

**From:** Ferguson, Boyd  
**Sent:** Wednesday, January 27, 2010 1:11 PM  
**To:** Rutan, Ed  
**Subject:** RE: Advise Needed - Potential Conflict of Interest for Council Member Martin

Here is the response to Karen and JT, with a reference to the constituent's question:

With respect to a question from a constituent, you have asked for an opinion as to whether City Council Chair JT Martin has a prohibited conflict of interest with respect to an alcohol zoning change being considered by the City Council.

City Code § 2.44.030 would require Mr. Martin to disclose and recuse himself if he were asked to take action on a matter involving his financial, professional, or personal interests, if that action would have an "individualized material effect on such interest, distinguishable from its effect on the public generally."

We understand that Mr. Martin owns the Emigration Market, which is located on property zoned CN. We also understand that the proposed ordinance change would affect that property, in that it would give Mr. Martin an additional option, beyond what he currently has, respecting alcohol sales. Therefore, action on the ordinance would most likely affect Mr. Martin's financial, professional, or personal interests.

However, as noted above, disclosure and recusal are required only if the action would have an "individualized material effect on such interest, distinguishable from its effect on the public generally." In cases such as this, our office has analyzed whether the affected public servant is part of a large (rather than a small) group of similarly situated persons. For example, a decision to rezone a single property that belongs to a council member would be at one end of the spectrum, and clearly would require recusal. At the other end of the spectrum, a vote on whether to increase property taxes on all properties in the city would directly affect any council member who owns property, but the effect on that council member would be not "individualized," because he or she would be affected no differently than thousands of other people in the city. Other cases typically fall between those extremes, and we analyze what the official action would do the public servant's interests and determine how large the group is that would be similarly affected.

In this case, the ordinance change would affect 12 zoning classifications in the city, giving owners of properties in those zones an additional option regarding alcohol sales. We examined a zoning map that shows all of the properties in the city that would be affected in that way by the ordinance, and we believe that the number of such properties is sufficiently large that we could not conclude that the proposed ordinance would have an individualized material effect on Mr. Martin's interests, distinguishable from its effect on the public generally. Consequently, Mr. Martin would not be required to disclose his interest in the Emigration Market or recuse himself from taking action on the proposed ordinance.

Boyd