



## FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 4: SOURCES OF GIFTS

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when it is reasonably foreseeable that those 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 involving sources of gifts. 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 (i.e., a realistic possibility) that the decision will have a “material financial effect” on any person or entity that has given the official gifts totaling \$520 or more within the past twelve months.
- ❖ Note that the dollar threshold is subject to change on January 1 of every odd-numbered year. For this reason, the \$520 threshold may increase on January 1, 2023.
- ❖ Under these rules, for example, a City Official who accepts \$520 worth of San Diego Padres tickets over the previous twelve months from a particular company would likely be precluded from participating in a municipal decision involving that company.
- ❖ For a detailed discussion regarding what does, and does not, constitute a “gift,” please refer to the Ethics Commission’s “Fact Sheet on Gifts to City Officials,” which is available on the Commission’s website.
- ❖ Note that there is no exception for gifts from charitable organizations. In addition, although payments for education and training from other governmental entities are typically not “gifts,” receiving other items of value from such entities could trigger disqualification.
- ❖ Although the Ethics Ordinance imposes a limit on gifts received within a calendar year, keep in mind that disqualification rules are based on any twelve-month period, not a calendar year. For this reason, you could accept \$600 in gifts from the same person over a twelve-month period without violating the gift limit if the gifts were appropriately spread out over two calendar years, but you might still be disqualified from participating in a municipal decision involving the donor.
- ❖ Some gifts are not subject to the gift limit (e.g., when a 501(c)(3) non-profit entity pays your travel expenses for a governmental purpose), but may still subject you to disqualification. For example, if a 501(c)(3) non-profit organization pays \$1,000 for airfare and lodging for you to attend a work-related conference in Sacramento, you would not exceed the gift limit, but you would be precluded from participating in decisions financially impacting that entity for twelve months following the payment.

- ❖ Whether the financial effect of a municipal decision on a source of a gift is “material” depends on the applicable facts. As a general rule, however, the financial effect will be “material” if the source of the gift is the subject of the decision or will otherwise be financially affected by the decision, as discussed below.

### **MATERIALITY – SOURCES THAT ARE THE SUBJECT OF THE DECISION**

- ❖ The financial effect of a municipal decision on a source of a gift is “material” if the source is a named party in, or the subject of, the decision, including a claimant, applicant, respondent, or contracting party.
- ❖ For example, Philip is a member of the Arts and Culture Commission, which is considering grant applications submitted by non-profit organizations. From time to time, San Diego Modern Theatre [SDMT], which is applying for a grant, offers Commission members free tickets to SDMT performances. Philip has used more than \$520 worth of these SDMT tickets over the past twelve months. Philip is disqualified from participating in Commission funding decisions involving SDMT because of his receipt of these tickets.
- ❖ This materiality rule applies regardless of whether the source of gift is an individual, a non-profit entity, or a for-profit entity.

### **MATERIALITY – SOURCES THAT ARE AFFECTED BY THE DECISION**

- ❖ Even if the source of a gift is not a claimant, applicant, respondent, contracting party, or otherwise the subject of the municipal decision, the official could still be disqualified from participating in decisions that will financially affect that source.
- ❖ For these sources of gifts, whether a financial impact is material largely depends on the nature of the entity and the relative financial impact caused by the decision. There are different rules for individuals, non-profit organizations, and for-profit entities, and the size of the entity may be relevant. For instance, a decision that causes a \$50,000 increase in revenue might be material to a small company, but comparatively negligible to a large corporation.
- ❖ When making a materiality determination for sources of income that are affected by a municipal decision, evaluate the decision’s impact on the individual or entity, using the rules discussed below.

#### **Source = An Individual**

- ❖ The financial effect of a municipal decision on a source of a gift is “material” if the source is an individual, and any of the following apply:
  - ✓ there is a realistic possibility that the decision will result in the individual (or any member of his or her immediate family) receiving a financial benefit or loss of at least \$500 in any 12-month period due to the decision;
  - ✓ the official knows or has reason to know that the individual has an interest in a business entity, and there is a realistic possibility that the entity will be materially impacted by the decision. The impact will be material if the business entity is (a) the “subject” of the decision (see discussion above); or (b) significantly “affected by” the decision (see materiality rules applicable to for-profit entities below); or,

- ✓ the official knows or has reason to know that the individual has an interest in real property, and there is a realistic possibility that the property will be materially impacted by the decision (for guidance, refer to the Ethics Commission’s [disqualification fact sheet for real property](#)).
- ❖ For example, Karla is a Council Representative. Helen is an acquaintance that Karla often sees at church services. Karla invited Helen to her wedding, and Helen gave the couple a gift worth well over \$1,000 (wedding gifts are not subject to the \$520 gift limit). Six months later, Karla is asked to participate in discussions relating to regulating vacation rentals. She’s aware that Helen owns a company that manages vacation rental properties. Based on the materiality rules for business entities (see below), Karla may not participate in a vacation rental decision if it is realistically possible that the decision will impact Helen’s company’s annual gross revenues by 5% or more (so long as the impact is at least \$10,000).

**Source = Non-Profit or For-Profit Entity**

- ❖ The financial effect of a municipal decision on a source of a gift is “material” if the source is a for-profit company or a non-profit organization and any of the following apply:
  - there is a realistic possibility that the decision will increase or decrease the entity’s annual gross revenues or the value of the entity’s assets or liabilities by at least:
    - \$1 million; or
    - 5%, so long as the increase or decrease is at least \$10,000.
  - there is a realistic possibility that the decision will cause the entity to incur or avoid additional expenses, or to reduce or eliminate expenses by at least:
    - \$250,000; or
    - 1% of the entity’s annual gross revenues, so long as the change in expenses is at least \$2,500.
  - the City Official knows or has reason to know that the entity has an interest in real property and:
    - the property is the subject of the decision (e.g., the decision changes the property’s development criteria, zoning, assessments, etc.; see disqualification fact sheet concerning real property for additional guidance); or,
    - there is clear and convincing evidence the decision will have a substantial effect on the property.
- ❖ For example, Bert is a Program Manager in the Water Department. A local 501(c)(3) non-profit organization has offered to pay \$2,000 to cover Bert’s airfare and lodging for a water conservation conference in New York City. (Work-related travel costs paid by 501(c)(3) organizations are subject to Form 700 reporting and disqualification purposes, but not the gift limit.) For the next 12 months, Bert must be careful not to participate in City decisions that have

a realistic possibility of affecting the non-profit organization in any of the manners described above.

- ❖ Another example: Eduardo is a member of the Planning Commission. He has a close working relationship with several AT&T officials, and is often invited to fill seats at the tables AT&T purchases at fundraising events. Over the last 12 months, Eduardo attended a half dozen such events and the total gift value now exceeds \$520. The Planning Commission is considering new rules banning new cell towers near City parks, and these rules will significantly impact AT&T's plans to install new cell towers next to Mission Bay Park. Because of the gifts he's received from AT&T, Eduardo is precluded from participating in the Commission's discussions of the cell tower ban.

### **INSIGNIFICANT FINANCIAL EFFECT**

- ❖ Notwithstanding the rules set forth above, there are circumstances in which a municipal decision's financial effect 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.
- ❖ For example, Tina is a member of the Commission for Arts and Culture. She also does volunteer work for an arts organization that receives tickets to cultural events and hands them out to its volunteers. Tina has received more than \$520 worth of these tickets over the past 12 months. Tina's commission will be considering a request from the arts organization to display student artwork on City property. Because the arts organization will not derive any financial benefit from the display of the student artwork, Tina is not prohibited from participating in the decision.

### **PUBLIC GENERALLY**

- ❖ Even if the financial effect of a municipal decision on the donor of a gift is material, you will not be disqualified from participating in that decision if you can establish that the financial effect on the donor is indistinguishable from the financial effect on the public generally.
- ❖ A decision affecting the donor of a gift is entitled to the "public generally" exception if the financial impact on the donor is essentially the same as it is on at least 25% of all individuals, business entities, or non-profit organizations (whichever category the donor falls into) located in the City of San Diego.
- ❖ When determining whether a municipal decision's financial impact on a particular donor is disproportionate to its impact on other individuals or entities in the City, consider the donor's income, investments, assets or liabilities, or real property.
- ❖ In addition, the "public generally" exception will likely apply in the following special circumstances: (1) the imposition of taxes or assessments for water, utility, or other broadly provided public services applied equally or proportionally to everyone; (2) changes to parking rates, permits, and fees that apply to the entire City; (3) ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance, or improve public safety; (4) decisions that affect all renters of residential property; (5) situations in which the law requires a board or commission to contain appointees representing a particular trade or profession and there is no unique effect on the appointee; and (6) states of emergency. Contact the Ethics Commission for assistance with these circumstances.

## 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.

Rev. 1/5/21