

Memorandum

City of Las Vegas
Office of the City Attorney

To: City of Las Vegas Planning Commissioners
From: Bryan K. Scott
Assistant City Attorney
CC: Tom Perrigo, Director of Planning
Karen Duddleston, Deputy Planning Director
Date: May 23, 2016
Re:

CODES OF ETHICAL CONDUCT

General rules of ethical standards for all public officers and employees in the state, including local governments, have been enacted by the State Legislature and are set forth in Chapter 281A of the Nevada Revised Statutes.

CONFLICTS OF INTEREST

Under certain circumstances, members of the Planning Commission are required to disclose a conflict of interest and ultimately abstain from advocating for or against or voting on an item brought before them for their consideration. NRS 281A.420.

ABSTENTION FROM VOTING

In certain instances, a Planning Commission member may be required to abstain from voting on certain items which come before the Planning Commission for consideration.

NRS 281A.420 provides, in pertinent part:

281A.420. Additional standards: Voting by public officers; effect of abstention from voting on quorum; disclosures required of public officers and employees

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than accruing to any other member of the general business, profession, occupation or group.

2. In addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

Submitted At Meeting

Date 5/24/16 Item 5

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

* * *

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest,

Without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

5. If a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is not reduced as though the member abstaining were not a member of the body or committee.

* * *

8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;

- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

APPLICATIONS/FINDINGS

There are several types of "zoning" requests that the Planning Commissioner makes recommendations on to the City Council:

General Plan Amendments – require a supermajority to be approved (5 votes). A reduced number of Planning Commission members to vote does not change requirement:

Tentative Map (TM)

Vacation (VAC)

Rezoning (ZON)

Site Development Plan Review (SDR)

Special Use Permit (SUP) – Applicant should orally agree to the conditions on the record. Doing so waves their ability to sue on those conditions at another time.

Waiver (WVR)

Variance (VAR)

Regardless of the type of applications being reviewed, please remember:

1. The Applicant always has the burden of proof to show the request is warranted and appropriate for the area and the subject property.
2. The Planning Commissioner making the motion to approve or deny the application must make appropriate "findings" to support the motion to approve or deny. The Planning Commission can make such findings:
 - A. By agreeing with the Staffing Report and making appropriate references to the Staff Report.
 - B. Using the rationale given by those persons opposing or favoring the Application.
 - C. Using the rationale of Title 19. Simply saying "I like it" or "I don't like it" is not appropriate and will not survive a judicial challenge, as it will be seen as being arbitrary and capricious.

When making your decision to approve or deny an Application, only those things submitted into the public record either orally or in document form may be used to make that decision.

CONDITIONS

The Staff's report has a list of conditions on nearly every Application except a General Plan Amendment and Rezoning. A Planning Commissioner may recommend striking or adding conditions. Every condition added must bear some rational nexus to the zoning action being requested.

MEETING WITH APPLICANTS/VISITING THE SUBJECT PROPERTY

Planning Commissioners at their discretion may visit with the Applicants or their representatives prior to the Planning Commission meeting to discuss the project or visit the site. If you do not want to meet with them, you are not required to do so.

If you are uncertain of something of a legal nature, believe you have a conflict of interest or have any other legal questions, please do not hesitate to contact me at (702)229-6629 at any time before or after a meeting.

BKS/cg