Mayor Chris Watts
419 S. Carroll Blvd Suite 1B
Denton, Texas 76201

Advisory Opinion

Advisory Opinion No. 18-001: Pertaining to the Oak/Gateway Small Area Plan

Mayor Watts;

Pursuant to Section 2-278 of the Ethics Ordinance, a panel of the Board of Ethics has considered your request and has rendered the opinion given below. The members of the panel were Jesse L. Davis, Lara Tomlin, and Ron Johnson.

Question 1

Pursuant to City of Denton Texas Code of Ordinances Chapter 2: Administration Article XI Ethics, is the proposed Oak/Gateway Small Area Plan of the City of Denton considered a Pending Matter?

The City of Denton Texas Code of Ordinances Chapter 2: Administrations Article XI (hereafter "the Ethics Ordinance") Section 2-269 defines a Pending Matter as, "[a]n application seeking approval of a permit or other form of authorization required by the city, state, or federal law; a proposal to enter into a contract or arrangement with the city for the provision of goods, services, real property, or other things of value; a case involving the city that is (or is anticipated to be) before a civil, criminal, or administrative tribunal."

This definition of a pending matter thus contemplates a party or parties with specific business before the City on which the City must make a decision. Such a decision could be either in a party’s favor, or adverse to the party’s interests. Understandably, the Ethics Ordinance prohibits such a party from participating in the decision making process. As the Panel understands it, the Oak/Gateway Small Area Plan (SAP) is a proposal brought forward by City staff in consultation with citizens for the betterment of the small area as a whole. Thus the SAP is not an application, a contract proposal, nor a legal case brought on behalf on any particular citizen or business entity. For these reasons, the Panel finds that the SAP is not a pending matter under the Ethics Ordinance.
**This opinion pertains only to the relevant sections of the City of Denton Ethics Ordinance. It is not intended as legal advice, and does not absolve any party of obligations that may exists under other applicable law (e.g., Texas Local Government Code Chapter 171). All parties are encouraged to consult competent legal counsel concerning their obligations under the law.**

**Question 2**

_Pursuant to Ordinances Chapter 2: Administrations Article XI, is a City Official required to file an Affidavit of Conflict of Interest and abstain from deliberating or voting on a pending matter pertaining to the Oak/Gateway Small Area Plan for the City of Denton Texas if the City Official owns a substantial interest in real property located within the proposed boundaries of the Oak/Gateway Small Area Plan or owns substantial business interest of a business entity within the proposed boundaries?_

The term “substantial interest” is not used in the Ethics Ordinance. In deciding this question, the Panel will assume that the request refers to the Conflicting Interest described in Section 2-273 of the Ethics Ordinance.

Because the Panel has determined that the SAP is not a pending matter under the Ethics Ordinance, the Panel finds that under the Ethics Ordinance such a City Official is not required to file an Affidavit of Conflict before deliberating or voting on the SAP. For the same reason, the Panel further finds that under the Ethics Ordinance, such a City Official is not required to abstain from deliberating or voting on the SAP.

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**Question 3**

_Pursuant to Ordinances Chapter 2: Administration Article XI, is a City Official required to file an Affidavit of Conflict of Interest and abstain from deliberating or voting on a pending matter pertaining to the Oak/Gateway Small Area Plan for the City of Denton Texas if four or more City Officials own a substantial interest in real property located within the proposed boundaries of the Oak/Gateway Small Area Plan or own a substantial business interest of a business entity or entities within the proposed boundaries?_

The term “substantial interest” is not used in the Ethics Ordinance. In deciding this question, the Panel will assume that the request refers to the Conflicting Interest described in Section 2-273 of the Ethics Ordinance.
Because the Panel has determined that the SAP is not a pending matter under the Ethics Ordinance, the Panel finds that under the Ethics Ordinance, such a City Official is not required to file an Affidavit of Conflict before deliberating or voting on the SAP. For the same reason, the Panel further finds that under the Ethics Ordinance, such a City Official is not required to abstain from deliberating or voting on the SAP.

Under Section 2-273(a)(1), it is an exception to the recusal requirement (but not the sworn statement requirement) that a majority of the members of a body is composed of persons who are required to file (and do file) disclosures on the same pending matter. That is, a City Official must make the proper filings and abstain when required, even if other City Officials who ought to file and abstain do not. The Panel urges caution in such a scenario.

**This opinion pertains only to the relevant sections of the City of Denton Ethics Ordinance. It is not intended as legal advice, and does not absolve any party of obligations that may exists under other applicable law (e.g., Texas Local Government Code Chapter 171). All parties are encouraged to consult competent legal counsel concerning their obligations under the law.**

Respectfully,

Jesse L. Davis
Chair, Board of Ethics
City of Denton