



CITY OF DUNWOODY

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MEMORANDUM

To: Honorable Mayor and City Council
From: Brian Anderson, City Attorney
Date: April 22, 2010
Subject: Conflicts of Interest in Zoning Matters

The City Attorney has been asked to render an opinion concerning the proper procedures for insuring that a council member meets or exceeds any and all ethical requirements in connection with a previous receipt of campaign contributions by a law firm providing assistance to a landowner in a zoning matter before the City Council.

Conflict of interest in zoning actions is covered by state law. O.C.G.A. § 36-67A-3 covers contributions by applicant in a zoning matter:

“When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government.”

In addition, the City's ethics ordinance excludes political contributions which are made and reported in accordance with state law in the definition of a *personal benefit*. DUNWOODY, GA., REV. ORDINANCES ch. 4, art. I, § 1 (2010). Accordingly, under the controlling statute and ordinance, there is no action required by the recipient for mere receipt of campaign contributions.

However, the City Charter in section 2.13(a)(1) has the following prohibition:

“No elected official, appointed officer, or employee of the city or any agency or political entity to which this charter applies shall knowingly:

Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties or which would tend to impair the independence of his or her judgment or action in the performance of official duties.”



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Likewise O.C.G.A. § 36-30-6 states that “[i]t is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested.” In addition, the city’s ethics ordinance also states:

“A member of the City Council who has or may have a conflict of interest in a matter which requires an official action by any decision maker shall, before the matter is decided, disclose the conflict of interest or the potential or alleged conflict of interest; if the member of the City Council believes that no conflict of interest exists, or that despite any alleged or potential special interest, such city councilmember is nevertheless able to vote and otherwise participate fairly, objectively and in a manner consistent with the public interest, then the member shall so state in the written disclosure. DUNWOODY, GA., REV. ORDINANCES ch. 4, art. I, § 13(a) (2010).

Nonetheless, as previously stated, the Conflicts in Zoning Actions O.C.G.A. § 36-67A-1 *et seq.* specifically authorizes a councilman to vote on zoning issues if received campaign contributions are properly reported. Likewise, the Dunwoody Ethics Code specifically exempts properly reported campaign contributions from creating any personal benefit to the recipient. Therefore, if the contributions do not impair the independence of his or her judgment or the ability to participate fairly, objectively and in a manner consistent with the public interest, there is not a conflict of interest or an ethics violation.

Accordingly, it is the opinion of the City Attorney that a properly reported prior campaign contribution by its mere occurrence does not create any conflict of interest in a zoning action. However, in order to ensure compliance with or exceed all applicable requirements, the council member should disclose in writing or on the record the contribution and state that the council member is nevertheless able to vote or otherwise participate fairly, objectively and in a manner consistent with the public interest. The preceding action ensures the councilmember meets or exceeds all ethical requirements. This opinion does not apply to any situation with extenuating circumstances such as *quid pro quo* arrangements, contributions made during the pendency of any proceedings, and any other situations explicitly declared by law, ordinance, or otherwise to be unethical or a conflict of interest.