

Memorandum



DATE May 14, 2020

TO Chairman Casey Thomas
Dr. Eric Johnson, Chief of Economic Development and Neighborhood Services

SUBJECT Proposed Amendment to Chapter 12A to Allow a Waiver for Incentives for City Officials who are Members of a Board, Commission, Committee, or Task Force

At the April 22, 2020, City Council meeting, during the discussion regarding the small business continuity fund (SBCF), City Council asked if board, commission, committee, or task force members are able to apply for these funds. Because the city's code of ethics prohibits city officials who are board, commission, committee, and task force members from applying for and obtaining certain incentives from the city, the Mayor asked the City Attorney to look into creating a waiver process for members of a board, commission, committee, or task force when certain incentives, such as grants or loans, may be available. Our office proposes the following amendments to accomplish the request.

1. Current code provisions.

Dallas City Code Section 12A-9 provides that city officials, including members of a board, commission, committee, or task force, may not apply for or obtain an incentive offered by the city, including grants, loans, tax abatements, and tax credits, unless (1) the incentive is available to the general public; (2) the application is evaluated under the same criteria that apply to the general public; and (3) the incentive is subject to the same terms and conditions that apply to the general public. Because employees are not eligible to receive SBCF funds in this program, members of a board, commission, committee, or task force also may not apply for or obtain an incentive from the SBCF as they are not available to the general public.

Further, Dallas City Code Section 12A-4 prohibits a city official from acquiring an interest in any matter that is affected by impending official action of the city or in an interest in a decided matter for a period of one year after the date of the official action. Section 12A-12 prohibits a city official from, either individually or as the officer or principal of an entity, submitting a bid or proposal or negotiating or entering into any city contract whether or not the contract is required by state law to be competitively bid. These provisions further limit a board, commission, committee, or task force member's ability to apply for the SBCF program, or other similar incentive (which generally requires a contract) with the city.

2. Proposed amendment.

The proposed amendments provide a waiver for incentives under Section 12A-9 if the City Council determines, after a review of the specific circumstances, that a waiver is justified for a particular program. The waiver is specific and only applies to city officials who are members of a board, commission, committee, or task force as described in Paragraphs (H), (I), and (K) of Section 12A-2(24):

- (H) Members of all boards, commissions, committees, or other bodies created by the city council pursuant to city ordinance or federal or state law, including bodies that are only advisory in nature;
- (I) City council appointed members of boards of entities that were not created by city council.
- (K) Resident volunteers on committees or task forces formed by boards or commissions.

If a waiver is granted, exceptions are necessary for Sections 12A-4 and 12A-12 to allow a member of a board, commission, committee, or task force to apply for and obtain the incentive.

The proposed exception under Section 12A-4(b) states:

“(3.1) Exception. The restrictions contained in Paragraphs (1) and (2) of this subsection do not apply to city officials who are members of a board, commission, or body as described in Paragraphs (H), (I), and (K) of Section 12A-2(24) if the city council approved a waiver pursuant to Section 12A-9(c).”

If the City Council grants a waiver under Section 12A-9(c) and the person falls under Paragraphs (H), (I), or (K), that person may acquire an interest in a matter that is affected by impending official action of the city. This provision includes incentives that have not been approved by City Council but are pending before the city. In addition, the waiver also allows for a member of a board, commission, committee, or task force to acquire an interest in a matter, limited to an incentive, that has been previously decided by the city and that member does not have to wait the one-year period.

The proposed exception under Section 12A-12 states:

“(c) Exceptions. The restrictions contained in Subsections (a) and (b) of this section do not apply to a member of:

(1) a board of a nonprofit development corporation that acts as an instrumentality of the city; [øø]

(2) a municipal management district board; or

(3) a board, commission, or body as described in Paragraphs (H), (I), and (K) of Section 12A-2(24) if the city council has provided a waiver under Section 12A-9(c).”

If the City Council grants a waiver under Section 12A-9(c) and the person falls under Paragraphs (H), (I), or (K), the person may, individually or as the officer or principal of an entity, enter into a city contract for an incentive, such as the SBCF program. This exception relaxes the restrictions relating to city contracts specifically for incentives, and allows a member of a board, commission, committee, or task force to enter into a city contract for an incentive on behalf of a company or themselves.

s/Christopher J. Caso

CHRISTOPHER J. CASO
City Attorney

c: Honorable Mayor and Members of the City Council