



FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 6: FINANCIAL INTERESTS IN A CONTRACT

The City's Ethics Ordinance includes laws that prohibit city officials from being financially interested in any contracts they make, or participate in making, in their official capacities. This fact sheet is designed to provide general guidance regarding this prohibition and should not be considered a substitute for the actual language contained in the Ethics Ordinance. Because the consequences for violations of this provision can be very severe, you are encouraged to contact the ethics commission if you have any questions about whether you have a financial interest in a contract.

- ❖ The Ethics Ordinance prohibits anyone who is serving as a city official from participating in the making of a contract if they are financially interested in that contract.
- ❖ You are participating in the making of a contract when you engage in various official activities leading up to the execution of a City contract, including preliminary discussions, negotiations, compromises, and planning. In other words, you do not need to actually sign a contract or vote to approve a contract in order to violate the law.
- ❖ This law is designed to ensure that city officials exercise absolute loyalty and undivided allegiance to the best interest of the City, to eliminate temptation, and to avoid the appearance of impropriety. The law is based on the State of California's longstanding prohibition against "self-dealing" with respect to public contracts (also known as Government Code section 1090). These local and state laws help ensure that governmental decisions are made in the public's best interest without regard to any public official's personal financial gain.
- ❖ Unlike the general rules regarding conflicts of interest which require an official to disqualify from participating in a particular decision, the rules regarding financial interests in contracts do not allow the City Council or a City board to enter into a contract if one of the body's members has a financial interest in the contract. In other words, disqualification is not enough. The City body simply may not enter into the contract while one of its members has a financial interest.
- ❖ If a member of a City body has a prohibited financial interest in a contract, he or she can remedy the prohibition by disposing of the interest (for example, selling an ownership interest in the business entity that is the subject of the contract) or resigning from the City body.
- ❖ The rule is applied somewhat differently when the City Official is an employee rather than a member of a City body. Such an official must disqualify himself or herself from any participation in the making of the contract. The City may make the contract without the participation of that City Official.
- ❖ For example, consider a situation where the City issues a Request for Proposals with regard to a contract for landscaping work at a City park. A Deputy Director's husband owns a landscaping company. If the Deputy Director participates in the issuance of the RFP, her husband's company may not lawfully receive that contract (even if his company is the low bidder). On the other hand, if the Deputy Director did not participate in any way in the issuance of the RFP or the

making of the landscaping contract, then the City may still enter into a contract with her husband's company.

- ❖ The fact that a contract is fair, or even advantageous to the City, is not relevant in the context of this prohibition.
- ❖ Consider the example of a City board interested in retaining consultant services for an urban revitalization project. A member of the board owns a consulting firm and has the expertise that the board is looking for. He offers to perform the work at a discounted rate. Even though the contract might be beneficial to the City, the board may not lawfully enter a contract with the board member or his consulting firm. This is the case even if the board member recuses himself from all discussions and voting regarding to the contract.
- ❖ A violation can occur in the context of an employment "contract" with the City. For example, if you participate in a decision to create or vacate a particular City position, neither you nor your spouse may accept the position that you helped to create or vacate. (Note that an exception may exist in the case of a large scale organizational restructuring; consult the ethics commission for assistance with this issue.)
- ❖ This prohibition extends indefinitely, even after a city official is no longer employed by the City. In other words, if you work on the early stages of a contract while you are at the City, you may not obtain a financial interest in this contract after you retire from the City. This is true even if the City does not award the contract until ten years after you retire.
- ❖ Certain financial interests in a contract are considered "remote." Such interests include being an officer of a non-profit corporation, being a landlord or tenant of a party, and receiving a salary from a government entity. If you have a "remote interest" in a prospective City contract, you must disclose this interest on the record and recuse yourself from participating in the matter. In this scenario, the remaining members of the body may still enter into the contract.
- ❖ Other financial interests in a contract are deemed to be "non-interests." These interests are considered so minor as to be exempt from the general prohibition. Non-interests include being an unsalaried member of a non-profit corporation, receiving reimbursement for expenses incurred in the performance of official duties, receiving public services on the same terms and conditions as a broad class of constituents (e.g., setting water rates that will have the same effect on the official as on a significant segment of the public), and owning less than three percent of the shares of a corporation (depending on how much the income from the corporation affects the official's total income). A City Official with a non-interest in a contract may participate in making that contract (although in some cases disclosure of that non-interest on the record is required).
- ❖ It can be difficult to determine whether a particular financial interest is considered a "remote interest" or a "non-interest." Please consult the ethics commission for assistance in this regard.
- ❖ Keep in mind that this fact sheet is meant to complement the ethics commission's other disqualification from municipal decision fact sheets. If you are participating in the making of a City contract, you will also have to consider the rules and prohibitions applicable to municipal decisions in general. Please refer to those fact sheets as well as this one when determining whether or not your participation in the making of a City contract is lawful.

Determining whether or not you have a prohibited financial interest in a City contract can be a complicated matter. For additional information or assistance, please contact the ethics commission at (619) 533-3476.