avoid actual bias or the appearance of possible improprieties, a public official with a disqualifying conflict of interest in a government decision must be prohibited from participating in the decision.

The FPPC outlines five types of interests that may result in disqualification. Of these, the “income” interest is clearly met by Ramos. “An individual or an entity from whom the official has received income or promised income aggregating to \$500 or more in the previous 12 months.” Please see the attached Form 700’s filed by Commissioner Ramos. The test goes on to see whether the financial impact of the decision is foreseeable and significant enough to material. In this case, the facts speak for themselves. The amendments to the HOO were significant enough to these entities that they spoke at the Planning Commission hearing, obviously aided Ramos in her preparation of a motion, and then spoke in favor of the amendments at the City Council hearing. If the effect wasn’t significant, it would be hard to believe that the only advocates of the amendments to the Ordinance just happened to be entities from whom Commissioner Ramos received income.

Potential State Law Violations:

1. The actions of Ramos potential violate Government Code Sections 1090-1097.5. Commissioner Ramos should have recused herself from the hearing on the HOO amendments because she has received income from entities who had a significant interest in the municipal issue. If Ramos had recused herself, the amendments would not have been offered in the same manner and the item would not have passed with a one vote margin. Her participation had a significant impact and effect on the municipal question in which these entities have an interest.
2. The City Council and City Attorney erred by not sending the item back to the Planning Commission for a hearing without the disqualified Planning Commissioner.
3. City Councilwoman Thai Phan likely violated the code by voting on the HOO due to the number of economically affected clients who are the sources of income to her employer Rutan and Tucker.

Potential City of Santa Ana Violations:

1. The participation by Commissioner Ramos likely violates Santa Ana Municipal Code section 2-105. First, Ramos should have “absented” [herself] from the room where the meeting was held during debate and voting on the matter. Second, per the code, Ramos should have divulged any “remote interest” before voting. Neither of these occurred and the City Attorney cannot “sweep it all under the rug” by stating that there is no financial interest. This opinion violates the latter part of code section 2-105.
2. Councilwoman Thai Phan’s participation in the November 16, 2021 hearing likely violated the municipal code requirements discussed above.

As stated previously, the California State Fair Political Practices Commission is being contacted because the complaint filed with the Mayor and City Attorney were not taken seriously. Additionally, the investigative authority of the Commission is ideally situated to obtain information regarding the conflicts of interest alleged herein.

A hearing for the second reading of the HOO amendments is scheduled for Tuesday December 7, 2021 beginning at 5:00 pm. It is requested that FPPC staff alert the City of Santa Ana to the conflicts of interest before this meeting occurs.

We have referred this matter to an attorney and reserve the right to challenge these decisions.

Sincerely,

A handwritten signature in black ink, appearing to be 'ALE' in a stylized, cursive font.

Alex Lee

On behalf of numerous concerned Santa Ana residents

alexlee1212@protonmail.com

Enc: Letter sent by United Latinos Vote to Mayor Sarmiento dated 11/9/2021
Commissioner Ramos Statement of Economic Impact Forms
Councilwoman Phan Statement of Economic Impact Forms
Rutan and Tucker Builders and Land Developers Team page

Letter sent by United Latinos Vote to Mayor Sarmiento
dated 11/9/2021



360 Grand Avenue
No. 343
Oakland CA 94610

Tel 510-501-6837
info@unitedlatinosvote.org
www.unitedlatinosvote.org

November 9, 2021

Vince Sarmiento
Mayor
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

RE: Santa Ana Planning Commissioner Conflict of Interest

Dear Mayor, Council, Commission and Staff:

On behalf of United Latinos Vote, I am writing to express concern over an invalidating conflict of interest occurring at the October 25, 2021 Santa Ana Planning Commission. Such action raises several issues which require your further action.

On October 25, 2021, a legally-biased Santa Ana Planning Commissioner cast the deciding vote on her own motion to amend Municipal Code Section 41-1900 *et al.* (the "Housing Opportunity Ordinance" or "HOO"). **Due process requires the unwinding of the Commission's decision and a rehearing without the biased Commissioner's participation.**

Commissioner Isuri Ramos is a "Training and Development Associate" for Latino Health Access ("LHA") and earns between \$1,001 - \$10,000. She also works for Kennedy Commission at a salary between \$10,001 - \$100,000. St. Joseph Hospital (the "Hospital") is listed as one of nine major "funders" on the Kennedy Commission's website.

Out of *three* public comment letters provided to the Commission in advance of the October 25 hearing on the HOO, *two* were submitted by organizations with close ties to Commissioner Ramos. LHA submitted a letter to the Commission in support of the proposed amendments to the HOO and affordable housing funds policies (the "LHA Letter"). Specifically, the LHA Letter recommend that the Commission:

- Increase the HOO's in-lieu fee from \$5 to \$15 per square foot (LHA Letter, p. 2);
- Apply the HOO "to all residential developments in the City" (*id.*); and
- "[M]ake new construction of affordable housing for extremely low- and very low-income families a priority when using the housing fund monies (*id.*).

The Hospital also sent a letter to the Commission in support of the proposed amendments to the HOO (the "Hospital Letter"). The Hospital Letter asked that the Commission take the same actions as the LHA Letter, including providing nearly word-for-word recommendations compared to the LHA Letter. (*See* Hospital Letter, pp. 2–3.) Such a coincidence is unlikely, suggesting that the Hospital coordinated with LHA.

During the October 25 hearing, the questions posed by Commissioner Ramos were alarmingly similar to the recommendations posed in the LHA and Hospital Letters. Case in point: the LHA and Hospital Letters asked the Commission to apply the HOO “to all residential developments in the City” and Commissioner Ramos’s first question to Staff was why “Staff is not recommending that the entire City be an applicable area under the HOO?” (Hearing Video, 22:30.) Moreover, whereas the LHA and Hospital Letters both asked for the in-lieu fee to be increased “from \$5 to \$15 per sq ft,” Commissioner Ramos asked to increase the “range of the in-lieu fee” from \$5 to \$15 to \$10 to \$15.

In addition, two public comments during the Commission’s hearing were provided by employees of LHA and *colleagues of Commissioner Ramos*. One of these public comments was in Spanish, from Araceli Robles on behalf of the LHA. (Hearing Video, 1:05:20.) Her comments were then roughly translated and summarized in English for the Commission’s consideration. Commissioner Ramos then inappropriately inserted herself into the conversation and stated “I can provide support if you would like” (Hearing Video, 1:07:13). Unprompted, she then delivered to the Commission *even more* information about Robles’s concerns, going *above and beyond* this initial translation, providing what appeared to be direct quotations from Robles’s statement, given just seconds before (Hearing Video, 1:08:20). Another public comment from the Kennedy Commission mirrored Commissioner Ramos’ desire to increase the in lieu fee and tracked her question about applying the HOO throughout the City.

As if all this were not already enough to disqualify Commissioner Ramos from voting on any HOO amendment, she then (1) personally initiated what was likely a pre-written motion; and (2) cast the *deciding vote* (4–3) on it. It will come as no surprise that the language of the motion closely matched the suggestions from the LHA Letter, the Hospital Letter, and the two public comments by her colleagues. Again, this was no coincidence.

