THE CITY OF SAN DIEGO
ETHICS COMMISSION

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 when those decisions are substantially likely to 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 the Ethics Ordinance.

- The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., substantially likely) that the decision will have a "material financial effect" on any real property in which they, or a member of their immediate family, have an interest worth $2,000 or more in fair market value.
- 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.
- This rule also applies 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 your immediate family pays $2,000 or more per year to lease residential or business property involved in the decision.
- 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.
- Even though you do not have to disclose your personal residence on your Statement of Economic Interests (Form 700), you should know that your ownership or leasehold interest in such property must be considered in a disqualification analysis.
- Before you can determine whether or not a municipal decision will have a "material" (i.e., significant) effect on your property, you must first identify how close the relationship is between the decision and the property. In other words, you must determine whether your real property interests are "directly involved" or "indirectly involved" in the decision.
- A variety of factors could result in real property being considered "directly involved" in a municipal decision. The most common factors include:
  - ✓ any part of the real property being located within 500 feet of the boundaries of the property that is the subject of the municipal decision;
  - ✓ the decision involves the zoning, sale, purchase, or lease of the real property;

- ✓ the decision involves the issuance, denial, or revocation of a license, permit, or other land use entitlement authorizing a specific use of the real property;
- ✓ the decision involves the imposition, repeal, or modification of any taxes or fees assessed or imposed on the real property;
- ✓ the decision involves construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the real property in which the official has an interest will receive new or improved services.

- ❖ Keep in mind that the above is not an exhaustive list of factors that make real property "directly involved." In addition, there are some exceptions that may be applicable. Be sure to contact the Ethics Commission if you have questions regarding whether property is "directly involved."
- ❖ If real property you own is directly involved, then the financial effect of a municipal decision on the property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the decision will have any financial effect on the property. This means that the decision will not have a financial effect of even a single dollar on the value of the property.
- ❖ With regard to your leasehold interest in real property that is directly involved, the financial effect of a municipal decision on the property is also presumed to be material. This presumption may be rebutted by proof that the decision will have no effect whatsoever on the lease's termination date, the amount of rent, the ability to sublease, the legally allowable use of the property, or the use or enjoyment of the property.
- ❖ If owned or leased real property is not "directly involved" as described above, but will still be affected by a particular decision, then the property is considered "indirectly involved" in the decision. The financial effect of a municipal decision on real property that is indirectly involved is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances that make it substantially likely that the decision will have a material financial effect on the real property (such as the legally allowable use of the property, its development potential, or the characteristics of the neighborhood, and the use or enjoyment of the property). Contact the Ethics Commission for assistance in this regard.
- ❖ Whether or not it is substantially likely that a municipal decision will have a particular effect on real property is a determination that you must make yourself. The Ethics Commission does not act as a finder of facts when providing conflict of interest advice.
- ❖ Even if it is substantially likely that the financial effect of a municipal decision on your real property interests is material, you will not be disqualified from participating in that decision if you can establish that the decision will affect the property in a manner that is no different from the manner in which the decision will affect the public generally. A decision involving your interest in real property affects the "public generally" if it also affects the following in substantially the same manner:
  - ✓ ten percent or more of all property owners or all homeowners in the City or in the district you represent; or
  - ✓ 5,000 property owners or homeowners in the City.
- ❖ 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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