



## FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 2: INTERESTS IN REAL PROPERTY

The City's ethics ordinance includes laws that prohibit city officials from influencing municipal decisions if it is reasonably foreseeable that the decisions will have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to city officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts that stem from financial interests in real property. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in local and state law.

### GENERAL RULES

- ❖ The ethics ordinance prohibits city officials from participating in a municipal decision if it is reasonably foreseeable that the decision will have a material financial effect on any real property in which they, or a member of their immediate families, have an interest worth \$2,000 or more.
  - ✓ The term immediate family means an official's spouse (or registered domestic partner) and any dependent children.
  - ✓ You must consider your spouse's investments and interests in real property for disqualification purposes even if you have an agreement (such as a pre-nuptial agreement) stating that you have no legal interest in his or her real property.
- ❖ Under this rule, for example, a city official who owns or leases a house next door to a site under consideration for a new sewer pump station may not participate in a municipal decision regarding placing the pump station on that site. Similarly, a city official may be precluded from participating in a decision to modify an assessment imposed on his or her real property.
- ❖ These rules also apply to leasehold interests in real property. In other words, even if you don't own a parcel of real property, you may still be disqualified from participating in a municipal decision if you or a member of your immediate family spends \$2,000 or more per year to lease residential or business property involved in the decision.
- ❖ Note that in some cases, as discussed in greater detail below, an official may participate in a municipal decision notwithstanding its financial effect on his or her property so long as the decision's effect on the property is indistinguishable from its effect on the public generally.
- ❖ Even though you are generally not required to disclose your personal residence on a statement of economic interests (Form 700), your ownership or leasehold interest in that property could still disqualify you from participating in a municipal decision.

- ❖ Whether a municipal decision will have a material financial effect on a city official's real property interests depends on a variety of factors, including whether the official has an ownership interest or a leasehold interest, the distance between the official's real property and the property that is the subject of the municipal decision, and the extent to which the decision may impact the official's property. These factors are discussed in the sections below.

## **MATERIALITY – OTHER THAN LEASEHOLD INTERESTS**

### **Decisions Involving an Official's Property**

- ❖ When a city official has a financial interest in real property that is the subject of a municipal decision, the official may not participate in the decision if it will have a material financial effect on the property.
- ❖ The financial effect of a municipal decision on real property in which an official has a financial interest is material whenever the decision:
  - (1) involves the adoption or amendment of development criteria applicable to the property;
  - (2) determines the property's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category, annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or local government subdivision, or other boundaries (other than boundaries for elective purposes);
  - (3) would impose, repeal, or modify any taxes, fees, or assessments that apply to the property;
  - (4) authorizes the sale, purchase, or lease of the property;
  - (5) involves the issuance, denial, or revocation of a license, permit, or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on, the property; or,
  - (6) involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction.
    - ✓ Note that decisions involving the repair, replacement or maintenance of existing streets, water, sewer, storm drainage, or similar facilities are exempt from this provision.
- ❖ In other words, if you have a financial interest in real property that will be directly impacted by the types of actions listed above you may not lawfully participate in municipal decisions relating to those actions.
- ❖ The sections that follow discuss the materiality standards for properties that aren't the subject of a municipal decision, but whose proximity to the subject property might result in a financial impact.

### Decisions Involving Parcels 500 Feet or Less from an Official's Property

- ❖ The financial effect of a municipal decision on real property in which an official has a financial interest is presumed to be material if the decision involves a parcel located 500 feet or less from the official's real property.
- ❖ This presumption may be rebutted only if there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.
- ❖ In other words, if you have a financial interest in real property located within 500 feet of a parcel that is the subject of a municipal decision, you may not participate in the decision unless all relevant facts clearly support a conclusion that your property will not be financially impacted by the decision in any meaningful way.

### Decisions Involving Parcels Between 500 and 1,000 Feet from an Official's Property

- ❖ The financial effect of a municipal decision on real property in which an official has a financial interest is material if the decision involves a parcel located more than 500 feet and less than 1,000 feet from the official's property, and the decision would change:
  - (1) the development potential of the official's real property;
  - (2) the income producing potential of the official's real property;
  - (3) the highest and best use of the official's real property;
  - (4) the character of the official's real property by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or,
  - (5) the market value of the official's real property.
- ❖ In other words, you may not lawfully participate in a municipal decision involving a parcel located 500 to 1,000 feet from your property if the decision will affect your property in the manner described above.

### Decisions Involving Parcels 1,000 Feet or More from an Official's Property

- ❖ The financial effect of a municipal decision on real property in which an official has a financial interest is presumed not to be material if the decision involves a parcel located 1,000 feet or more from the official's property.
- ❖ Regardless of the distance from the subject parcel, however, this presumption can be rebutted if there is clear and convincing evidence that the decision will substantially impact the official's property.
- ❖ In other words, if you own property more than 1,000 feet from a parcel that is the subject of a municipal decision, it is likely that you can lawfully participate in the decision. Before doing so, however, you must consider the magnitude of the decision and how far its impact will extend. A large-scale project like a new sports arena, for example, would likely have a substantial impact on properties beyond 1,000 feet.