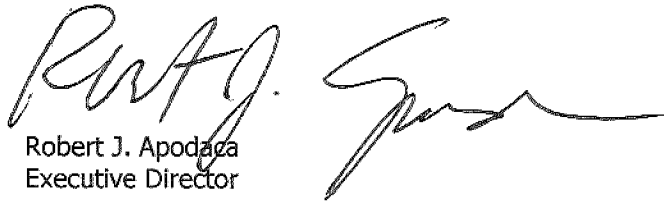
The law with respect to biased decisionmakers is clear. Due process requires that a decisionmaker be fair and impartial. The law does not require proof of actual bias. Rather, it is sufficient to invalidate a decision if “an unacceptable probability of actual bias” by the municipal decisionmaker is established. (*Woody’s Group, Inc. v City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022.) When it is established that a biased decisionmaker participated in a decision, the appropriate remedy is to return the matter to the body for a rehearing without biased decisionmaker’s participation.

Because of her close ties to organizations and callers actively participating in advocacy regarding the HOO, in addition to her actions on the night of the hearing, it is beyond doubt that Commissioner Ramos harbors “an unacceptable probability of actual bias” on the HOO. (*Woody’s Group, supra*, 233 Cal.App.4th at p. 1022.) In addition, Commissioner Ramos’s alternative motion had likely been written out beforehand, wholly belying her own self-serving comment at the hearing that LHA’s position on the HOO “will not influence my vote tonight.” Her actions are constitutionally unacceptable and have “crossed the line into advocacy.” (*Petrovich Dev. Co., LLC v City of Sacramento* (2020) 48 Cal.App.5th 963, 974.)

Commissioner Ramos should have recused herself from the Commission’s hearing on October 25; because she did not, **the Commission must reconsider amendments to the HOO without a**

biased decisionmaker. None of these defects are cured by her disclosure at the beginning of the hearing that she is employed by LHA.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Apodaza", followed by a long horizontal flourish.

Robert J. Apodaza
Executive Director

cc: Santa Ana City Council
Santa Ana Planning Commission
Sonia Carvalho, City Attorney

Commissioner Ramos Statement of Economic Impact
Forms

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Initial Filing Received

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NAME OF FILER	(LAST)	(FIRST)	(MIDDLE)
Ramos, Isuri Sadadhy			

1. Office, Agency, or Court

Agency Name (Do not use acronyms)

CITY OF SANTA ANA

Division, Board, Department, District, if applicable

PLANNING COMMISSION

Your Position

COMMISSIONER

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: _____ Position: _____

2. Jurisdiction of Office (Check at least one box)☐ State☐ Multi-County _____☒ City of Santa Ana☐ Judge, Retired Judge, Pro Tem Judge, or Court Commissioner (Statewide Jurisdiction)☐ County of _____☐ Other _____**3. Type of Statement (Check at least one box)**☐ **Annual:** The period covered is January 1, 2020 through December 31, 2020

-or-

The period covered is ____/____/____, through December 31, 2020

☒ **Assuming Office:** Date assumed 02 / 02 / 2021☐ **Leaving Office:** Date Left ____/____/____
(Check one circle)☐ The period covered is January 1, 2020 through the date of leaving office.☐ The period covered is ____/____/____, through the date of leaving office.☐ **Candidate:** Date of Election _____ and office sought, if different than Part 1: _____**4. Schedule Summary (must complete) ► Total number of pages including this cover page: 2****Schedules attached**☐ **Schedule A-1 - Investments** – schedule attached☐ **Schedule A-2 - Investments** – schedule attached☐ **Schedule B - Real Property** – schedule attached☒ **Schedule C - Income, Loans, & Business Positions** – schedule attached☐ **Schedule D - Income – Gifts** – schedule attached☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-

☐ **None - No reportable interests on any schedule****5. Verification**

MAILING ADDRESS	STREET	CITY	STATE	ZIP CODE
(Business or Agency Address Recommended Public Document)				

Santa Ana

CA

92701

DAYTIME TELEPHONE NUMBER

()

E MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

 Date Signed 02/03/2021
 (month, day, year)

 Signature Isuri Sadadhy Ramos
 (File the originally signed paper statement with your filing official.)

SCHEDULE C

Income, Loans, & Business Positions

(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700**FAIR POLITICAL PRACTICES COMMISSION**

Name

Ramos, Isuri Sadadhy

▶ 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

Latino Health Access

ADDRESS (Business Address Acceptable)

Santa Ana, CA 92701

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

Training and Development Associate

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000 ☒ \$1,001 \$10,000☐ \$10,001 \$100,000 ☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more_____
(Describe)☐ Other _____
(Describe)**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME

The Kennedy Commission

ADDRESS (Business Address Acceptable)

Irvine, CA 92614

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

Policy Analyst

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000 ☐ \$1,001 \$10,000☒ \$10,001 \$100,000 ☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more_____
(Describe)☐ Other _____
(Describe)**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

INTEREST RATE

_____% ☐ None

TERM (Months/Years)

SECURITY FOR LOAN

☐ None ☐ Personal residence☐ Real Property _____
Street address_____
City☐ Guarantor _____☐ Other _____
(Describe)

Comments: _____

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Initial Filing Received

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NAME OF FILER	(LAST)	(FIRST)	(MIDDLE)
Ramos, Isuri Sadadhy			

1. Office, Agency, or Court

Agency Name (Do not use acronyms)

CITY OF SANTA ANA

Division, Board, Department, District, if applicable

PLANNING COMMISSION

Your Position

COMMISSIONER

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: _____ Position: _____

2. Jurisdiction of Office (Check at least one box)☐ State☐ Multi-County _____☒ City of Santa Ana☐ Judge, Retired Judge, Pro Tem Judge, or Court Commissioner (Statewide Jurisdiction)☐ County of _____☐ Other _____**3. Type of Statement (Check at least one box)**☒ **Annual:** The period covered is January 1, 2020 through December 31, 2020

-or-

The period covered is ____/____/____, through December 31, 2020

☐ **Assuming Office:** Date assumed ____/____/____☐ **Leaving Office:** Date Left ____/____/____ (Check one circle)☐ The period covered is January 1, 2020 through the date of leaving office.☐ The period covered is ____/____/____, through the date of leaving office.☐ **Candidate:** Date of Election _____ and office sought, if different than Part 1: _____**4. Schedule Summary (must complete) ► Total number of pages including this cover page: 2****Schedules attached**☐ **Schedule A-1 - Investments** – schedule attached☐ **Schedule A-2 - Investments** – schedule attached☐ **Schedule B - Real Property** – schedule attached☒ **Schedule C - Income, Loans, & Business Positions** – schedule attached☐ **Schedule D - Income – Gifts** – schedule attached☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-

☐ **None - No reportable interests on any schedule****5. Verification**

MAILING ADDRESS	STREET	CITY	STATE	ZIP CODE
(Business or Agency Address Recommended Public Document)				

Santa Ana

CA

92701

DAYTIME TELEPHONE NUMBER

()

E MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

 Date Signed 03/31/2021
 (month, day, year)

 Signature Isuri Sadadhy Ramos
 (File the originally signed paper statement with your filing official.)

