



Office of the Attorney General  
State of Texas

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May 10, 1996

The Honorable Fred Hill  
Chair  
Committee on Urban Affairs  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-049

Re: Whether a city council member may vote or decide on a zoning matter regarding the subdivision in which the member resides (ID# 38147)

Dear Representative Hill:

You ask whether a city council member may vote or decide on a zoning matter regarding the subdivision in which the member resides. You have not told us that the city council member owns the residence. We assume that this is the case. Apparently, a city council agenda will include an application for an amendment to a zoning ordinance governing the subdivision.

Chapter 171 of the Local Government Code, which regulates local public officials' conflicts of interests, applies to city council members. Local Gov't Code § 171.001(1); Attorney General Opinion DM-130 (1992) at 2 ("A home rule city council member is clearly a 'local public official' within the meaning of [Local Government Code] section 171.004."). Section 171.004 provides that if it is reasonably foreseeable that a vote or decision on a matter involving real property will have a special economic effect on the value of the property, distinguishable from its effect on the public, a local public official who has a substantial interest in the real property must take certain steps. Local Gov't Code § 171.004(a). Those steps include filing an affidavit stating the nature and extent of the real property interest before a vote or decision on a matter involving the real property and abstaining from further participation in the matter. *Id.*

Section 171.002 defines a "substantial interest in real property" as "an equitable or legal ownership with a fair market value of \$2,500 or more." *Id.* § 171.002(b). Thus, if the value of the residence exceeds \$2,500, a city council member who owns his or her home has a substantial interest in the residence. That fact, however, does not necessarily preclude the city council member from voting or deciding on a matter affecting the property. As noted above, the city council member must abstain only if it is reasonably foreseeable that the action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public. Whether it is "reasonably foreseeable" that a matter will have a "special economic effect" on the value of the member's residence 'distinguishable from its effect on the public,' so as to trigger the affidavit and abstention requirements of the section . . . depend[s] on the facts of the

particular case." Attorney General Opinion DM-130 (1992) at 2. Therefore, we cannot provide a definitive answer to your question.

We further note that because chapter 171 is cumulative of municipal charter provisions and ordinances, a city council member should consult charter provisions and ordinances to determine whether they place additional restrictions on members' participation in matters affecting their real property. *Id.* at 3; *see also* Local Gov't Code § 171.007(b) (providing that chapter 171 is cumulative of municipal charter provisions and ordinances prohibiting conflicts of interests).

### S U M M A R Y

Under chapter 171 of the Local Government Code, a city council member may not vote or decide on a zoning matter regarding the subdivision in which the member owns a residence if it is reasonably foreseeable that the action on the matter will have a special economic effect on the value of the member's residence, distinguishable from its effect on the public.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee