

March 12, 2007

SDEC Formal Advice Letter No. FA07-03

Councilmember Jim Madaffer
City Council District 7
202 "C" St., 10th Floor
San Diego, CA 92101

Re: Request for Advice Regarding Disqualification from Municipal Decisions
Involving Wightman Street Property (Your File # M-07-03-01)

Dear Councilmember Madaffer:

This advice letter has been prepared in response to your memorandum to the City of San Diego Ethics Commission dated March 1, 2007. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Ethics Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Your letter seeks the Commission's assistance with regard to whether you may participate in upcoming municipal decisions involving a park on Wightman Street.

QUESTION

Do you have a conflict of interest that disqualifies you from participating in upcoming municipal decisions involving park acquisition and development on Wightman Street?

SHORT ANSWER

The City's Ethics Ordinance provides that City Officials are prohibited from participating in a municipal decision if it is reasonably foreseeable that the decision will have a material financial effect on their economic interests. The facts you provided indicate that you do not have any economic interests that would be affected in any manner as a result of the Wightman Street project. Accordingly, there is nothing in the Ethics Ordinance that disqualifies you from participating in upcoming City Council decisions relating to that project.

BACKGROUND

According to information provided in your memorandum, you have been working with members of the Fox Canyon community to build a system of parks and to provide a connection between Ontario Avenue and Winona Avenue in the Fox Canyon area. On February 27, 2007, the City Council discussed an agenda item relating to Wightman Street, which is in the Fox Canyon area.

This agenda item involved transferring monies previously earmarked for a proposed park several blocks away to a Wightman Street park acquisition and development fund, and amending a state grant proposal to pertain to Wightman Street instead of to the other proposed park area. This item was continued to a future date. Because of disqualification issues raised by the City Attorney at the February 27, 2007, City Council meeting, you are seeking advice regarding whether you may lawfully participate in upcoming municipal decisions involving the Wightman Street park project.

DISQUALIFICATION ANALYSIS

SDMC section 27.3561 prohibits you, as a City Official, from knowingly influencing a municipal decision if it is reasonably foreseeable that the municipal decision will have a material financial effect on any of your economic interests. The term, "municipal decision" includes any decision made by the City Council, including any of its resolutions or ordinances. Thus, when the City Council makes a decision regarding funding a park on Wightman Street or involving changing the scope of a state grant from a previously selected location to the Wightman Street location, all such matters are "municipal decisions" under the Ethics Ordinance.

"Economic interests," are defined in the Ethics Ordinance as follows:

- (1) any business entity in which the City Official or a member of the City Official's immediate family has invested \$2,000 or more;
- (2) any business entity for which the City Official or a member of the City Official's immediate family is a director, officer, partner, trustee, employee, or hold any position of management;
- (3) any real property which the City Official or a member of the City Official's immediate family has invested \$2,000 or more;
- (4) any person from whom a City Official or a member of the City Official's immediate family has received (or by whom you have been promised) \$500 or more in income within twelve months prior to the municipal decision; and
- (5) any person from whom a City Official or a member of the City Official's immediate family has received gifts which total \$320 or more within twelve months prior to the municipal decision.¹
- (6) the personal expenses, income, assets, or liabilities of a City Official or a member of the City Official's immediate family.

SDMC § 27.3561.

The above provisions are based on the state law contained in the Political Reform Act (Cal. Gov't Code §§ 81000-91014).

¹ The \$320 gift limits at the time this section went into effect have been raised to \$390.

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You have indicated that none of the above economic interests are applicable to any upcoming municipal decisions pertaining to the funding or acquisition of a park on Wightman Street. In particular, you stated that you do not own any real property within several miles of this area, and have indicated that you do not have any business interests that would be financially affected in any manner by the Wightman Street project. Under these facts, because the Wightman Street park project will not have a material financial effect on any of your economic interests, the City's Ethics Ordinance does not preclude you from participating in municipal decisions relating to that project

In your memorandum, you ask if there is any law that exists that would preclude you from participating in the Wightman Street decision. As you know, the Ethics Commission's jurisdiction is limited to certain "governmental ethics laws," which consist of the Ethics Ordinance, the Election Campaign Control Ordinance, and the Lobbying Ordinance. We cannot comment on the applicability of any law outside our jurisdiction, except to say that with regard to our laws that are based on the state's Political Reform Act [PRA], we do interpret our laws in a manner that is consistent with the Fair Political Practices Commission's [FPPC] interpretation of the PRA. Our conflict of interest laws are based on those contained in the PRA, which regulates only "financial" conflicts of interests. *In re Newcomer*, FPPC Adv. Ltr. A-00-229. There are other conflict of interest laws that may apply to your facts, over which the Ethics Commission has no jurisdiction.²

CONCLUSION

Under the provisions of the City's Ethics Ordinance, and under the facts you have provided to us, you do not have a financial interest that disqualifies you from participating in upcoming City Council decisions pertaining to acquiring and developing a park on Wightman Street.

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice from an attorney to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

Sincerely,

Cristie McGuire
General Counsel

By: Stephen Ross
Program Manager-Technical Assistance

² The common law doctrine against conflicts of interest provides that public officers are impliedly bound to exercise their powers with disinterested skill, zeal, and diligence, primarily for the benefit of the public. *Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152, 1170 (1996); *Noble v. City of Palo Alto*, 89 Cal.App. 47, 51 (1928).