SCHEDULE C

Income, Loans, & Business Positions

(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name

Ramos, Isuri Sadadhy

▶ 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

The Kennedy Commission

ADDRESS (Business Address Acceptable)

Irvine, CA 92614

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

Policy Analyst

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000☐ \$1,001 \$10,000☒ \$10,001 \$100,000☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME

Latino Health Access

ADDRESS (Business Address Acceptable)

Santa Ana, CA 92701

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

Training and Development Associate

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000☒ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

INTEREST RATE

TERM (Months/Years)

_____% ☐ None

SECURITY FOR LOAN

☐ None☐ Personal residence☐ Real Property

Street address

City

☐ Guarantor☐ Other _____
(Describe)

Comments: _____

STATEMENT OF ECONOMIC INTERESTS

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NAME OF FILER (LAST) (FIRST) (MIDDLE)

Ramos, Isuri Sadadhy

1. Office, Agency, or Court

Agency Name (Do not use acronyms)

CITY OF SANTA ANA

Division, Board, Department, District, if applicable

PLANNING COMMISSION

Your Position

COMMISSIONER

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: _____ Position: _____

2. Jurisdiction of Office (Check at least one box)☐ State☐ Judge or Court Commissioner (Statewide Jurisdiction)☐ Multi-County _____☐ County of _____☒ City of Santa Ana☐ Other _____**3. Type of Statement (Check at least one box)**☐ **Annual:** The period covered is January 1, 2018, through December 31, 2018☒ **Leaving Office:** Date Left 08 / 20 / 2019
(Check one circle)

-or-

The period covered is ____/____/____, through December 31, 2018

☒ The period covered is January 1, 2018, through the date of leaving office.☐ **Assuming Office:** Date assumed ____/____/____☐ The period covered is ____/____/____, through the date of leaving office.☐ **Candidate:** Date of Election _____ and office sought, if different than Part 1: _____**4. Schedule Summary (must complete) ► Total number of pages including this cover page: 2****Schedules attached**☐ **Schedule A-1 - Investments** – schedule attached☒ **Schedule C - Income, Loans, & Business Positions** – schedule attached☐ **Schedule A-2 - Investments** – schedule attached☐ **Schedule D - Income – Gifts** – schedule attached☐ **Schedule B - Real Property** – schedule attached☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-

☐ **None - No reportable interests on any schedule****5. Verification**MAILING ADDRESS STREET CITY STATE ZIP CODE
(Business or Agency Address Recommended Public Document)

Santa Ana

CA

92701

DAYTIME TELEPHONE NUMBER

()

E MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 03/31/2021
(month, day, year)Signature Isuri Sadadhy Ramos
(File the originally signed paper statement with your filing official.)

SCHEDULE C

Income, Loans, & Business Positions

(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700**FAIR POLITICAL PRACTICES COMMISSION**

Name

Ramos, Isuri Sadadhy

▶ 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

The Kennedy Commission

ADDRESS (Business Address Acceptable)

Irvine, CA 92614

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000☐ \$1,001 \$10,000☒ \$10,001 \$100,000☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☐ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

INTEREST RATE

TERM (Months/Years)

_____% ☐ None

SECURITY FOR LOAN

☐ None☐ Personal residence☐ Real Property

Street address

City

☐ Guarantor☐ Other _____
(Describe)

Comments: _____

Councilwoman Phan Statement of Economic Impact
Forms

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

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NAME OF FILER	(LAST)	(FIRST)	(MIDDLE)
PHAN, THAI VIET			

1. Office, Agency, or Court

Agency Name (Do not use acronyms)

CITY OF SANTA ANA

Division, Board, Department, District, if applicable

CITY COUNCIL

Your Position

COUNCILMEMBER

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: *SEE ATTACHED FOR ADDITIONAL POSITIONS

Position: _____

2. Jurisdiction of Office (Check at least one box)☐ State☐ Multi-County _____☒ City of Santa Ana☐ Judge, Retired Judge, Pro Tem Judge, or Court Commissioner
(Statewide Jurisdiction)☐ County of _____☐ Other _____**3. Type of Statement (Check at least one box)**☒ **Annual:** The period covered is January 1, 2020 through
December 31, 2020

-or-

The period covered is ____/____/____, through
December 31, 2020☐ **Assuming Office:** Date assumed ____/____/____☐ **Leaving Office:** Date Left ____/____/____
(Check one circle)☐ The period covered is January 1, 2020 through the date of
leaving office.☐ The period covered is ____/____/____, through the date
of leaving office.☐ **Candidate:** Date of Election _____ and office sought, if different than Part 1: _____**4. Schedule Summary (must complete) ► Total number of pages including this cover page: 4****Schedules attached**☐ **Schedule A-1 - Investments** – schedule attached☐ **Schedule A-2 - Investments** – schedule attached☒ **Schedule B - Real Property** – schedule attached☒ **Schedule C - Income, Loans, & Business Positions** – schedule attached☐ **Schedule D - Income – Gifts** – schedule attached☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-

☐ **None - No reportable interests on any schedule****5. Verification**

MAILING ADDRESS	STREET	CITY	STATE	ZIP CODE
(Business or Agency Address Recommended Public Document)				

Santa Ana

CA

92704

DAYTIME TELEPHONE NUMBER

()

E MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

 Date Signed 01/28/2021
 (month, day, year)

 Signature THAI VIET PHAN
 (File the originally signed paper statement with your filing official.)

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE
Expanded Statement Attachment

CALIFORNIA FORM 700 <small>FAIR POLITICAL PRACTICES COMMISSION</small>
Name <div style="text-align: center; margin-top: 10px;">THAI VIET PHAN</div>

* This table lists all positions including the primary position listed in the Office, Agency, or Court section of the Cover Page.

Agency	Division/Board/Dept/District	Position	Type of Statement
CITY OF SANTA ANA	PLANNING COMMISSION	COMMISSIONER	Annual 1/1/2020 - 12/31/2020
CITY OF SANTA ANA	CITY COUNCIL	CANDIDATE	Annual 1/1/2020 - 12/31/2020
CITY OF SANTA ANA	CITY COUNCIL	COUNCILMEMBER	Annual 1/1/2020 - 12/31/2020

SCHEDULE B

Interests in Real Property

(Including Rental Income)

Name

PHAN, THAI VIET

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

2680 West Segerstrom Avenue

CITY

Santa Ana

FAIR MARKET VALUE

☐ \$2,000 \$10,000☐ \$10,001 \$100,000☒ \$100,001 \$1,000,000☐ Over \$1,000,000

IF APPLICABLE, LIST DATE:

05/13/19 / / 20

ACQUIRED

DISPOSED

NATURE OF INTEREST

☒ Ownership/Deed of Trust☐ Easement☐ Leasehold

Yrs. remaining

☐

Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

☐ \$0 \$499☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

☐ None

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

CITY

FAIR MARKET VALUE

☐ \$2,000 \$10,000☐ \$10,001 \$100,000☐ \$100,001 \$1,000,000☐ Over \$1,000,000

IF APPLICABLE, LIST DATE:

