



ETHICS TRAINING FOR PLANNING COMMISSION

February 14, 2019

JURISDICTION OF THE COMMISSION

The Ethics Commission has jurisdiction to enforce the City's governmental ethics laws, which include:

- Ethics Ordinance
- Election Campaign Control Ordinance
- Lobbying Ordinance



This training covers the provisions of the Ethics Ordinance.

This training does not cover other provisions of the Municipal Code, Administrative Regulations, or Council Policies that also address conduct of City Officials.

ETHICS LAWS

The City's Ethics Ordinance is based primarily on state laws that govern all public officials in California. The Ethics Ordinance:

- ✓ applies to paid and volunteer officials who are involved in making City decisions;
 - ✓ focuses on financial disclosures and conflicts; and,
 - ✓ does not regulate values or morality.
- Under state law, Planning Commissioners are subject to the same disclosure obligations and conflict rules as elected officials.
 - PLEASE PAY ATTENTION; failure to follow these rules can result in penalties up to \$5,000 per violation.

DISCLOSURE OF ECONOMIC INTERESTS

- Disclosures are made on Form 700 - Statement of Economic Interests (SEI).
- Forms 700 are filed electronically with the City Clerk.
- You must file assuming/leaving office statement within 30 days of assuming/leaving office, and
- You must file annual statements by April 1 of each year.
- Filers must disclose interests for immediate family (spouse, registered domestic partner, dependent children).



DISCLOSURE GUIDELINES

Planning Commissioners are “high level” filers; according to state law you must disclose investments in, business positions with, and loans and income from any person or entity that is:

- ✓ located in the City of San Diego; or
- ✓ doing business in the City of San Diego; or
- ✓ planning to do business in the City of San Diego; or
- ✓ has done business in the City of San Diego within the previous two years.

Investments in real property must be disclosed if the property is located in, or within two miles of, the City or property owned/used by the City.

MORE DISCLOSURE GUIDELINES

Types of financial interests that must be disclosed:

- investments in stocks and bonds (diversified mutual funds and government bonds exempt);
- ownership interests in business entities or trusts:
 - ✓ less than 10% on Schedule A-1
 - ✓ 10% or more on Schedule A-2
- management positions in for-profit companies even if no income received (Schedule A-2)
- real property (including leaseholds);
- income, loans, and gifts received within past 12 months.

MORE DISCLOSURE GUIDELINES

- You must report investments if the value was \$2,000 or more at any time during the reporting period.
- When you disclose an interest of 10% or more in a business entity, you must also identify:
 - ✓ each reportable source of income to the business if your pro rata share is \$10,000 or more, and
 - ✓ investments and real property held by the business if your pro rata share is \$2,000 or more.
- You are not required to disclose a loan from a bank made in the regular course of business on terms available to the public



MORE DISCLOSURE GUIDELINES

You do not need to report your personal residence (but you do need to consider it for potential conflicts) unless:

- You rent a bedroom in your San Diego residence or use the residence as a short term vacation rental.
 - ✓ If so, report the fair market value of the portion of the house used for rental purposes, the total amount of rent received, and the names of any renters (if they are a reportable source) who paid you \$10,000 or more.
- You claim a business deduction for a portion of your personal residence (e.g., a home office).
 - ✓ If so, report the fair market value of the portion claimed as a deduction.



ECONOMIC INTERESTS - Case Vignette

You have a 25% partnership interest in an engineering firm. Last year, the firm received a total of \$200,000 in income, including the following income from these three clients:

- Earth Movers: \$46,000
- ABC Construction: \$14,000
- Oceanside Builders: \$75,000



Do you have to disclose the income from each of these clients?

ECONOMIC INTERESTS - Case Vignette

Nancy is a Commissioner who owns a rental property in the City of San Diego that she rents for \$2,000 per month. She is the sole owner of the property, but has a real estate mortgage loan issued by Bank of California in the amount of \$450,000. The same tenant has occupied the property during the past twelve months, and has paid Nancy a total of \$24,000.



Is Nancy required to disclose her ownership of the property?
The bank loan? The income from the tenant?

What if her family trust owns the property?

