

CIVIC SAN DIEGO BOARD POLICY

Section: 2.0 – Ethics and Conflict of Interest
Sub-section: 2.05 – Disclosure Requirements for Financial Interest in Discretionary
Actions and Development Agreements
Effective Date: June 27, 2018

1. PURPOSE

- 1.1 The CORPORATION participates in and takes action on certain discretionary decisions relating to development projects within its jurisdiction. In some cases, the CORPORATION negotiates development agreements with developers and property owners. These DISCRETIONARY ACTIONS and DEVELOPMENT AGREEMENTS affect various private FINANCIAL INTEREST and may result in a conflict of interest for OFFICIALS that are required to participate in, influence, or take action such as voting.
- 1.2 This policy document is intended to establish a process for the efficient disclosure of private financial interests that may be affected in such circumstances.

2. EFFECTIVE DATE AND AMENDMENTS

- 2.1 This Policy shall be effective upon the approval of the BOARD of the CORPORATION. This Policy may only be amended by approval of the BOARD, except as provided in Policy 1.01, Section 5.8.

3. DEFINITIONS

- 3.1 AGENCY - The Successor Agency to the former Redevelopment Agency of the City of San Diego.
- 3.2 APPLICANT – Any natural person that has a financial interest in an application submitted to the CORPORATION or CITY relating to a proposed development project that is subject to a DISCRETIONARY ACTION or relates to a DEVELOPMENT AGREEMENT. For corporations or other similar legal entities, all natural persons who have a financial interest in said corporation or legal interest shall be identified.
- 3.3 BOARD – The Board of Directors of the CORPORATION.
- 3.4 CITY – City of San Diego.
- 3.5 CORPORATION – Civic San Diego.
- 3.6 DECISION-MAKING AUTHORITY – A committee, board or commission possesses DECISION-MAKING AUTHORITY whenever:

- (A) It may make a final GOVERNMENTAL DECISION including making appointments, entering into contracts or otherwise committing the CITY or CORPORATION to a course of action;
- (B) It may compel a GOVERNMENTAL DECISION; or it may prevent a GOVERNMENTAL DECISION, either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden, or;
- (C) It makes substantive recommendations relating to any GOVERNMENTAL DECISION that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

A committee, board, or commission does not possess DECISION-MAKING AUTHORITY under subsection 3.1 (A) if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final DECISION-MAKING AUTHORITY.

- 3.7 DEVELOPMENT AGREEMENT – The term “Development Agreement” means any agreement between the CORPORATION, and any private party pertaining to the use or development of real property within the jurisdiction of CORPORATION.
- 3.8 DISCLOSURE STATEMENT - The term “Disclosure Statement” means a statement in the form required by the CORPORATION listing any FINANCIAL INTEREST of an APPLICANT which may be affected by a DISCRETIONARY ACTION.
- 3.9 DISCRETIONARY ACTION – The term “Discretionary Action” means any discretionary action relating to real property within the jurisdiction of CORPORATION, including, without limitation, approval or denial of development permits, conditional use permits, and variances.
- 3.10 FINANCIAL INTEREST – The term “Financial Interest” means any interest which would prevent the OFFICIALS involved from exercising absolute loyalty and undivided allegiance to the best interests of the CORPORATION or CITY, including an interest of an OFFICIAL’s immediate family members.
- 3.11 GOVERNMENTAL DECISIONS – The term “Governmental Decision” is defined in Title 2, Section 18700 of the California Code of Regulations.
- 3.12 NON-INTEREST – The term “Non-Interest” is defined in California Government Code sections 1091.1, 1091.2 and 1091.5.
- 3.13 OFFICIAL – The term “Official” includes, but is not limited to, salaried or unsalaried members, employees, or consultants of committees, boards or commissions with DECISION-MAKING AUTHORITY. OFFICIALS may include, without limitation, CORPORATION or CITY staff; members of the

BOARD; other boards or commission formed by the CITY Council; and, the CITY Council, and their respective consultants and employees.

