



FACT SHEET ON REPRESENTING CLIENTS BEFORE YOUR BOARD OR COMMISSION

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. Such interests could include the clients of a person serving on a City board or commission. Accordingly, this Fact Sheet is designed to offer general guidance to board and commission members who have clients with matters that may come before their respective board or commission.¹ 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.

GENERAL PROHIBITION

- ❖ The Ethics Ordinance prohibits a City Official from participating in a municipal decision if a party to that decision has given the City Official \$500 or more within the past twelve months.
- ❖ If a client has paid you \$500 or more within the past twelve months, that client is a source of income to you for purposes of this prohibition. You may not attempt to influence your own board or commission on behalf of such clients.
 - ✓ Note that your income also includes the community property interest you have in the income of your spouse or registered domestic partner. You have an economic interest in any source of \$1,000 or more to your spouse or registered domestic partner (your 50% community property interest would be \$500 or more) within the previous twelve months.
 - ✓ Thus, the prohibitions discussed in this Fact Sheet will also apply to clients who paid your spouse or registered domestic partner \$1,000 or more within the past twelve months.
- ❖ Influencing your own board or commission includes:
 - ✓ voting on your client's matter;
 - ✓ discussing your client's matter with other members of your board or commission, before, during, or after a meeting;
 - ✓ making an appearance before your board or commission on behalf of your client, which includes making a presentation and answering questions about your client's matter;
 - ✓ preparing documents that are submitted to your board or commission on behalf of your client; and,
 - ✓ assisting others who submit documents or appear before your board or commission on behalf of your client.

¹ This Fact Sheet assumes that your client is directly involved in the municipal decision coming before your board or commission and that the municipal decision will have a material financial effect on your client. For more information regarding direct and indirect involvement and materiality standards, refer to the Ethics Commission's fact sheet entitled "Disqualification From Municipal Decision: Source of Income."

ADDITIONAL CONSIDERATIONS

- ❖ Even if you disqualify yourself from discussing and voting on a matter involving your client, you are still prohibited from appearing before, and submitting documents to, your board or commission with regard to that matter. This prohibition includes assisting others “behind-the-scenes” on matters involving your client if that matter will come before your board or commission.
- ❖ Documents you have prepared for a client may not be submitted to your board or commission, even if your name does not appear on the document. In other words, you may not ghostwrite a document for submission on behalf of your client.
- ❖ You may not avoid the prohibitions discussed in this Fact Sheet by hiring someone else, or associating with another firm, in order to have another person to present your documents to your board or commission.
- ❖ A partner or employee of your firm is not subject to the prohibitions outlined in this Fact Sheet. Such persons may represent a client before your board or commission (and may use the firm’s letterhead that includes your name). You are, however, prohibited from assisting anyone, including a partner or employee of your firm, who is presenting the client’s matter to your board or commission. In other words, you may not help the partner or employee by making suggestions, rendering advice, giving direction, or editing a document that will come before your board or commission. A document you’ve authored, co-authored, or edited on behalf of a client may not be submitted to your board or commission, even if it is signed by someone else in the firm.
- ❖ If you are a “high level filer,” note that when you are disqualified from participating in a decision because it involves your client, you must identify that interest at any meeting where the client’s matter is being considered, and then you must leave the room while the matter is discussed and voted upon. (High level filers include members of the Planning Commission, Funds Commission, Retirement Board, San Diego Data Processing Corporation Board, Defined Contribution Plan Board, and the Ethics Commission.)
- ❖ If you are a “local code filer” who is disqualified from participating in a municipal decision, there is no legal requirement that you leave the room. Instead, you may sit with members of the public.

COMMUNICATIONS WITH STAFF & OTHER ENTITIES

- ❖ The above prohibitions extend beyond communicating with the individuals serving on your board or commission; they also apply to City staff members who work on matters subject to the purview of your board or commission. Such staff members are, in essence, a part of your agency. They play an integral role in the business of your board or commission by reviewing projects, making recommendations, rendering advice, making approvals, or otherwise assisting in the processing of matters.
- ❖ You are prohibited from communicating, on behalf of your client, with any City staff member involved in the client’s project if that project may come before your board or commission. Such communications would constitute an unlawful use of your official position to influence a municipal decision. This activity is prohibited even while your client’s project is being

processed by staff and isn't scheduled to be heard at a formal meeting of your board or commission. (As discussed above, these prohibitions do not apply to other partners or employees in your firm.)

- ✓ For example, the City staff members assigned to support the Historical Resources Board [HRB] are responsible for reviewing proposed alterations to historic properties to determine whether such alterations will comply with applicable standards. Members of the HRB may not contact City staff regarding alterations sought by their clients if there is a potential for those alterations to also be reviewed by the HRB. As long as the alterations fall within the HRB's purview, such contacts would be treated as an impermissible attempt by the HRB member to influence his or her own agency.
- ❖ You may also be prohibited from discussing a client's project with other City boards and commissions and members of their staff. If your client's project will be processed by another City board or commission before it is considered by your agency, you may not discuss the project with the other board or commission or its staff.
- ❖ Even communications with entities outside the City are subject to these prohibitions. If a client's project is being considered by a community planning group or similar entity, and that project has the potential to come before your agency, you may not discuss the project with the other entity or its staff.
- ❖ For example, members of the Planning Commission are subject to the above prohibitions in the following manner:
 - ✓ they may not appear before, or communicate with, the Planning Commission, any other City board or commission, or any community planning group regarding a client's project that is, or has the potential to be, a Process 2 through 5 decision (because such decisions have the potential to come before the Planning Commission);
 - ✓ they may not appear before, or communicate with, any City staff members, and in particular any Development Services Department [DSD] staff members, regarding a client's project that is, or has the potential to be, a Process 2 through 5 decision (including early feasibility discussions for a project for which the permit process has yet to be determined). For this reason, they may not appear before, or communicate with, a DSD Planner, a DSD Project Manager, or any other City staff member participating in a Process 3 hearing involving a client's project.
- ❖ Note that these prohibitions do not extend to the staff working for other City entities on matters unrelated to your board or commission. If your client's project will not be subject to the purview of your board or commission, then you may communicate with the applicable entity and its staff regarding the project so long as it is clear to those individuals that you are not acting on behalf of your agency. For example, a member of the HRB may communicate with Planning Commission staff with regard to a client's project that has nothing to do with the HRB so long as the member does not use his or her HRB title or otherwise indicate that he or she is acting on behalf of the HRB.

- ❖ Communications with your agency’s staff members are prohibited even after a project has been approved or disapproved by your board or commission if there is a potential for the project to come back before your agency. On the other hand, once your agency has made its final decision regarding a project, and there is no possibility of the project coming back before your agency, you may contact any City staff regarding the project so long as you make it clear that you are not acting on behalf of your agency.

EXCEPTIONS

There are a number of exceptions to the general prohibition, including:

- ❖ “Personal Interest” exception: as a member of the general public, you may represent your own personal interests before your board or commission. Personal interests include (a) interests in real property owned by you or your immediate family; (b) business entities owned by you or immediate family; and (c) business entities over which you or your spouse exercise direction and control.
- ❖ “Technical Documents” exception: you may prepare architectural, engineering, or similar type drawings and other technical submissions for use by a client in connection with a matter that comes before your board or commission.
 - ✓ This exception allows you to have contact with the staff of your board or commission, but only to the extent necessary to process your drawings or technical submissions.
 - ✓ In order for a narrative document to qualify for this exception, it must be limited in its scope to employing objective methodologies, principles, techniques, standards, or specialized knowledge within the fields of architecture or engineering, or of a similar nature.
 - ✓ A narrative document that advocates a position or provides more than an analysis limited to technical factors will not fall within the exception.
- ❖ “Design Review Committee” exception: If you serve on a design or architectural review committee, you may appear before that committee to present your drawings or submissions that are of an architectural, engineering or similar nature if: (a) the committee’s sole function is to review these types of plans and make recommendations concerning such plans to the Planning Commission or other agency; (b) your committee is required by law to have members who are architects, engineers, or persons in related professions, and you were appointed to the body to fulfill that requirement; and (c) you are a sole practitioner.
- ❖ “Clerical” exception: you may communicate with City staff for purely clerical or ministerial purposes, such as to obtain information available to the public, without impermissibly influencing your own agency.

For additional information, please contact the Ethics Commission at (619) 533-3476.

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