DISQUALIFICATION

- You may not influence a government decision if there is a realistic possibility that the decision will have a financial effect on you (including your immediate family), or one of your personal financial interests.
- Influencing a decision includes providing information, analysis, or studies to another City Official.
- The “public generally” exceptions may allow you to participate in decisions even if the decision involves your personal financial interests – contact the Ethics Commission for details.
- If you have a conflict concerning an item on the meeting docket, you must leave the room while the item is discussed and voted on.



DISQUALIFICATION - Continued

You are not permitted to participate in decisions that might affect your financial interests, or those of your immediate family, including:

- ✓ investments in business entities (including ownership)
- ✓ management positions in for-profit businesses, even if unpaid (e.g. board of directors)
- ✓ investments or leaseholds in real property
- ✓ sources of income of \$500 or more within the past 12 months (including income received through a business entity if you own 10% or more)
- ✓ the donor of any gifts if the aggregate value equals \$500 or more within the past 12 months
- ✓ your personal expenses, income, assets, or liabilities

DISQUALIFICATION – Continued

You are prohibited from influencing a Planning Commission matter if there is a realistic possibility that the decision will have a financial effect on any source of income, including your clients, of \$500 or more during the past 12 months. Influencing a Commission matter includes:

- ✓ voting on your client's matter
- ✓ discussing your client's matter with other Commissioners before, during, or after a meeting
- ✓ making an appearance before the Commission on behalf of your client (including making a presentation and answering questions about your client's matter)
- ✓ preparing documents that are submitted to the Commission on behalf of your client
- ✓ assisting others who submit documents or appear before the Commission for your client



DISQUALIFICATION – Continued

Prohibited contacts with staff and other entities:

- You may not contact City staff on behalf of a client if the client's project could come before the Commission.
- If a client's project will be processed by another City board or commission before it is considered by the Planning Commission, you may not discuss the project with the other board or its staff.
- If a client's project is being considered by a community planning group, you may not discuss the project with the group or its staff if the project has the potential to come before the Commission.

DISQUALIFICATION – continued

Permissible contacts with staff and other entities:

- Any other member of your firm may contact City staff or make presentations to other City boards on behalf of clients whose projects could come before the Commission (provided you do not assist in any way).
- You may contact City staff or make presentations to other boards on behalf of a client if the client's project will never come before the Planning Commission (as long as you do not suggest you are acting on behalf of the Commission).
- Once the Planning Commission makes a final decision, you may contact City staff on behalf of the client as long as there is no possibility of the project coming back to the Commission.

There are also exemptions for submitting technical documents and representing your personal interests. Contact the Commission staff for additional information.

DISQUALIFICATION - Case Vignette

Which of the following activities may you lawfully engage in on behalf of a client who has a matter pending before the Commission:

- Editing a report that will be distributed to the Commission without your signature or any mention of your name.
- Answering questions from other Commissioners outside of Commission meetings.
- Giving the client some helpful hints on the verbal presentation to the Commission.
- Preparing architectural plans that will be submitted with the client's report.



Is another member of your firm prohibited from any of these activities?

DISQUALIFICATION - Case Vignette

You are a Planning Commissioner and are also a partner in an architectural firm. One of the firm's clients has a project scheduled for a Process 3 hearing. You are aware that you are not permitted make a presentation on behalf of your client at the hearing; however, because you have the most knowledge concerning the project, you offer to review the presentation prepared by your associate.



Is this lawful under the Ethics Ordinance?

DISQUALIFICATION - Case Vignette

Mr. Smith is seeking a conditional use permit for a property he recently purchased. Your spouse's law firm received \$50,000 in income from Mr. Smith during the past year for work unrelated to the property, and does not plan to do any additional work for Mr. Smith in the future. Your spouse is one of ten partners in the law firm, but did not participate in the previous work for Mr. Smith.



Does the Ethics Ordinance permit you to participate in the decision concerning Mr. Smith's permit?

DISQUALIFICATION - Case Vignette

The Commission is asked to approve the construction of a homeless shelter downtown. One of the Commissioners owns a condominium located 750 feet away from the proposed project site. He doesn't believe the shelter will affect him differently than anyone else in the neighborhood, so he determines there is no need to recuse himself and he will participate in the decision to approve the project.



Is this activity lawful under the Ethics Ordinance?

What if he is renting the condominium?

