FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS

PART 1: INTERESTS IN BUSINESS ENTITIES

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. 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 that result from investments in business entities or from serving in a position of management in a business entity. 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.

- The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., substantially likely) that the decision will have a "material financial effect" on any business entity in which the official, or a member of the official's immediate family, has an investment worth two thousand dollars ($2,000) or more. Such an interest could include ownership of a family business or stock in a publicly traded company.
- The Ethics Ordinance also prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable that the decision will have a "material financial effect" on any business entity in which the official serves as a director, officer, partner, trustee, employee, or otherwise holds any position of management.
- The term "business entity" means any organization or enterprise operated for profit. It does not, therefore, include any bona fide non-profit organizations or governmental agencies.
- The term "immediate family" means an official's spouse (or registered domestic partner) and any dependent children. Under these rules, for example, a City Official whose spouse owns a billboard company may be unable to participate in a City decision to change zoning for outside advertising.
- You must consider your spouse's or registered domestic partner's investments in business entities for disqualification purposes even if you have an agreement (such as a pre-nuptial agreement) stating that you have no legal interest in the other person's investments.
- An investment in a business entity includes an investment in any other business entity that is a parent or subsidiary of, or is otherwise related to, the business entity in which the official is financially interested. Generally speaking, a parent-subsidiary relationship exists when one entity owns 50% or more of another entity. In addition, businesses are considered "related" when one entity has a controlling interest in the other, the entities share management, or the same person controls both entities.
- Before you can determine whether or not a municipal decision will have a "material" (i.e., significant) effect on a business entity, you must first identify how close the relationship is between the decision and the business entity. In other words, you must determine whether the business entity is "directly involved" or "indirectly involved" in the decision.

- A business entity is considered "directly involved" in a municipal decision when it:
  - ✓ initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
  - ✓ is a named party in the decision, or is otherwise the subject of the decision. A person is the subject of a decision if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the person.
- If the business entity is directly involved, then the financial effect of a municipal decision on the entity is presumed to be material. This presumption may be rebutted by proof that it is not substantially likely that the municipal decision will have any financial effect on the entity. This means that the decision will not result in the business entity gaining or losing even a single dollar.
- There is an exception to the presumption of materiality if your only economic interest in the business entity is an investment interest worth $25,000 or less in a Fortune 500 company or company listed on the NYSE. In such circumstances, contact the Ethics Commission for assistance in determining whether or not the financial effect on the investment is material.
- If a business entity is not "directly involved" as described above, but will still be affected by a particular decision, then the entity is considered "indirectly involved" in the decision. The financial effect of a municipal decision on a business entity that that is "indirectly involved" depends on the size of the business. The larger the business entity, the greater the impact the decision will need to be on that entity in order for the financial effect to be considered "material." A decision that has a negligible financial impact on a large business entity could have a substantial impact on a small business. In other words, what is "material" to a small company might not be "material" to a large one.
- Please refer to the chart below for assistance in determining how much impact a municipal decision will need to have for the financial effect to be considered "material" to an indirectly involved business entity:

TYPE OF BUSINESS ENTITY	IMPACT OF DECISION ON "INDIRECTLY INVOLVED" ENTITY		
	Will increase or decrease the business entity's gross revenues for a fiscal year by:	Will cause entity to incur or avoid additional expenses or reduce or eliminate existing expenses for a fiscal year in the amount of:	Will increase or decrease the value of the business entity's assets or liabilities by:
Listed on the Fortune 500	$10 million	$2.5 million	$10 million
Has revenues no less than revenues of entity ranked 500th on the Fortune 500	$10 million	$2.5 million	$10 million
Listed on the New York Stock Exchange	$500,000	$200,000	$500,000
In most recent fiscal year, had net income no less than $2.5 million	$500,000	$200,000	$500,000
Listed on the NASDAQ or American Stock Exchange	$300,000	$100,000	$300,000
In most recent fiscal year, had net income no less than $750,000	$300,000	$100,000	$300,000
Any entity not covered above	$20,000	$5,000	$20,000
Note: If more than one of the above categories is applicable, apply the one with the highest dollar threshold.			

- Whether or not it is substantially likely that a municipal decision will have a particular effect on a business entity is a determination that you must make yourself. The Ethics Commission does not act as a finder of facts when providing conflict of interest advice.
- Even if it is substantially likely that the financial effect of a municipal decision on your interests in a business entity is material, you will not be disqualified from participating in that decision if you can establish that the decision will affect the business entity in a manner that is no different from the manner in which the decision will affect the public generally.
  - ✓ A decision involving your interest in a business entity affects the "public generally" if it also affects, in substantially the same manner, either 2,000 or twenty-five percent of all business entities in the City (or in the district you represent, if applicable), so long as the effect is on persons composed of more than a single industry, trade, or profession.
  - ✓ For purposes of this rule, nonprofit entities other than a governmental entity are treated as a business entity.
- 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.

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