

From: Barnett, Wayne
Sent: Friday, May 17, 2024 12:12 PM
To: Woo, Tanya <Tanya.Woo@seattle.gov>
Cc: Henry, Lauren <Lauren.Henry@seattle.gov>
Subject: Advice on App-Based Worker Minimum Payment Ordinance

Dear CM Woo,

Yesterday you asked me for advice on what you can do with changes to the App-Based Worker Minimum Payment Ordinance on the agenda. Your family owns Kau Kau BBQ in the Chinatown-International District, and contracts with at least one of the app-based delivery companies.

You told me that you have seen a reduction in smaller dollar orders since the minimum payment ordinance became effective in January of this year. The changes to the law would reduce but not eliminate the minimum pay standards, which advocates claim will boost sales for restaurants.

The Law

The Ethics Code says that a City official may not participate in a matter in which either they, an immediate family member, or a business of which they are “an officer, director, trustee, partner, or employee” has a financial interest.

The Ethics Code does not define “financial interest,” and I have looked to federal regulations in the past for guidance. The Code of Federal Regulations elaborates on what the term means in the context of federal conflict of interest law. 5 CFR Part 2640 says that “A particular matter will have a ‘direct’ effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.”

I should note that there is an exception to the law that allows you to participate in legislation that "establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the elected official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate." *SMC 4.16.070.A.5.a*. This legislation does not qualify for the exception.

Application

It is my advice that you recuse yourself from the discussion and vote on the council bill. I believe that under the federal rule, you would have a financial interest in changes to pay for app-based workers. One of the goals of the legislation is to boost sales at restaurants like the one owned by your family.

The Ethics Code exists to give people confidence that no individual's private interests are in conflict with the public interest on matters before them. It does not presume that you would act to further your own interests at the expense of the public interest. It takes a prophylactic approach, sidelining you on matters where you or those close to you have a financial interest.

To the extent you wish to participate in amendments to the bill, you may do so as long as those amendments are unlikely to reduce costs and boost restaurant sales. Please call me for further advice if you wish to do so.

Conclusion

If you believe my advice is an incorrect interpretation of the Ethics Code, you have the ability to ask for an opinion from the full Ethics and Elections Commission. Let me know if you would like one.

Thanks for seeking advice. Please let me know if you would like to talk further.

Best regards,
Wayne



Wayne Barnett

Executive Director

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