

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

- I. **STATEMENT:** [Assembly Member gets in the queue at a meeting to state] I would like to make a disclosure regarding a potential conflict of interest.
 - It shall be the duty of the Assembly member to disclose any private interest in a public meeting and state the nature of the interest, including whether it is financial or personal, in sufficient detail to permit the chair or the other members of the body to determine if the private interest is substantial.
- II. **CHAIR:** The Question before the Chair and the body is: Does Assembly Member [*name of member*] have a substantial private interest including a financial or personal interest that the member will describe, in a certain matter before the Assembly?
- III. **DISCLOSURE:** The Assembly Member makes the disclosure using the following rubric in AMC 1.15.060E – Duty and Procedure for Disclosure (full code reprinted below):
 - **PRIOR TO** comment, deliberation, public hearing, or decision on any matter coming before the body, the member or official shall disclose in a public meeting the nature of the interest in sufficient detail to permit the other members of the body to determine if the private interest is substantial. The disclosure of the interest to the body shall include the following information:
 - **A detailed description of the interest.**
 - **Whether the interest is financial or personal. If the interest is financial, the disclosure shall include the size of the interest.**
 - **Who holds the interest? The description shall allow the body to determine if the interest applies to the person making the disclosure, an immediate family member, household member, an organization, or if the interest is possessed by the public or a large class of persons.**
 - **When did the interest arise? The description shall allow the body to determine whether the interest was in the past, is ongoing, or might arise in the future.**
 - **How does the matter coming before the body impact the interest, including:**
 - **whether the interest is a substantial part of the matter under consideration,**
 - **whether the impact on the interest directly varies with the outcome of the official action,**
 - **whether the impact on the interest is immediate or conjectural and dependent on factors beyond the official action.**
 - After disclosing the interest to the body, the disclosing person shall either
 - affirm to the body that they do not believe their interest prevents them from placing the public interest on the official action before the body above their private interest; or
 - inform the body of their belief that they should be excused from participation in the official action.

- The disclosing person's belief that they should or should not be excused is a factor the body should consider but is not determinative and the decision rests with the body.
- The member of the body making the disclosure shall not participate in the deliberations except to answer questions from the body on the interest, nor vote on whether the private interest is substantial.
- **The Chair, after disclosure, the Chair may do the following:**
 - Ask other members of the body if they have any questions of the member making the disclosure. The member of the body making the disclosure shall not participate in the deliberations except to answer questions from the body on the interest.... AMC 1.15.060E2:
 - *Understand Prohibited conflict of interest.* A public servant shall not participate in an official action in which the public servant has a substantial private interest. The determination of whether a private interest is substantial is determined based on the balancing of two factors:
 - a. Size: the significance of the private interest in financial amount or personal importance.
 - b. Connection: the link between the official action and the private interest.
 - *Evaluate the conflict.:* Interests that are large in size and direct in connection are substantial interests (prohibited conflicts of interest). Interests that are insignificant in size and remote/indirect in connection are not substantial interests (permissible conflicts of interest). The more significant the size of the interest, the less direct the connection needs to be to make the interest substantial. AMC 1.15.060D2-3:
 - If the conflict is with only a part of the action, the body may divide the question to avoid a conflict on a part of the official action but allow participation on the whole.
 - Exercise parliamentary authority by making an initial ruling on a disclosure of a private interest.
 - The decision of the presiding officer may be appealed to the body by a motion to challenge the ruling of the chair, followed by a second, requiring a majority vote of the body.
 - **If the vote on the question is in the negative**, then the Assembly member may fully participate in all further proceedings on the decision or matter.
 - **If the vote on the question is in the affirmative**, then the Assembly member shall not vote and shall not participate in any further proceedings or decisions on the matter.
- **Under circumstances not directly addressed under this section, the body is authorized to use its best efforts to apply a conflict analysis consistent with these rules. AMC 1.15.060E.2.f.** (For example, if the mayor is participating in a meeting as an Assembly member, the rules for disclosure, evaluation, and determination of the conflict apply per AMC 1.15.060E.3.)

See AMC 1.15.060 Conflicts of Interest.