/ / 20 / / 20

ACQUIRED

DISPOSED

NATURE OF INTEREST

☐ Ownership/Deed of Trust☐ Easement☐ Leasehold

Yrs. remaining

☐

Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

☐ \$0 \$499☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

☐ None

* You are not required to report loans from a commercial lending institution made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

INTEREST RATE

TERM (Months/Years)

_____% ☐ None

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000☐ Guarantor, if applicable

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

INTEREST RATE

TERM (Months/Years)

_____% ☐ None

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000☐ Guarantor, if applicable

Comments: _____

SCHEDULE C

Income, Loans, & Business Positions

(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name

PHAN, THAI VIET

▶ 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

Rutan & Tucker, LLP

ADDRESS (Business Address Acceptable)

COSTA MESA, CA 92626

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

Rutan & Tucker, LLP

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000 ☐ \$1,001 \$10,000☐ \$10,001 \$100,000 ☒ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000 ☐ \$1,001 \$10,000☐ \$10,001 \$100,000 ☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☐ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

INTEREST RATE

_____% ☐ None

TERM (Months/Years)

SECURITY FOR LOAN

☐ None ☐ Personal residence☐ Real Property _____
Street address

City

☐ Guarantor _____☐ Other _____
(Describe)

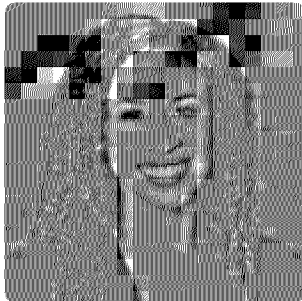
Comments: _____

Rutan and Tucker Builders and Land Developers Team
page

Rutan offers the highest quality legal services to the building and land development industry to ensure our clients succeed in the complex real estate market.

Our Builders and Land Developers industry is comprised of a team of highly qualified attorneys who specialize in assisting clients with due diligence, acquisitions, entitlements, construction, and all related matters for commercial, industrial, mixed use and residential projects. We have combined the talents and experience of top echelon transactional attorneys and litigators from a variety of practice areas to provide our clients with the highest quality and most comprehensive legal coverage for all their building and land development needs. Our attorneys know the building industry and have worked with builders to successfully deliver projects for decades, including routinely guiding a project from the due diligence/land acquisition stage, through the entitlement process – including compliance with the California Environmental Quality Act (CEQA) and the local political process – and ultimately to the sale or leasing of the finished product. Should litigation arise following project approval, we have experienced trial attorneys that are uniquely equipped to protect the interests of our clients. We are uniquely suited to assist clients with any and all business, legal, or regulatory matters that may arise.

Team



Allina M. Amuchie

Partner
Litigation and Trial

(714) 338-1853

[Email](#) [vCard](#)

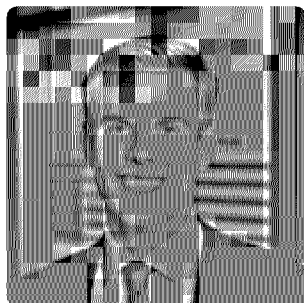


Bradley A. Chapin

Partner
Litigation and Trial

(714) 662-4638

[Email](#) [vCard](#)

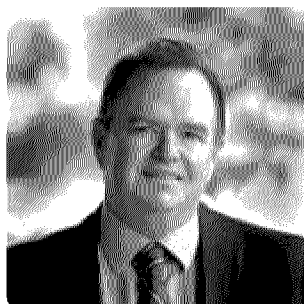


Corey H. Collins

Associate
Employment

(714) 338-1814

[Email](#) [vCard](#)

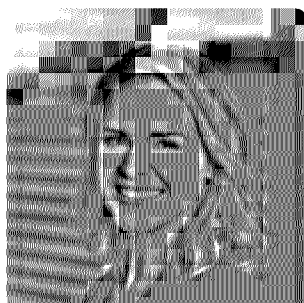


Douglas J. Dennington

Partner
Land Use and Entitlement

(714) 641-3419

[Email](#) [vCard](#)

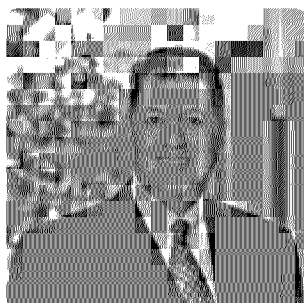


Kathryn D.Z. Domin

Partner
Litigation and Trial

(714) 338-1887

[Email](#) [vCard](#)



William T. Eliopoulos

Partner
Litigation and Trial

(650) 320-1501

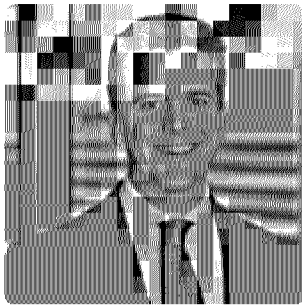
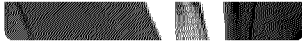
[Email](#) [vCard](#)



Jeffrey Farano, Jr.

Associate
Land Use and Entitlement

[Email](#) [vCard](#)

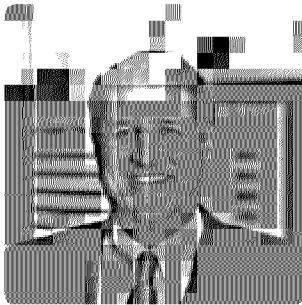


Alan B. Fenstermacher

Partner
Land Use and Entitlement

(714) 641-3452

[Email](#) [vCard](#)



Steven J. Goon

Partner
Litigation and Trial

(714) 662-4699

[Email](#) [vCard](#)

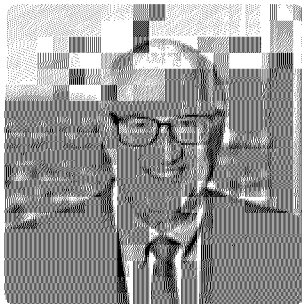


Justine Kastan

Partner
Construction

(650) 320-1506

[Email](#) [vCard](#)



Philip D. Kohn

Partner
Government and
Regulatory

(714) 641-3415

[Email](#) [vCard](#)



David P. Lanferman

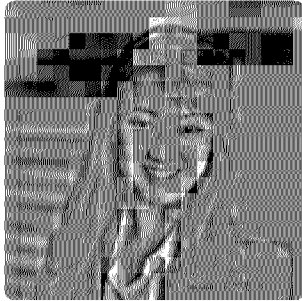
Partner
Land Use and Entitlement

(650) 320-1507



(800) 320-1307

[Email](#) [vCard](#)

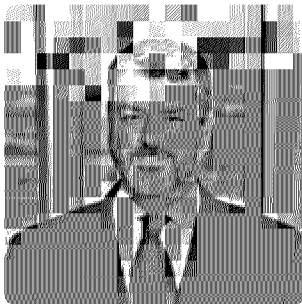


Jacqueline L. Maar

Associate
Real Estate, Corporate and
Tax

(714) 641-3421

[Email](#) [vCard](#)



William F. Meehan

Partner
Real Estate / Corporate

(714) 641-3417

[Email](#) [vCard](#)