FINANCIAL INTEREST IN A CONTRACT

Conflicts of interest involving contracts have additional restrictions:

- If a member of a legislative body (such as the Planning Commission) has a conflict of interest involving a contract, disqualification is not sufficient; the remainder of the legislative body may not vote on the contract.
- If you participate in creating or approving a contract, you may not obtain a financial interest in the contract in the future.



CONTRACTS - Continued

- You are involved in making a contract if you are involved in any stage of contract preparation.
- The fact that a contract might be fair or advantageous to the City is not relevant
- This prohibition extends beyond the time you are employed by the City.

There are exceptions for less significant financial interests. Contact the Ethics Commission for advice.



FINANCIAL INTEREST IN A CONTRACT Case Vignette



The Planning Commission recommends that the City Council hire an environmental expert to advise the City on specific issues associated with amendments to the City's General Plan. The City Council decides to accept the recommendation and hire an expert.

One of the members of the Planning Commission decides to offer his expert services on a "pro bono" basis since he is qualified and familiar with the Planning Commission's concerns.



Is the described action lawful under the Ethics Ordinance?

MISUSE OF POSITION

- City Officials may not use their positions to induce someone to provide them with something of value.
- City Officials may not disclose confidential information acquired during work for the City.
- City Officials may not engage in campaign-related activities using City facilities, equipment, supplies, or resources.



MISUSE OF POSITION - Case Vignette

A Planning Commissioner contacts the office of his City Councilmember. He talks to a Council staffer and tells the staffer that as a volunteer Commissioner he has been spending a lot of time lately at lengthy and contentious Commission meetings. He then asks the staffer to tell the Councilmember that he would like his residential street prioritized for the undergrounding of overhead utilities in the upcoming year.

Has the Commissioner violated the Ethics Ordinance?



POLITICAL ACTIVITY

- City Officials may not use their influence to secure any appointment to any position in the City in return for personal or partisan political service.
- City Officials and candidates may not knowingly solicit campaign contributions from City employees.
 - This prohibition applies to employees of the City and City agencies (Civic San Diego, Convention Center Corporation, and Housing Commission).
 - Inadvertent solicitation of City employees is not unlawful if the solicitation is directed to a large segment of the public and there is no reason to believe that a City employee is receiving the solicitation.



POLITICAL ACTIVITY - Case Vignette

You have decided to support the campaign of your friend, a candidate for City Council. While you are walking your neighborhood handing out flyers in support of your friend's candidacy, you knock on a door and recognize the person who opens the door as a City employee. You then ask this person to support your friend's candidacy by volunteering at the campaign headquarters, putting up a yard sign, or making a campaign contribution.



Is this permitted under the Ethics Ordinance?



GIFTS - Generally

- Gifts from a reportable source with an aggregate value of \$50 or more must be disclosed on your SEI. For Planning Commissioners, everyone is a reportable source.
- If you receive a gift from a group, you only have to report those individuals who contributed \$50 or more.
- Gifts are limited to a value of \$500 from any one reportable source within a calendar year
- Gifts valued at \$500 or more that overlap 2 calendar years will trigger disqualification.
- Gifts include a rebate or discount unless the discount is offered in the regular course of business to members of the public.

GIFTS - Continued

- A gift is reportable even if you discard it (unless it is a ticket to a one-time event) or give it to someone else.
- A gift is not reportable if, within 30 days, it is returned unused, paid for, or delivered to the City or a 501(c)(3) charity.
- Some gifts have unique rules, such as wedding gifts, which are reportable but not subject to the annual limit.
- There are many exceptions to the gift rules, including gifts from family, free or discounted admission to local seminars, hospitality in a friend's home, and gifts received in a bona fide dating relationship.

GIFTS – Personal Relationships

- Reciprocal Exchanges. If a City Official is in an ongoing social relationship in which both parties alternate paying for each others' lunches, movie tickets, greens fees, etc., there is no reportable gift if the City Official has substantially paid for what he or she received over the course of the reporting period.
- Long Term Friendships. Items received from a long-term personal friend are not gifts if the friend has not engaged in any type of City business involving the City Official during the past 12 months and it is not foreseeable that the friend will engage in City business involving the City Official within the next 12 months.

