

May 14, 2018

## MEMORANDUM

**To:** GET Committee  
**From:** Patricia Lee  
**Subject:** Council Bill 119254 – Limited Exception to Disqualification Requirements in the Ethics Code

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[Council Bill \(CB\) 119254](#) will be discussed and up for a possible vote by the Governance, Equity and Technology (GET) Committee on Tuesday, May 15, 2018. CB 119254 would create an exception to the disqualification requirement for elected officials from action on limited types of legislative matters.

This memo (1) provides background on prior Committee discussions on disqualification requirements; (2) summarizes the current Ethics Code disqualification requirement and exemptions; and (3) summarizes the proposed change in CB 119254, highlighting a few potential issues for discussion.

### Background

Currently under the Ethics Code, if a Councilmember shares a financial interest with a substantial segment of the city population he or she does not need to disclose or recuse. If that financial interest is not shared, he or she must recuse himself or herself from participation and voting.

The GET Committee previously considered [CB 118701](#) but did not vote on the bill. CB 118701 would have allowed a Councilmember whose financial interest is not shared with a substantial segment of the city population to disclose but not have to recuse himself or herself from participation. Without this change the Councilmember would have to recuse himself or herself from participation and voting.

The new bill, CB 119254, would allow a more limited exemption to what was proposed in CB 118701. Under the new bill, a Councilmember has to disclose his or her financial interest but not recuse himself or herself from participation, if the legislative matter relates to taxes, or utilities, public services or facilities rates that are applied equally or by the same percentage to the elected officials' interest and others subject to the assessment. The proposal would also define "legislative matter" and delegate to the Ethics and Elections Commission (Commission) authority to provide other exemptions for similar circumstances by rule. It would also allow the Commission to determine by rule when a financial interest is shared with a substantial segment of the population.

In addition, the new bill applies to all elected officials, including the Mayor, whereas the previous ordinance applied only to Councilmembers.

### Definitions:

A couple of definitions used in the Ethics Code will make the following sections more understandable. There is also a new definition proposed for “legislative matter” which was previously undefined.

“Covered Individual” means any City officer, City employee, City contractor or City volunteer. Covered Individual also includes every individual who was a City officer, City employee, City contractor or City volunteer at the time of the act or omission that is alleged to have violated this chapter, even if he or she no longer has that status.

“Legislative matter” means any enacted or introduced council bill, ordinance, resolution, clerk file, ballot measure, or charter amendment. A legislative matter may include a possible future council bill, ordinance, resolution, clerk file, ballot measure, or charter amendment, if the possible future matter has been discussed on the public record at an open public meeting of the City Council or one of its committees. (Proposed Definition)

"Matter" means an application, submission, request for a ruling or other determination, permit, contract, claim, proceeding, case, decision, rulemaking, legislation, or other similar action. Matter includes the preparation, consideration, discussion, or enactment of administrative rules or legislation. Matter does not include advice or recommendations regarding broad policies and goals.

“Person” is defined as an individual, association, corporation or other legal entity.

### Current Required Disqualification:

The Ethics Code currently requires disqualification due to a financial interest under the following circumstances.

SMC 4.16.070.A prohibits a covered individual from participating in a matter:

- (1) In which they, their family, household member or entity they are employed with or have an official capacity with, have a financial interest; and
- (2) In which a person that employed or retained the covered individual in the last 12 months has a financial interest.

### Current Exemptions:

The Ethics Director shall waive the disqualification because of employment in the last 12 months, [SMC 4.16.070.A.2](#), upon determination that there is a compelling City need for the covered individuals participation in the matter and the City’s interests will be safeguarded as evidenced in a written and submitted plan.

The disqualification due to a financial interest set forth in SMC 4.16.070.A.1 and 2 does not apply if the prohibited financial interest is shared with a substantial segment of the City’s population.

## Proposed Changes to Disqualification Due to Financial Interest Requirements

CB 119254 proposes four changes, which are set out and discussed below.

1. Allow the Commission to determine whether the financial interest is shared with a substantial segment of the public and change City's "population" to "public".

SMC 4.16.07.A.4 would be amended to change the requirement that a covered individual may not participate in a matter in which they have a financial interest unless the financial interest is shared with a substantial segment of the City's population. This would be changed to a substantial segment of the public, instead of City's population, and whether the covered individual shared the financial interest would be defined by rule by the Ethics and Elections Commission (Commission). Substantial segment is currently undefined in the SMC, and the proposed change would allow the definition to be established by the Commission. The proposed language is below:

*(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)) public, as defined by rule by the Ethics and Elections Commission.*

2. Remove disqualification for tax, utility, public services.

SMC 4.16.070 would be amended to add a new exemption to remove the disqualification requirement and allow elected officials to participate in legislative matters if the legislative matter establishes taxes, fees, rates or for utilities, other public services or facilities rates that are applied equally, proportionally or by the same percentage to the elected officials.

*5. Application to City elected officials and legislative matters. Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply to an elected official's participation in legislative matters if:*

*a. The legislative matter establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the elected official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate and a disclosure is made in accordance with subsection 4.16.070.A.6, or*

3. Allow the Commission to establish other disqualification exemptions.

SMC 4.16.070 would be amended to add a new exemption in section five to give the Commission discretion to establish additional exemptions which would remove the disqualification requirement by Commission Rule. The exemptions would not be established by legislation or codified in the SMC. *The Council may want to consider whether authority to establish additional exemptions should be delegated to the Commission.* The proposed language is:

*b. Any other similar circumstance as may be prescribed by rule by the Ethics and Elections Commission pursuant to [Section 3.70.100](#).*

4. Add a new disclosure requirement.

SMC 4.16.070 would be amended to add a new disclosure requirement if the elected official is exempted from disqualification because the legislative matter establishes taxes, fees, utility or other public services or facilities rates that are applied equally, proportionally or by the same percentage to the elected official's. It also places the burden of proof on the Councilmember to prove that the proper disclosure was made, if a violation is charged.

The proposed language is:

*6. Before participating in a matter covered by subsection 4.16.070.A.5, the elected official must publicly disclose any financial interest. An elected official must post a written disclosure on the official's webpage and file a copy with the Executive Director and the City Clerk. A Councilmember shall additionally make such a disclosure on the public record at an open public meeting of the Council or one of its committees at which the legislative matter is discussed. The Councilmember shall also, before participating in that legislative matter at any subsequent Council or committee meeting, repeat the oral disclosure on the public record of that meeting.*

*a. If a Councilmember is charged with a violation of subsection 4.16.070.A.1 or 4.16.070.A.2 and asserts as an affirmative defense that a disclosure under this subsection 4.16.070.A.6 was made, the burden of proof is on the Councilmember to show that a proper disclosure was made.*

cc: Kirstan Arestad, Central Staff Director  
Dan Eder, Deputy Director