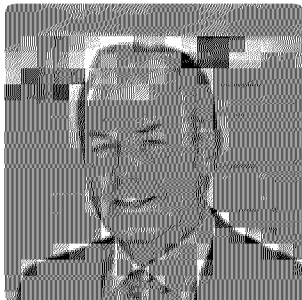


Gerard M. Mooney

Partner
Litigation and Trial

(714) 338-1857

[Email](#) [vCard](#)



Steven A. Nichols

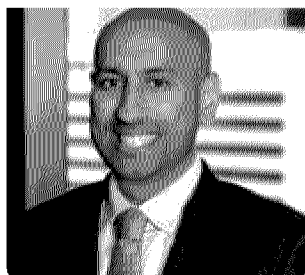
Partner
Litigation and Trial

(714) 641-3448

[Email](#) [vCard](#)



Vijay Pai



Partner
Real Estate

(714) 662-4620

Email vCard

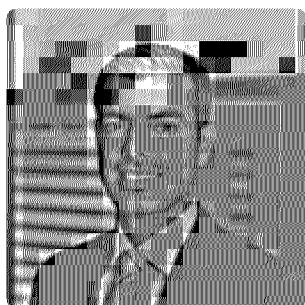


Garett Sleichter

Partner
Corporate and Securities

(714) 641-3495

Email vCard

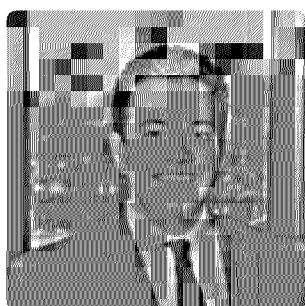


Ajit Thind

Partner
Government and
Regulatory

(714) 338-1819

Email vCard



Travis Van Ligten

Associate
Government and
Regulatory

(714) 641-3435

Email vCard

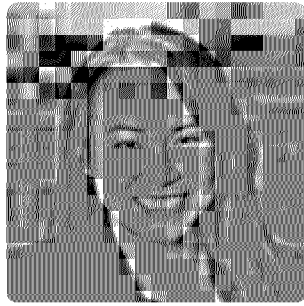


**Ashley Vernick
(Vaccaro)**

Senior Counsel
Litigation and Trial

(714) 662-4685

Email vCard



Thai Viet Phan

Associate
Government and
Regulatory

(714) 338-1825

[Email](#)

[vCard](#)

December 1, 2021

Fair Political Practices Commission
Enforcement Division
1102 Q Street, Suite 3000
Sacramento, CA 95811
Also sent via email to complaint@fppc.ca.gov

Santa Ana City Clerk
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to dgomez@santa-ana.org

Santa Ana City Attorney
20 Civic Center Plaza
Santa Ana, CA 92701
Also sent via email to scarvalho@santa-ana.org

Regarding: Complaint regarding Conflict of Interest by City Councilwoman Thai Phan

To Whom it May Concern,

On November 16, 2021, the Santa Ana City Council considered the first reading of the amendment to the HOO.

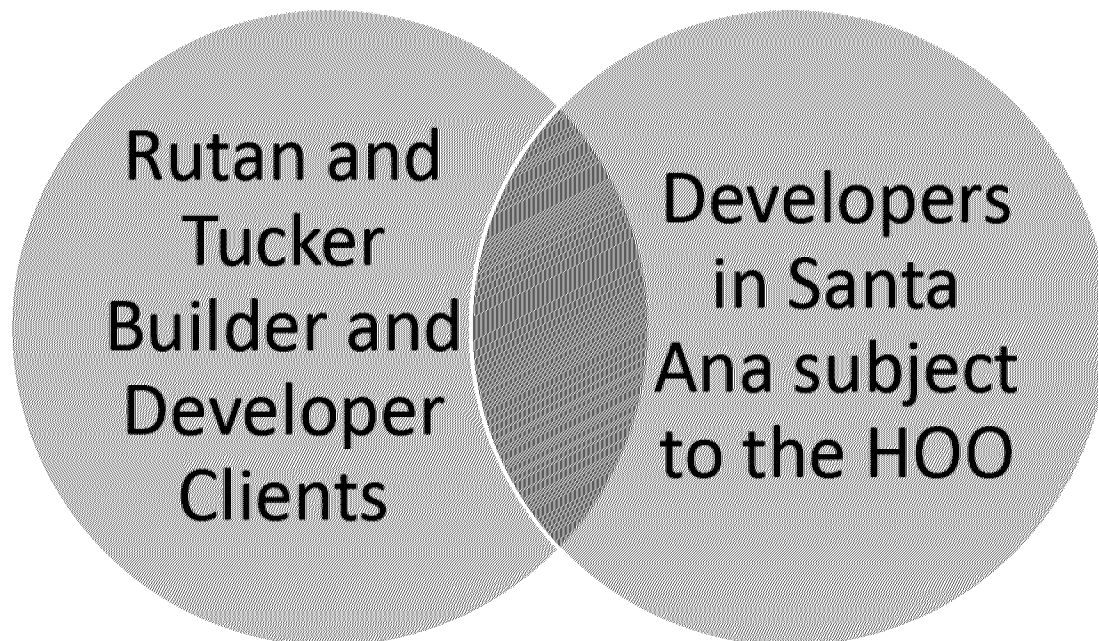
The video of the hearing can be found at <https://youtu.be/Li6MTVMM9D0> (Santa Ana Council, Nov. 16, 2021-English, published by City of Santa Ana).

At Hour 6, minute 35, Councilwoman Thai Phan dismisses an alleged conflict of interest of a City Planning Commissioner. A practicing City Attorney herself, Phan apparently doesn't understand that a conflict of interest is not excused based on an item being legislative rather than quasi-judicial. There is simply no premise for the concept that legislative acts do not have conflicts of interest and to argue such is to turn the entire Government Code section on its head.

Councilmember Thai Phan is an attorney at the law firm of Rutan & Tucker which represents many residential developers directly affected by the HOO amendments. She has an un-waivable conflict of interest which prohibits her from participating on the HOO item. Conflicts of interest do not say that a decision maker with a conflict of interest can only participate if they vote against the interests of their clients, it is a total bar to participation.

It would be unbelievable for Phan to argue that her firm's numerous developer clients would hypothetically have nothing to do with her cutting the fee to \$0 to benefit her clients, but she appears to believe that voting to increase the fee (and adding a completely illegal condition of mandating "skilled and trained workforce" for all housing beginning in 2025) has no economic impact on her firm's clients. Attached to this complaint is a print out of the Rutan & Tucker website showing that Thai Phan is a member of the firm's "Builders and Land Developers Team" page. Also attached is a copy of her Statement of Economic Interests form. While it is arguable whether a lawyer may list ONLY their law firm as a source of income over \$10,000 and thus shield their actual clients from disclosure to the public,

it is simply not believable that Thai Phan derives income from representing builders and developers in the community. This source of income is a total bar to her participation on matters such as the HOO amendment and, while she may argue that it is a broadly applied ordinance in the City, the facts are that a Venn diagram showing the entities subject to the HOO and Rutan and Tucker's Builder and Developer clients would be largely the same group of people.