NOTE: these exceptions do not apply to gifts from lobbyists

GIFTS – Reportable Value

- The reportable value of a ticket is its face value.
- The reportable value of other gifts is generally the fair market value as of the date of receipt.
- If you cannot determine the fair market value, you must make a reasonable approximation taking into account the price of similar items.
- It is your responsibility to obtain information concerning the value of a gift before it is accepted and/or used.



GIFTS – Tickets and Invitations to Events

- If you receive a ticket to an event, and tickets are available for purchase by the general public, the value of the gift is the face value printed on the ticket.
- If you attend an invitation-only event such as a banquet, party, or gala, the value of the gift is your pro rata share of the catering services (food, beverages, etc.), feature entertainment, and other items given to all attendees.
- Tickets to fundraisers for political campaigns and 501(c)(3) charities are exempt for you and one guest if the host has provided you with the tickets.
- See the Ethics Commission Fact Sheet entitled “Tickets and Invitations to Events.”

GIFTS – Family Members – Continued

- A gift given to a family member is a gift to you if:
 - ✓ There is no established working or social relationship between the donor and your family member; or,
 - ✓ There is evidence suggesting an intent to influence your actions as a City Official (e.g., the donor is a lobbyist, is the subject of a decision made by your department, etc.).
- If you and any other member of your immediate family receive a gift jointly (e.g., a television for the family, weekend at timeshare, etc.), the reportable value of the gift is the gift's full value.
- Note: your “family” includes children between 18 and 23 years of age who are full-time or part-time students who do not provide over one-half of their own support.

GIFTS – Honoraria & Travel Expenses

- Honoraria (payments for speeches, articles, or attending events) are severely restricted. Contact the Commission for advice before accepting.
- Travel expenses (transportation, lodging, meals) paid by a federal, state, or local government entity are not a gift if the travel is related to your City job.
- Travel expenses paid by a 501(c)(3) organization for a legislative or governmental purpose are not subject to gift limits, but are reportable and may trigger disqualification.
- Travel expenses paid by other entities will generally be treated as a gift, subject to limits, reporting, and disqualification.
- Travel rules can be complicated. You are encouraged to contact the Ethics Commission for assistance before accepting travel expenses.

GIFTS - Case Vignette

You are invited to attend an invitation-only celebration party hosted by the Padres after they win the World Series. You are told that the cost of food and beverages at the party is \$100 per person. You attend the event, but only stay for a few minutes and you don't eat or drink anything.



Have you received a reportable gift?

What if you ate a few appetizers before you left? What if you stayed for the entire event? What if you and your spouse were both invited?

GIFTS - Case Vignette



A local consulting firm is hosting a seminar regarding homeless issues in San Diego. The firm offers you free admission to the seminar.

Can you accept the offer? Have you received a reportable gift? What if you receive lunch at the seminar?

What if the seminar is in Hawaii and the offer includes travel and hotel expenses?



FUTURE EMPLOYMENT

- You may not use your position to influence a decision that involves the interests of a person with whom you are seeking or negotiating for future employment.
- This prohibition applies in each of these situations:
 - ✓ you have submitted an application or bid;
 - ✓ you have discussed the possibility of employment with an individual who has hiring authority.
- The prohibition does not apply if your prospective employer or client is another public agency.



FUTURE EMPLOYMENT - Case Vignette

Monica is a Planning Commissioner. She is also a partner in a local architectural firm. The Commission has been asked to consider a permit that would allow a local developer to convert an apartment building in the downtown area to condominiums.

One day she runs into the developer, who tells her that he is accepting bids for the design of a small commercial building in the Pacific Beach area.



Monica indicates that her firm is definitely interested and asks about the deadline for bid submittal. Monica then participates in the Commission's decision regarding the condo conversion.

Has Monica violated the Ethics Ordinance?

ADVICE

The Ethics Commission provides verbal and written advice to City Officials:



- Verbal and written advice is only provided for specific contemplated future action
- Formal written advice provides immunity (only from Ethics Commission)
- Written advice is a public record (posted on Commission website)
- Advice from another department or agency will not provide immunity from the Ethics Commission

ADDITIONAL INFORMATION

Website: www.sandiego.gov/ethics



Our website contains links to:

- The Ethics Ordinance
- Fact Sheets
- Frequently Asked Questions



Ethics
Commission

ETHICS TRAINING FOR PLANNING COMMISSION

February 14, 2019