- ❖ When determining whether your property will be substantially impacted by a municipal decision involving a parcel more than 1,000 feet away, consider the factors discussed in the prior section, that is, your property's development potential, income producing potential, highest and best use, character, and market value. If a municipal decision will not substantially affect these aspects of your property, you may lawfully participate in the decision.

## **MATERIALITY – LEASEHOLD INTERESTS**

- ❖ The financial effect of a municipal decision on real property in which an official has a leasehold interest is material whenever the decision will:
  - (1) change the termination date of the lease;
  - (2) increase or decrease the potential rental value of the property;
  - (3) change the official's actual or legally allowable use of the real property;
  - (4) impact the official's use and enjoyment of the real property.
- ❖ In other words, you may not participate in a municipal decision if the decision will impact real property that you are leasing by changing the lease termination date, the property's rental value or legally allowable uses, or your use and enjoyment of the property.

## **INSIGNIFICANT EFFECTS**

- ❖ Notwithstanding the rules set forth above, there may be circumstances in which a municipal decision's financial impact is so minor that it does not rise to the level of being material. In other words, a city official does not have a disqualifying conflict of interest in a municipal decision if the financial effect of the decision is nominal or inconsequential.
- ❖ Although the materiality criteria set forth above typically involve significant financial impacts, it's possible that a decision will have virtually no financial impact on an official's real property. Please contact the ethics commission for additional guidance if you believe the impact of a decision on your real property will be insignificant.

## **PUBLIC GENERALLY**

- ❖ Even if the financial effect of a municipal decision on your real property interest is material, you will not be disqualified from participating in that decision if you can establish that the financial effect on the property is indistinguishable from the financial effect on the public generally.
- ❖ A decision affecting your interest in real property is entitled to the public generally exception if the financial impact on the real property is not unique compared to its effect on at least 25% of all real property, commercial real property, or residential real property located in the City of San Diego. Note that if the only interest you have in the decision is your personal residence, the exception will apply if the financial impact on your residence is not unique compared to the decision's effect on at least 15% of the residential real properties in the City.
- ❖ When determining whether a municipal decision's financial impact on your property is unique compared to its impact on other properties in the City, consider these types of factors:

- ✓ the property's development potential or use;
  - ✓ the property's income producing potential;
  - ✓ the proximity of the property to the project that is the subject of the municipal decision;
  - ✓ when you own multiple properties, whether the municipal decision's cumulative effect on your properties is greater than its effect on a single property; and,
  - ✓ when the decision imposes the same rate or percentage on all properties, whether you own a large property that will be financially impacted differently than a smaller property.
- ❖ In addition, the public generally exception may apply if a municipal decision will not have a unique effect on a city official's economic interests and if it involves one of the following special circumstances:
- ✓ the decision is to adjust an assessment, tax, fee, or rate for water, utility, or other public services applied equally, proportionally, or by the same percentage to everyone financially impacted, so long as (1) the assessment, tax, fee, or rate had already been imposed; and (2) the persons or properties subject to the assessment, tax, fee, or rate had already been determined;
  - ✓ the decision is to change general fees or charges, such as parking rates, permits, license fees, application fees, and other general fees to that apply to the entire City;
  - ✓ the decision will impact a residential neighborhood by restricting on-street parking, imposing traffic controls, deterring vagrancy, reducing nuisance, or improving public safety, so long as the neighborhood has at least 50 residential properties, or at least 5% of the residential properties in the City;
  - ✓ the decision will establish, eliminate, amend, or otherwise affect the rights or liabilities of tenants and owners of residential rental properties (for example, rent control, tenant rights), so long as (1) the decision applies to all residential properties in the City that are not exempt under the Costa-Hawkins Rental Housing Act; (2) the official owns three or fewer residential rental units; and (3) the decision affects only the official's interests as a lessor of residential real property or as the lessee or owner of the official's primary residence.
  - ✓ The decision is made by a commission, board, or committee that by law requires appointees with a representative interest in a particular industry, trade, or profession, and the decision's impact is on that industry, trade, or profession; or,
  - ✓ The decision is made pursuant to an official proclamation of a state of emergency.
- ❖ A Councilmember may consider the effect of a decision on the Council district to which he or she was elected, instead of the entire City, when determining whether any of the above special circumstances are present.
- ❖ Contact the ethics commission for assistance with these rules.

## CONTRACTS

- ❖ If the municipal decision involves a contract, be sure you also review the ethics commission's fact sheet on financial interests in a contract.

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the ethics commission at (619) 533-3476 for additional assistance.

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