

March 22, 2004

SDEC Informal Advice Letter No. IA04-02

John W. Collum
Associate Project Manager
Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, CA 92101

Re: Request for Informal Advice Regarding Disqualification from Municipal
Decisions that Involve Real Property Interests

Dear Mr. Collum:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated March 17, 2004. 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 asks general, hypothetical questions, and accordingly we consider your letter to be a request for informal advice.

QUESTIONS

1. What disclosure requirements apply to your potential ownership interest in real property located in the Little Italy neighborhood of the City of San Diego?
2. If you acquire a financial interest in real property located in the Little Italy area, will you be required to disqualify yourself from certain municipal decisions pursuant to SDMC section 27.3561?

SHORT ANSWERS

1. If you acquire an ownership interest in real property in the Little Italy area and occupy this property as your primary residence, you will not be required to disclose this financial interest on your annual Statement of Economic Interests [SEI] forms.
2. If your position as an Associate Project Manager with Centre City Development Corporation [CCDC] is limited to projects located within the East Village area of San Diego, and if these projects are located more than 500 feet from the real property you intend to purchase in the Little Italy area, then it is unlikely that you will be required to

disqualify yourself from municipal decisions pursuant to SDMC section 27.3561. If, however, your work for CCDC extends beyond the East Village area to projects located within 500 feet of real property you own, or if there are unique circumstances that cause your financial interest in the property to be materially effected by certain municipal decisions, then you will need to conduct a case-specific analysis in accordance with the guidelines set forth below to determine whether disqualification is required.

BACKGROUND

According to information provided in your letter, you are contemplating the purchase of a condominium to serve as your primary residence in the Little Italy area of the City of San Diego. You indicated that you are employed as an Associate Project Manager with CCDC, and that you are currently assigned to serve as the staff liaison to the East Village neighborhood and to act as the project manager for various development projects in the East Village area. Your duties reportedly include: involvement in the preparation of requests for qualifications and proposals; selection of developers; negotiations of disposition and development terms; presentation of agreements to the CCDC Board, City Council and Redevelopment Agency for approval; and implementation of these agreements.

DISCLOSURE OBLIGATIONS

Section 27.3510 of the Ethics Ordinance requires that you file an annual SEI on or before April 1 of each calendar year pursuant to the Conflict of Interest Code adopted by the City Council for CCDC. The Conflict of Interest Code applicable to CCDC officials was established in accordance with state law requirements, and consequently you are subject to the disclosure obligations and exceptions set forth in state law. According to California Government Code section 87206(e), the obligation to disclose real property interests does not include the disclosure of a filer's principal residence. If you purchase the Little Italy condominium and occupy it as your primary residence, therefore, you will not be required to disclose this real property interest on your annual SEI.

DISQUALIFICATION ANALYSIS

A. General Prohibition

With respect to potential disqualification issues, SDMC section 27.3561 prohibits 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 real property which the City Official or a member of the City Official's immediate family has invested \$2,000 or more." In order to determine whether your purchase of the condominium (which would obviously exceed the \$2,000 threshold) triggers a disqualification requirement, we must look at the definitions of the key terms contained in section 27.3561: "City Official," "influencing a municipal decision," "reasonably foreseeable," and "material financial effect."

B. City Official

The definition of “City Official” set forth in the City’s Ethics Ordinance includes any City employee (except “classified” employees as defined by San Diego Charter section 117) who is required to file an SEI. The definition of “City” is broadly defined to include any of the City’s organizational subdivisions, agencies, offices, or boards. SDMC § 27.3503. As an employee of a City agency who files an SEI, therefore, you are a City Official subject to the provisions of SDMC section 27.3561.

C. Influencing a Municipal Decision

With regard to whether or not you are “influencing municipal decisions” during the course of your employment with CCDC, the Ethics Ordinance defines this term as follows:

Influencing a municipal decision means affecting or attempting to affect any action by a City Official on one or more municipal decisions by any method, including promoting, supporting, opposing, participating in, or seeking to modify or delay such action. Influencing a municipal decision also includes providing information, statistics, analysis or studies to a City Official.

SDMC § 27.3503.

You have indicated that your work as an Associate Project Manager for CCDC includes: involvement in the preparation of requests for qualifications and proposals; selection of developers; negotiations of disposition and development terms; presentation of agreements to the CCDC Board, City Council and Redevelopment Agency for approval; and implementation of these agreements. Such activities are substantially certain to involve “influencing municipal decisions.”

