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C O N F I D E N T I A L

Financial Interest in City Business

Re:

Dear [redacted]:

This is in response to your March 11 request for written confirmation of your recent telephone conversations with staff. You asked how the Governmental Ethics Ordinance applies to a City employee, Mr. X [redacted] in the refinancing, including the extension of the term, of a City loan in which he has an interest.

As we discussed, from the facts you presented, including a letter from the borrower's accountant, [redacted] it is the staff's conclusion that, under the Ethics Ordinance, Mr. X [redacted] does not have a prohibited financial interest in the refinancing of the loan, as proposed, and there is nothing in the Ethics Ordinance that prohibits the proposed refinancing.

The facts you presented are as follows. You said Mr. X [redacted] has a 1.91% ownership interest in property on which the City, through the Department of Housing, made a second mortgage loan of \$225,000 in 19 [redacted]. You explained that the borrower has asked for refinancing under which the first lender will increase its loan amount and extend the term to 20 years, to 2017, and the City, subordinating its interest to the additional loan amount, will extend the term of its existing loan to match. The City would therefore be increasing its risk and extending the term of its loan, but would be providing no new funding. The refinancing must be approved by City Council.

The borrower is [redacted], a real estate development and rehabilitation general partnership. It owns and under the loan is rehabilitating a three-story walkup rental building [redacted] Mr. X [redacted] an employee in the City's Department [redacted], has



a 1.91% interest in the loan by virtue of being co-owner of [Redacted] a 3.82% limited partner in [Redacted] The first lender is the [Redacted] which plans to increase its outstanding loan amount of \$258,782 to \$455,000. The amount outstanding on the City's second mortgage loan of \$225,000 is \$184,144.

Mr. X, you explained, has not been involved in and has not influenced in any way the City's review and approval of the loan or of the proposed refinancing.

The provision of the Ordinance at issue is Section 2-156-110, "Interest in City Business," which states in relevant part:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

"Financial interest" is defined in relevant part as (1) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year, or (2) any interest with a cost or present value of \$5,000 or more (§ 2-156-010(1)).

Under Board precedent, for purposes of determining whether an employee will have a prohibited financial interest in a one-time payment from the City, such as a City loan, we calculate the employee's percentage ownership interest multiplied by the amount of the payment, and ask whether the resulting amount is \$5,000 or more.

Our calculations indicate that Mr. X's 1.91% interest in the original City loan of \$225,000 was under \$5,000, and therefore his interest the outstanding amount of the loan--a lesser amount--is also under \$5,000. The refinancing does not increase the City's outstanding loan amount, and therefore would not affect these calculations.

Our conclusion in this case is based on the application of the Ethics Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, please notify us

You and the accountant have presented some alternate measurements of Mr. X's interest, which, although consistent with our conclusion, do not affect it.

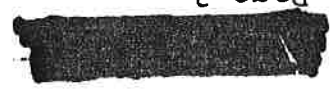
Dorothy J. Eng
Executive Director

Approved by: *Dorothy J. Eng by EMMS by permission STB*

Ellen M. Sewell
Legal Counsel

Ellen M. Sewell
Very truly yours,

Immediately, as any change in the facts may alter our conclusion. Further, please be advised that other laws or rules may apply to this situation. Please note that the staff's conclusion applies only to those persons involved in the specific transaction or activity addressed in this letter. We appreciate your bringing this matter to our attention and your concern to abide by the standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.



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