Rutan and Tucker is a regional law firm who represents many Orange County clients. Rutan and Tucker has practice areas such as corporate and tax, or employment, or intellectual property which are clearly not a conflict of interest for the firm and Phan on a land use matter, however, Phan works on the Team which services builders and developers and is participating in a municipal question directly related to her practice area and likely, clients.

To put an even more specific point on the matter, Councilmember Phan's colleague at Rutan & Tucker, Peter Howell, represents Dallas-based real estate developer Centennial in the re-entitlement of the 49 acre, 1.13m square foot, Santa Ana Main Place Mall. Centennial proposes to redevelop the Mall with over 1,900 dwelling units in what will surely amount to a approximate \$1 billion investment. The impact of Councilmember Phan's decision on the HOO will have a multi-million dollar impact to Centennial. There was a specific question as to whether "vested" projects were subject to the HOO amendments, the outcome of which has a direct economic impact on Centennial, which has a direct economic connection with Phan's employer. It defies logic (not to mention the Government Code and case law) that Councilmember Phan would be allowed to not only participate, but lead, the HOO discussion given the scope of this impact to Rutan's clients.

The code clearly states that to avoid actual bias or the appearance of possible improprieties, a public official with a disqualifying conflict of interest in a government decision must be prohibited from participating in the decision.

The FPPC outlines five types of interests that may result in disqualification. Of these, the “income” interest is clearly met by Ramos. “An individual or an entity from whom the official has received income or promised income aggregating to \$500 or more in the previous 12 months.”

Please see the attached Form 700’s filed by Councilwoman Phan. The test goes on to see whether the financial impact of the decision is foreseeable and significant enough to material. In this case, the facts speak for themselves. The amendments to the HOO are significant to current and future builders and developers who may be or are current clients of Phan’s.

Potential State Law Violations:

1. City Councilwoman Thai Phan likely violated the code by voting on the HOO due to the number of economically affected clients who are the sources of income to her employer Rutan and Tucker and to her team within the firm.

Potential City of Santa Ana Violations:

1. Councilwoman Thai Phan’s participation in the November 16, 2021 hearing likely violated Santa Ana Municipal Code section 2-105. First, Phan should have “absented” [herself] from the room where the meeting was held during debate and voting on the matter. Second, per the code, Phan should have divulged any “remote interest” before voting. Neither of these occurred and the City Attorney cannot “sweep it all under the rug” by stating that there is no financial interest. This opinion violates the latter part of code section 2-105.

As stated previously, the California State Fair Political Practices Commission is being contacted because the complaint filed with the Mayor and City Attorney were not taken seriously. Additionally, the investigative authority of the Commission is ideally situated to obtain information regarding the conflicts of interest alleged herein.

A hearing for the second reading of the HOO amendments is scheduled for Tuesday December 7, 2021 beginning at 5:00 pm. It is requested that FPPC staff alert the City of Santa Ana to the conflicts of interest before this meeting occurs.

We have referred this matter to an attorney and reserve the right to challenge these decisions.

Sincerely,



Alex Lee

On behalf of numerous concerned Santa Ana residents

alexlee1212@protonmail.com

Enc: Councilwoman Phan Statement of Economic Impact Forms
Rutan and Tucker Builders and Land Developers Team page

cc: Rutan & Tucker Managing Partner

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Initial Filing Received

Filing Official Use Only

 E-Filed
 01/28/2021
 14:51:07

 Filing ID:
 196447376

Please type or print in ink.

NAME OF FILER	(LAST)	(FIRST)	(MIDDLE)
PHAN, THAI VIET			

1. Office, Agency, or Court

Agency Name (Do not use acronyms)

CITY OF SANTA ANA

Division, Board, Department, District, if applicable

CITY COUNCIL

Your Position

COUNCILMEMBER

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: *SEE ATTACHED FOR ADDITIONAL POSITIONS

Position: _____

2. Jurisdiction of Office (Check at least one box)☐ State☐ Multi-County _____☒ City of Santa Ana☐ Judge, Retired Judge, Pro Tem Judge, or Court Commissioner
(Statewide Jurisdiction)☐ County of _____☐ Other _____**3. Type of Statement (Check at least one box)**☒ **Annual:** The period covered is January 1, 2020 through
December 31, 2020

-or-

The period covered is ____/____/____, through
December 31, 2020☐ **Assuming Office:** Date assumed ____/____/____☐ **Leaving Office:** Date Left ____/____/____
(Check one circle)☐ The period covered is January 1, 2020 through the date of
leaving office.☐ The period covered is ____/____/____, through the date
of leaving office.☐ **Candidate:** Date of Election _____ and office sought, if different than Part 1: _____**4. Schedule Summary (must complete) ► Total number of pages including this cover page: 4****Schedules attached**☐ **Schedule A-1 - Investments** – schedule attached☐ **Schedule A-2 - Investments** – schedule attached☒ **Schedule B - Real Property** – schedule attached☒ **Schedule C - Income, Loans, & Business Positions** – schedule attached☐ **Schedule D - Income – Gifts** – schedule attached☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-

☐ **None - No reportable interests on any schedule****5. Verification**

MAILING ADDRESS	STREET	CITY	STATE	ZIP CODE
(Business or Agency Address Recommended Public Document)				

Santa Ana

CA

92704

DAYTIME TELEPHONE NUMBER

()

E MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

 Date Signed 01/28/2021
 (month, day, year)

 Signature THAI VIET PHAN
 (File the originally signed paper statement with your filing official.)

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE
Expanded Statement Attachment

CALIFORNIA FORM 700 FAIR POLITICAL PRACTICES COMMISSION
Name THAI VIET PHAN

* This table lists all positions including the primary position listed in the Office, Agency, or Court section of the Cover Page.

Agency	Division/Board/Dept/District	Position	Type of Statement
CITY OF SANTA ANA	PLANNING COMMISSION	COMMISSIONER	Annual 1/1/2020 - 12/31/2020
CITY OF SANTA ANA	CITY COUNCIL	CANDIDATE	Annual 1/1/2020 - 12/31/2020
CITY OF SANTA ANA	CITY COUNCIL	COUNCILMEMBER	Annual 1/1/2020 - 12/31/2020

SCHEDULE B

Interests in Real Property

(Including Rental Income)

Name

PHAN, THAI VIET

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

2680 West Segerstrom Avenue

CITY

Santa Ana

FAIR MARKET VALUE

☐ \$2,000 \$10,000☐ \$10,001 \$100,000☒ \$100,001 \$1,000,000☐ Over \$1,000,000

IF APPLICABLE, LIST DATE:

05/13/19 / / 20

ACQUIRED

DISPOSED

NATURE OF INTEREST

☒ Ownership/Deed of Trust☐ Easement☐ Leasehold

Yrs. remaining

☐

Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

☐ \$0 \$499☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

☐ None

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

CITY

FAIR MARKET VALUE

☐ \$2,000 \$10,000☐ \$10,001 \$100,000☐ \$100,001 \$1,000,000☐ Over \$1,000,000

IF APPLICABLE, LIST DATE:

/ / 20 / / 20

ACQUIRED

DISPOSED

NATURE OF INTEREST

☐ Ownership/Deed of Trust☐ Easement☐ Leasehold

Yrs. remaining

☐

Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

☐ \$0 \$499☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

☐ None

* You are not required to report loans from a commercial lending institution made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

INTEREST RATE

TERM (Months/Years)

_____% ☐ None

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000☐ Guarantor, if applicable

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

INTEREST RATE

TERM (Months/Years)

_____% ☐ None

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000☐ Guarantor, if applicable

Comments:

SCHEDULE C

Income, Loans, & Business Positions

(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name

PHAN, THAI VIET

▶ 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

Rutan & Tucker, LLP

ADDRESS (Business Address Acceptable)

COSTA MESA, CA 92626

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

Rutan & Tucker, LLP

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000 ☐ \$1,001 \$10,000☐ \$10,001 \$100,000 ☒ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☒ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED ☐ No Income Business Position Only☐ \$500 \$1,000 ☐ \$1,001 \$10,000☐ \$10,001 \$100,000 ☐ OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

☐ Salary ☐ Spouse's or registered domestic partner's income
(For self employed use Schedule A 2.)☐ Partnership (Less than 10% ownership. For 10% or greater use
Schedule A 2.)☐ Sale of _____
(Real property, car, boat, etc.)☐ Loan repayment☐ Commission or ☐ Rental Income, list each source of \$10,000 or more

(Describe)

☐ Other _____
(Describe)**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD

☐ \$500 \$1,000☐ \$1,001 \$10,000☐ \$10,001 \$100,000☐ OVER \$100,000

INTEREST RATE

_____% ☐ None

TERM (Months/Years)

SECURITY FOR LOAN

☐ None ☐ Personal residence☐ Real Property _____
Street address

City

☐ Guarantor _____☐ Other _____
(Describe)

Comments: _____

Rutan offers the highest quality legal services to the building and land development industry to ensure our clients succeed in the complex real estate market.

Our Builders and Land Developers industry is comprised of a team of highly qualified attorneys who specialize in assisting clients with due diligence, acquisitions, entitlements, construction, and all related matters for commercial, industrial, mixed use and residential projects. We have combined the talents and experience of top echelon transactional attorneys and litigators from a variety of practice areas to provide our clients with the highest quality and most comprehensive legal coverage for all their building and land development needs. Our attorneys know the building industry and have worked with builders to successfully deliver projects for decades, including routinely guiding a project from the due diligence/land acquisition stage, through the entitlement process – including compliance with the California Environmental Quality Act (CEQA) and the local political process – and ultimately to the sale or leasing of the finished product. Should litigation arise following project approval, we have experienced trial attorneys that are uniquely equipped to protect the interests of our clients. We are uniquely suited to assist clients with any and all business, legal, or regulatory matters that may arise.

Team



Allina M. Amuchie

Partner
Litigation and Trial

(714) 338-1853

[Email](#) [vCard](#)

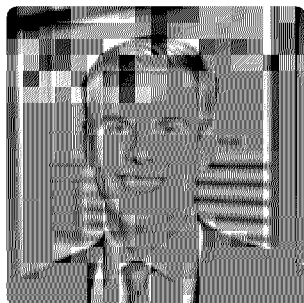


Bradley A. Chapin

Partner
Litigation and Trial

(714) 662-4638

[Email](#) [vCard](#)

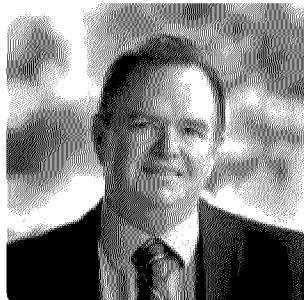


Corey H. Collins

Associate
Employment

(714) 338-1814

[Email](#) [vCard](#)



Douglas J. Dennington

Partner
Land Use and Entitlement

(714) 641-3419

[Email](#) [vCard](#)

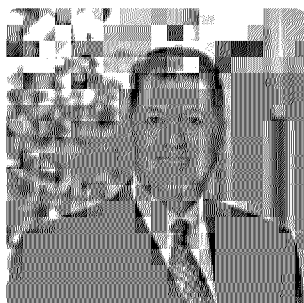


Kathryn D.Z. Domin

Partner
Litigation and Trial

(714) 338-1887

[Email](#) [vCard](#)



William T. Eliopoulos

Partner
Litigation and Trial

(650) 320-1501

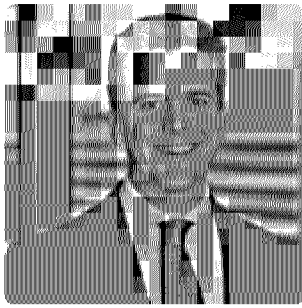
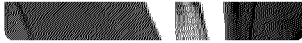
[Email](#) [vCard](#)



Jeffrey Farano, Jr.

Associate
Land Use and Entitlement

[Email](#) [vCard](#)

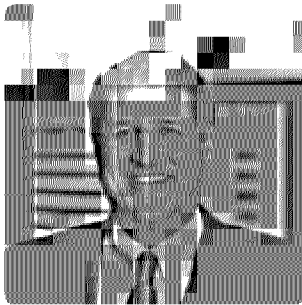


Alan B. Fenstermacher

Partner
Land Use and Entitlement

(714) 641-3452

[Email](#) [vCard](#)



Steven J. Goon

Partner
Litigation and Trial

(714) 662-4699

[Email](#) [vCard](#)

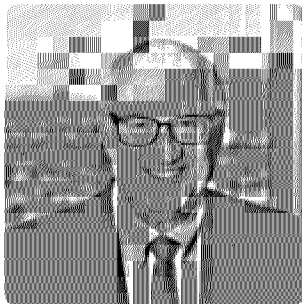


Justine Kastan

Partner
Construction

(650) 320-1506

[Email](#) [vCard](#)



Philip D. Kohn

Partner
Government and
Regulatory

(714) 641-3415

[Email](#) [vCard](#)



David P. Lanferman

Partner
Land Use and Entitlement

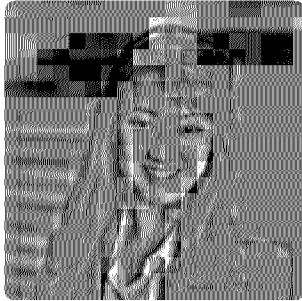
(650) 320-1507



(800) 320-1307

[Email](#)

[vCard](#)



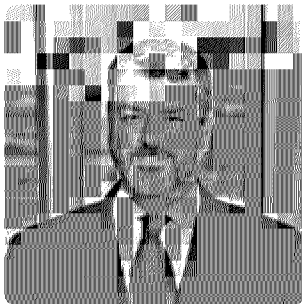
Jacqueline L. Maar

Associate
Real Estate, Corporate and
Tax

(714) 641-3421

[Email](#)

[vCard](#)



William F. Meehan

Partner
Real Estate / Corporate

(714) 641-3417

[Email](#)

[vCard](#)



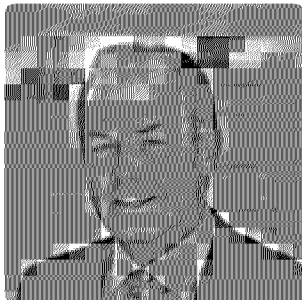
Gerard M. Mooney

Partner
Litigation and Trial

(714) 338-1857

[Email](#)