D. Reasonably Foreseeable

The term “reasonably foreseeable” has been thoroughly analyzed by the California Fair Political Practices Commission [FPPC] in its advice letters. The FPPC has opined that an effect is considered “reasonably foreseeable” if there is a substantial likelihood that it will occur. *In re Orlik*, FPPC Inf. Adv. Ltr. I-98-175. Moreover, the FPPC has stated that any financial effect, no matter how small, will result in the “reasonably foreseeable” standard being met as long as there is a substantial likelihood that the effect will occur. *Id.*

E. Material Financial Effect

Based on the law set forth above, disqualification will depend on whether you, as a City Official, are influencing municipal decisions in circumstances where it is reasonably foreseeable that the decision will have a material financial effect on the Little Italy condominium. Whether the “material financial effect” threshold will be met if you purchase the Little Italy property is

beyond the scope of this advice letter because you have not identified any particular municipal decisions. Each municipal decision has a unique set of facts that must be considered in a disqualification analysis, and without those facts an ultimate determination is not possible. Because you have not identified a specific municipal decision in your request for advice, we can only offer general guidance with regard to whether a municipal decision will have a material financial effect on the property.

According to SDMC section 27.3561(c), “material financial effect” has the same meaning as that set forth in sections 18705 through 18705.5 of the California Code of Regulations. Regulation 18705.2 sets forth the materiality standards for “direct” and “indirect” economic interests in real property. This regulation states that the financial effect of a governmental decision on real property that is “directly involved” in the decision is presumed to be material, while the financial effect of a decision on real property that is “indirectly involved” in the decision is presumed not to be material.

Regulation 18704.2(a) sets forth the guidelines for determining whether real property is directly or indirectly involved in a governmental decision. According to this regulation, an official’s real property is considered to be directly involved in a governmental decision if the property is the subject of the decision, or if any part of the property is located within 500 feet of the boundary of the property that is the subject of the decision. On the other hand, if the Little Italy condominium project is not directly involved in a municipal decision, and if it is located more than 500 feet from the property that is the subject of the decision, then the Little Italy condominium is indirectly involved and it is presumed that the decision will not have a material financial effect on your real property interests. It should be noted, however, that this presumption may be rebutted by proof that there are specific circumstances that make it reasonably foreseeable that the decision will have a material financial effect on the official’s real property. According to Regulation 18705.2, examples of circumstances that could rebut the presumption include decisions that affect the development or income potential of real property, the use of real property, or the character of the neighborhood.

F. Public Generally Exception

Even if it is reasonably foreseeable that a governmental decision will have a material financial effect on your real property interests, you would not be disqualified from participating in the decision if the effect of the decision on your property is indistinguishable from the effect of the decision on the “public generally.” Cal. Code Regs. tit. 2, § 18707. This exception exists because it is assumed that a public official is less likely to be biased by a financial impact on his or her economic interest when a significant part of the community is experiencing the same impact from a governmental decision. *In re Condotti*, FPPC Priv. Adv. Ltr. A-99-154. In order for the “public generally” exception to apply, it must be reasonably foreseeable that the decision will affect a “significant segment” of the public in substantially the same manner. Cal. Code Regs. tit. 2, § 18707(a). In the case of an interest in real property, a “significant segment” of the jurisdiction is defined to mean: (1) 10 percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency or the district the official represents; or (2) 5,000

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property owners or homeowners in the jurisdiction of the official's agency. Cal. Code Regs. tit. 2, § 18707.1(b)(1). Not only must the governmental decision affect a significant segment of property owners or homeowners, but the decision must affect the public official's economic interest in substantially the same manner that it will affect the other property owners or homeowners.

G. Conclusion

Because your current assignment at CCDC is limited to the East Village project area, and because this area is located more than 500 feet from the Little Italy neighborhood, it appears unlikely that you will be required to disqualify yourself from participating in municipal decisions if you purchase the Little Italy condominium. However, because your request does not contain information regarding a specific municipal decision, we can only provide you with general guidance at this time. We encourage you to contact the Ethics Commission in the future if your work assignment changes, or if it otherwise appears likely that your financial interests could be affected by any projects you are involved in as an Associate Project Manager for CCDC.

Sincerely,

Stacey Fulhorst
Executive Director

SF/s