

# Memo

To: Commission

From: Wayne Barnett

Date: March 20, 2015

Re: Widely shared financial interests

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## **BACKGROUND**

When the Commission undertook a comprehensive review of the Ethics Code in 2009, it recommended that the Code be amended to expressly permit City officers and employees to participate in matters in which they had a financial interest so long as that interest was shared with a broad swath of the City's population. When, for example, the City Council votes to submit a levy to the voters, it would be absurd to exempt all property owners from the vote because they would have a financial interest in the legislation.

Since this Code change, the Commission has issued two opinions interpreting the language of the section. Those opinions are attached.

With the transition to District elections on the horizon, the Commission has been urged to revisit the exception to determine whether changes to the language are necessary.

## **LAW**

The Code section at issue reads as follow:

4.16.070 - Prohibited conduct

A covered individual may not:

A. Disqualification from acting on City business

1. Participate in a matter in which any of the following has a financial interest, except as permitted by Section 4.16.071
  - a. the covered individual;
  - b. an immediate family member of the covered individual;
  - c. an individual residing with the covered individual;
  - d. a person the covered individual serves as an officer, director, trustee, partner or employee;
  - e. a person with which the covered individual is seeking or has an arrangement concerning future employment.
  
2. Participate in a matter in which a person that employed the covered individual in the preceding 12 months, or retained the covered individual or his or her firm or partnership in the preceding 12 months, has a financial interest; provided, however, that the Executive Director shall waive this section when:
  - a. the covered individual's appointing authority or the authority's designee makes a written determination that there is a compelling City need for the covered individual to participate in a matter involving a prior employer or client, and submits that determination with a written plan showing how the authority will safeguard the City's interests, and
  - b. the Executive Director determines that the authority's plan is satisfactory.
  
- ...
  
4. **Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply if the prohibited financial interest is shared with a substantial segment of the City's population.**

## **DISCUSSION**

With seven of the nine councilmembers to be elected to represent specific districts in 2015 and beyond, at a minimum the Commission should consider recommending that the Code be amended to exempt from A.1 and A.2 councilmembers sharing a financial interest with a substantial segment of their *district's* population. Otherwise, on a matter of significant concern to residents in South Seattle, Downtown, Northgate, West Seattle or some other neighborhood, that district's representative could find him or herself disqualified from acting because of a conflict of interest under the Ethics Code. If, for example, Councilmember Bagshaw is elected to represent District 7 in 2015, under the current language of the Ethics Code she would be disqualified from acting on matters that uniquely impact her constituents. That would seem contrary to what voters intended when they adopted a district-based system.

If the Commission wants to amend the Ethics Code to address this issue, such an amendment would read something like the following: “Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply if the prohibited financial interest is shared with a substantial segment of the City's population or, in the case of a member of the City Council holding positions 1 through 7, if the prohibited financial interest is shared with a substantial segment of that District’s population.”

The Commission should give careful consideration, though, to making a more dramatic change to the Code. For illustrative purposes, consider Council Bill 117905, which related to rental housing inspections and moved through the City Council in the latter half of 2013. Three Councilmembers, living in Districts 1, 2 and 6 were disqualified by virtue of the fact that they owned rental properties from participating in the consideration of that bill. Had districts been in place, fully one third of the City’s residents – and *all* of the City’s residents living south of downtown – would have seen their representatives disqualified. They would not have been voiceless because of the two at-large members of the Council, but their unique representative would have been disqualified from acting. (It is unlikely that rental property owners constitute a substantial segment of any of the seven districts. It is also unlikely that the Commission would have been able to find any reliable information on how rental property owners were geographically dispersed throughout the City.)

If the Commission wants to tackle this larger issue, a potential amendment would read something like this: “Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply if (a) the prohibited financial interest is shared with a substantial segment of the City's population or (b) in the case of a member of the City Council, if the matter is a council bill, ordinance, resolution, ballot measure or charter amendment.” The Commission could couple such an amendment with language requiring the councilmember to disclose on the record the conflict of interest prior to participating in the matter.