[vCard](#)



Steven A. Nichols

Partner
Litigation and Trial

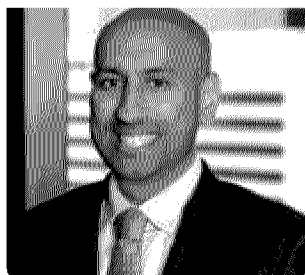
(714) 641-3448

[Email](#)

[vCard](#)



Vijay Pai



Partner
Real Estate

(714) 662-4620

Email vCard

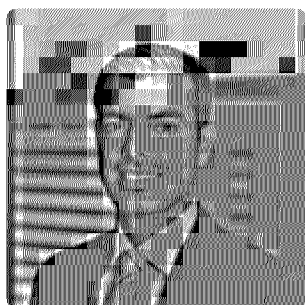


Garett Sleichter

Partner
Corporate and Securities

(714) 641-3495

Email vCard

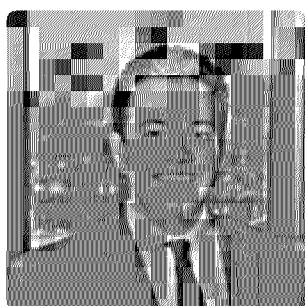


Ajit Thind

Partner
Government and
Regulatory

(714) 338-1819

Email vCard

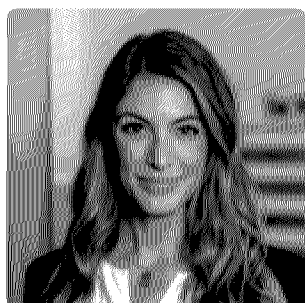


Travis Van Ligten

Associate
Government and
Regulatory

(714) 641-3435

Email vCard

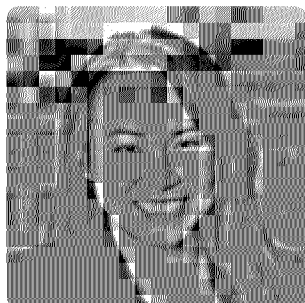


**Ashley Vernick
(Vaccaro)**

Senior Counsel
Litigation and Trial

(714) 662-4685

Email vCard



Thai Viet Phan

Associate
Government and
Regulatory

(714) 338-1825

[Email](#)

[vCard](#)



BUILDING INDUSTRY OF SOUTHERN CALIFORNIA, INC.

ORANGE COUNTY CHAPTER

December 7, 2021

Mayor Vicente Sarmiento
City of Santa Ana
22 Civic Center Plaza
Santa Ana, CA 92701

Dear Mayor and Council,

On November 16, 2021, the City Council for the City of Santa Ana (“City”) held a public hearing during which it addressed Zoning Amendment No. 2021-03 (“Repealing and Reenacting in its Entirety Article XVIII.I. of Chapter 41 of the Santa Ana Municipal Code Regarding the Housing Opportunity Ordinance”). The Orange County Chapter of the Building Industry Association of Southern California (“BIA/OC”) objects to the scope of the City Council’s changes to the Housing Opportunity Ordinance (“HOO”) after it was introduced. For the reasons set forth in this letter, BIA/OC respectfully requests that the new, re-imagined HOO ordinance be sent back to the Planning Commission for further review and public input.

On the night of November 16, and into the early morning of the next day, the City Council proposed a dizzying array of amendments to the HOO ordinance, fundamentally changing what had been publicly vetted. As detailed below, the Council made a variety of substantive, non-clerical, and non-typographical changes that the public, the Planning Commission, and City Staff never had a chance to review, including:

- Altering priorities for the use of the inclusionary housing fund not directly relating to the production of affordable housing units;
- Altering inclusionary rates for for-sale units;
- Mandating skilled and trained workforce and local hire, phased in at two levels;
 - November 16, 2021 to December 31, 2025:
 - \$15: no requirements
 - \$10: 30 percent skilled and trained workforce and two trades, and 20 percent local hire
 - \$5: 60 percent skilled and trained workforce and three trades, and 20 percent local hire
 - January 1, 2026 onward:
 - \$15: 30 percent skilled and trained workforce and 35 percent local hire
 - \$10: 60 percent skilled and trained workforce and 35 percent local hire
 - \$5: 90 percent skilled and trained workforce and 35 percent local hire
- Incorporating a 4/5 vote requirement for future amendments

EXECUTIVE COMMITTEE

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IMMEDIATE PAST PRESIDENT
RICK WOOD

VICE PRESIDENT, OC CHAPTER
ADAM WOOD
BIASC

The amendments run afoul of the City Charter's explicit restrictions on changing the "general scope" of the proposed HOO ordinance after its introduction. (City Charter Art. IV, Div. 2, Sec. 413 ["A proposed ordinance may be amended or modified between the time of its introduction and the time of its final passage, providing its general scope and original purpose are retained."].) Because the proposed amendments changed the "general scope" of the ordinance by substantively altering its provisions, the proposed ordinance must be re-introduced before adoption, allowing for another waiting period to pass before the modified ordinance can be adopted.¹ This important step helps to ensure that laws, especially those as consequential as the HOO, are drafted carefully and are provided with a full and open review by the public before their ultimate approval.²

The City Council's vote on the HOO amendments provides context on why these guardrails should be in place. When the City Council voted on the Mayor's substitute motion containing the variety of newly proposed amendments—introduced mere minutes before the rushed vote at approximately 1:30 am—the voting screen only stated "Substitute motion" without providing additional context about the exact changes proposed. Because of the proposed ordinance's changed scope, it appeared that some City Councilmembers were confused over what was proposed while they cast votes on those very amendments. The HOO amendments were a moving target, even up until the final seconds before their early morning approval.

BIA/OC objects to the changes to the HOO introduced by the City Council and respectfully requests that the motion approving the rushed array of new amendments changing the ordinance's general scope be sent back to the Planning Commission for further review.

Sincerely,



Adam Wood
Vice President
Building Industry Association of
Southern California
Orange County Chapter

¹ Foley, *Ordinances and Resolutions: Practice Tips for Effective Legislation*, League of California Cities Annual Conference <<https://www.cacities.org/uploadedfiles/leagueinternet/53/530f101f-f778-47cf-8995-3fca3e8ba129.pdf>> (as of December 1, 2021), stating "Alterations (other than for typographical or clerical errors) prior to second reading **require re-introduction** for all non-urgency ordinances" (emphasis added).

² *How Local Agencies Make Things Happen*, Institute for Local Government (June 2014) <https://www.ca-ilg.org/sites/main/files/file-attachments/how_agencies_make_things_happen_june_2014.pdf> (as of December 1, 2021), stating "If substantive changes are made to a proposed ordinance after it is first introduced, **it generally will need to be re-introduced and another waiting period must pass before the modified ordinance can be adopted**. These steps ensure that laws are drafted as carefully as possible and to ensure that a full and open review of the ordinance occurs that permits the public to review and comment on the proposed law prior to its approval" (emphasis added).