- 3.14 REMOTE INTEREST – The term “Remote Interest” is defined in California Government Code section 1091. By way of example, the term “Remote Interest” includes, but is not limited to, an OFFICIAL’s interest as: (a) an officer or employee of a 501(c)(3) nonprofit corporation; (b) an employee of the contracting party, if the contracting party has more than 10 employees, the employee is not an officer and does not hold more than 3% of stock in the entity, and the employee does not participate directly in the decision; or (c) a person receiving salary, per diem or reimbursement of expenses from a governmental entity.

4. PROCEDURES

- 4.1 The President is authorized to establish and disseminate administrative procedures to implement this Policy, as applicable.

5. POLICY

5.1 CONFLICT RULES FOR OFFICIALS

- (A) Disqualification of OFFICIALS from participation in DISCRETIONARY ACTIONS affecting their FINANCIAL INTERESTS (Gov. Code § 87100): No OFFICIAL shall knowingly influence, participate in or vote on a DISCRETIONARY ACTION if it is reasonably foreseeable that the DISCRETIONARY ACTION will have a material financial effect on the FINANCIAL INTEREST designated in Title 2, Section 18700, subsection (c)(6) of the California Code of Regulations, or those of his or her immediate family members, that is indistinguishable from the effect of the DISCRETIONARY ACTION on the public generally. For purposes of this section, “material financial effect” has the same meaning as that term is used in Title 2, sections 18702 through 18705.5 of the California Code of Regulations. Examples of FINANCIAL INTERESTS designated in Section 18700(c)(6) include:

- (1) any business entity in which the OFFICIAL or a member of the OFFICIAL’s immediate family has a direct or indirect interest of \$2,000 or more; and
- (2) any business entity for which the OFFICIAL or a member of the OFFICIAL’s immediate family is a director, officer, partner, trustee, employee, or holds any position of management; and
- (3) any real property which the OFFICIAL or a member of the OFFICIAL’s immediate family has a direct or indirect interest of \$2,000 or more; and
- (4) any source of income from whom an OFFICIAL or a member of

- the OFFICIAL's immediate family has received (or by whom he or she has been promised) \$500 or more in income within twelve months prior to the GOVERNMENTAL DECISION; and
- (5) any donor, or any intermediary or agent for a donor, from whom an OFFICIAL or a member of the OFFICIAL's immediate family has received gifts which total \$470 or more within twelve months prior to the GOVERNMENTAL DECISION. This gift threshold is subject to adjustment in accordance with the provisions of San Diego Municipal Code Section 27.3521; and
 - (6) the personal expenses, income, assets, or liabilities of an OFFICIAL or a member of the OFFICIAL's immediate family.
- (B) Disqualification of OFFICIALS from participation in the making of a DEVELOPMENT AGREEMENT affecting their FINANCIAL INTEREST (Gov. Code § 1090):
- (1) The CITY Council, BOARD, or any board or commission established by the City Council may not enter into a DEVELOPMENT AGREEMENT or any other contract if any OFFICIAL who is an individual member of the body has a FINANCIAL INTEREST in the DEVELOPMENT AGREEMENT or other contract.
 - (2) No OFFICIAL shall participate in any way in his or her official capacity in the making of any DEVELOPMENT AGREEMENT or other contract in which he or she has a FINANCIAL INTEREST. Additional policies may be adopted to implement this prohibition.
 - (3) Exceptions:
 - (a) Any interest that qualifies as a NON-INTEREST shall not be considered a FINANCIAL INTEREST within the meaning of subsections 5.1(B)(1) and 5.1(B)(2)
 - (b) An OFFICIAL who has a FINANCIAL INTEREST that qualifies as a REMOTE INTEREST is not subject to the prohibitions of subsections 5.1(B)(1) and 5.1(B)(2) if the OFFICIAL publicly discloses his or her financial interest, abstains from influencing or attempting to influence any member of the CITY Council, BOARD, AGENCY Board or other board or commission established by the CITY Council in the making of the contract, the interest is noted in the official records of the CITY Council, board or commission, and the legislative body authorizes the contract in good faith by a sufficient vote without counting

the vote of the OFFICIAL with the REMOTE INTEREST.

