

City of Los Alamitos

Agenda Report Discussion Items

February 18, 2014
Item No: 11B

To: Mayor Graham-Mejia & Members of the City Council
Via: Bret M. Plumlee, City Manager
From: Cary S. Reisman, City Attorney
Subject: Conflict of Interest Test and Small Jurisdiction Modification

Summary: Council Member Warren Kusumoto has requested a City Attorney opinion regarding conflicts of interest, and that staff provide maps showing 500 foot and 300 foot radii for Planning Commissioners and City Council Members. Staff will provide those maps. As for the Request for City Attorney opinion, one Council Member is not generally entitled to incur expenses on behalf of the City such as City Attorney time. Therefore, unless the City Council orders a City Attorney opinion, this short form should suffice.

Recommendation:

1. Receive and file; or,
2. Direct the City Attorney to provide an opinion on Council Member Kusumoto's Conflict of Interest; or,
3. Action as Council deems appropriate.

Background

Council Member Kusumoto has requested of the City Attorney: "A staff report from you that provides your analysis of each Council Member's "conflict of interest" radius that clearly steps through the tests established by the FPPC. This staff report to include citations to the FPPC rule and the date it was established. The purpose of this staff report is to affirm the FPPC rule and provide the specific answer for each test (except the test about the size of the residential lot - which is a variable that will have to be applied on a case-by-case basis)."

Discussion

Under the California Political Reform Act (California Code of Regulations, Title 2, section 18700(h) hereinafter, "the Act"), a public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his or her economic interests, unless that effect is not distinguishable from the effect on the public generally. The rules are explained in the Ethics classes required to be attended by all City Council members and Planning Commissioners every other year.

There is an eight step analysis for determining whether a council member has a disqualifying financial interest under the Act. That analysis is covered in detail in the California Attorney General's 2008 pamphlet "Conflicts of Interest" available on the internet at <http://oag.ca.gov/conflict-interest>. Another excellent source of information regarding ethics laws in California is the Institute for Local Government. Their web page has links to various articles and analyses on the issue: <http://www.ca-ilg.org/understanding-public-service-ethics-laws>. It should be noted that the eight step analysis is under study by the FPPC for possible simplification (and reduction to a four step analysis) later this year.

What is not well covered by the cited sources, and unique to Los Alamitos and other small jurisdictions is the small jurisdiction exception to the public generally rule. That is, a council member in any sized city may participate in a decision despite a conflict of interest if the governmental decision would affect their residential real property in a manner that is not distinguishable from its effect on the "public generally." In large jurisdictions, the public generally is defined as at least 10% of the population of the city or district (if elections are by district). However, under the small jurisdiction exception of California Code of Regulations section 18707.10(a), a council member may participate despite the conflict if 6 factors are present:

- (1) The jurisdiction of the public official's agency has a population of 30,000 or less and covers a geographic area of ten square miles or less (YES);
- (2) The public official is required to live within the jurisdiction (YES);
- (3) The public official, if elected, has been elected in an at-large jurisdiction (YES);
- (4) The official's property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;
- (5) The official's property is located on a lot not more than one-quarter acre in size or not larger than 125 percent of the median residential lot size for the jurisdiction (the median residential lot size in Los Alamitos is 7,840); and
- (6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value.

Conclusion

The consequence of a council member's conflict, and the procedure to follow, are as follows: Immediately prior to consideration of the decision, the council member shall: (1) publicly identify in detail the financial interest that causes the conflict (except that he need not disclose the street address of his residence); (2) recuse himself or herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made (except while "testifying"), unless the matter is on the consent calendar. An official who has a disqualifying conflict of interest may not attempt to influence the decision (except as a member of the public regarding the specific effects upon his/her property), and is not counted towards achieving a quorum on that particular vote.

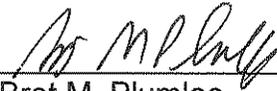
Caveat: Please be aware that reliance upon the advice of a city attorney may not afford any protection regarding violations of state law. People vs. Maria Chacon (Cal. Supreme Court, 2007) 40 Cal.4th 558.

Submitted By:



Cary S. Reisman
City Attorney

Approved By:



Bret M. Plumlee
City Manager

*Attachments: 1. E-mail from Council Member Kusumoto to City Attorney
2. Conflict of Interest Radius Maps for City Council and Planning Commission*