5.2 DISCLOSURE

- (A) All OFFICIALS shall comply with all requirements of law and any applicable policy regarding disclosure of their FINANCIAL INTERESTS.
- (B) All APPLICANTS shall be required to submit a DISCLOSURE STATEMENT listing any FINANCIAL INTEREST which may be affected by a DISCRETIONARY ACTION prior to or concurrently with its initial application relating to its project, or prior to selection of a developer relating to a DEVELOPMENT AGREEMENT or, if no selection process is conducted, prior to beginning of any negotiations relating to the proposed DEVELOPMENT AGREEMENT. The same DISCLOSURE STATEMENT submitted to CORPORATION for any DISCRETIONARY ACTION being processed prior to beginning negotiations for a DEVELOPMENT AGREEMENT may be used for a DEVELOPMENT AGREEMENT relating to the DISCRETIONARY ACTION, if such DISCLOSURE STATEMENTS would be identical. Each DISCLOSURE STATEMENT shall be updated as necessary until all DISCRETIONARY ACTIONS relating to the project have been completed and until any DEVELOPMENT AGREEMENT is no longer in effect. Copies of the DISCLOSURE STATEMENT should be routed to all OFFICIALS scheduled to consider a DISCRETIONARY ACTION or a DEVELOPMENT AGREEMENT along with CORPORATION's staff report.

5.3 PUBLIC DISCLOSURE PROCESS

- (A) Council, Board and Commission Members

Each OFFICIAL who is a member of the CITY Council, BOARD, or any other board or commission with DECISION-MAKING AUTHORITY shall, whenever he or she has a FINANCIAL INTEREST which disqualifies him or her from participating in the DISCRETIONARY ACTION or a FINANCIAL INTEREST qualifying as a REMOTE INTEREST in a DEVELOPMENT AGREEMENT or another contract:

- (1) Refrain from participating in or influencing any other OFFICIAL on the matter;
- (2) Publicly identify, in detail, the FINANCIAL INTEREST that causes the conflict at the meeting at which it the matter being considered;
- (3) Recuse himself or herself from discussing and voting on the matter;

- (4) Leave the room until after the decision has been made (except in the case of a consent calendar item);
- (5) Refrain from being present in any closed session when the matter from which he or she is disqualified is considered and from obtaining or reviewing any non-public information regarding the matter.

Nothing in this policy shall prohibit an OFFICIAL from speaking on a matter as a member of the general public during the period for public participation regarding that matter, subject to any applicable limitations of State law.

(B) Employees and Consultants

Any OFFICIAL who is an employee or consultant shall be responsible for identifying his or her FINANCIAL INTEREST that disqualifies him or her from participating in a DISCRETIONARY ACTION, DEVELOPMENT AGREEMENT or another contract under this policy and shall immediately report such conflict to (1) the City Council BOARD OR AGENCY, as appropriate, if he or she is a department head or acts in a similar capacity, or (2) his or her supervisor, for all other employees or consultants. Each such OFFICIAL shall refrain from influencing or participating in any way in such DISCRETIONARY ACTIONS, DEVELOPMENT AGREEMENT or contract. If his or her FINANCIAL INTEREST would be affected by a DEVELOPMENT AGREEMENT or other contract and qualifies as a REMOTE INTEREST, the OFFICIAL shall: publicly disclose his or her financial interest and abstain from influencing or attempting to influence any member of the legislative body in the making of the contract. Additional policies may govern the participation of an OFFICIAL in a DISCRETIONARY ACTION, DEVELOPMENT AGREEMENT or other contract.

5.4 RECORD-KEEPING

Each DISCLOSURE STATEMENT shall be maintained in the CORPORATION's permit application, DISCRETIONARY ACTION or DEVELOPMENT AGREEMENT file for a period of no less than three (3) years from the date of the DISCRETIONARY ACTION or the termination date of the DEVELOPMENT AGREEMENT, whichever is later.