- A. Interest. An “interest” is a commitment, obligation, duty, goal, or expected benefit.
- B. Private Interest. A private interest is an interest affecting, belonging, or accruing to an individual or private entity as distinct from the public at large. Public servants are understood to possess their own interests as well as those of their immediate family, their household, and organizations in which the public servant has an ownership interest or, even if no compensation or profit accrues to them, serves as a director, officer, or employee. Private interests may include:
1. *Financial Interest* – the receipt or expectation of the receipt of a pecuniary benefit.
 2. *Personal Interest* –the receipt or expectation of the receipt of a benefit, including but not limited to a special privilege, contractual relationship, or promotion of a business or political interest.
- C. Official action: For purposes of this code, official action means participation in a process, including deliberation, in which a decision or recommendation is reached. Official action does not include:
1. Clerical or ministerial action on a matter. For purposes of this chapter, clerical or ministerial describes an act or duty that conforms to an instruction of prescribed procedure with limited or no use of judgment by the person performing the act or duty.
 2. Action on a matter that does not substantially evaluate or impact the merits of the recommendation or decision.
- D. Conflict of Interest. A conflict of interest is a conflict between the private interest of a public servant and the official responsibilities of the public servant in the context of an official action.
1. *Permissible conflict of interest*: A public servant may participate in an official action in which the public servant has a minor or inconsequential private interest. The assembly recognizes that in a representative democracy, public servants are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government. Standards of ethical conduct need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interest that are substantial and material.
 2. *Prohibited conflict of interest*. A public servant shall not participate in an official action in which the public servant has a substantial private interest. The determination of whether a private interest is substantial is determined based on the balancing of two factors:
 - a. Size: the significance of the private interest in financial amount or personal importance.
 - b. Connection: the link between the official action and the private interest.
 3. *Evaluation of the conflict*.: Interests that are large in size and direct in connection are substantial interests (prohibited conflicts of interest). Interests that are insignificant in size and remote/indirect in connection are not substantial interests (permissible conflicts of interest). The more significant the size of the interest, the less direct the connection needs to be to make the interest substantial.

E. Duty and Procedure for Disclosure. When a public servant has a potential conflict of interest, the public servant has a duty to disclose the interest for appropriate evaluation.

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2. *Board and Commission Members and Elected Officials:* Members and officials shall disclose potential conflicts of interest to the body:

a. **PRIOR TO** comment, deliberation, public hearing, or decision on any matter coming before the board, commission, or body (collectively referred to as “body”), the member or official shall disclose in a public meeting the nature of the interest in sufficient detail to permit the other members of the body to determine if the private interest is substantial. The disclosure of the interest to the body shall include the following information:

i. **A detailed description of the interest.**

ii. **Whether the interest is financial or personal. If the interest is financial, the disclosure shall include the size of the interest.**

iii. **Who holds the interest? The description shall allow the body to determine if the interest applies to the person making the disclosure, an immediate family member, household member, an organization, or if the interest is possessed by the public or a large class of persons.**

iv. **When did the interest arise? The description shall allow the body to determine whether the interest was in the past, is ongoing, or might arise in the future.**

v. **How does the matter coming before the body impact the interest, including:**

(A) **whether the interest is a substantial part of the matter under consideration,**

(B) **whether the impact on the interest directly varies with the outcome of the official action,**

(C) **whether the impact on the interest is immediate or conjectural and dependent on factors beyond the official action.**

b. After disclosing the interest to the body, the disclosing person shall either (i) affirm to the body that they do not believe their interest prevents them from placing the public interest on the official action before the body above their private interest; or (ii) inform the body of their belief that they should be excused from participation in the official action. The disclosing person’s belief that they should or should not be excused is a factor the body should consider but is not determinative and the decision rests with the body.

c. The member of the body making the disclosure shall not participate in the deliberations except to answer questions from the body on the interest, nor vote on whether the private interest is substantial.

d. If the presiding officer exercises parliamentary authority by making an initial ruling on a disclosure of a private interest, the decision of the presiding officer

may be appealed to the body for a majority vote. If the conflict is with only a part of the action, the body may divide the question to avoid a conflict on a part of the official action but allow participation on the whole.

- e. Following disclosure and a ruling by the chair or body, the jurisdiction of the Board of Ethics is limited to the sufficiency of the disclosure.
 - f. Under circumstances not directly addressed under this section, the body is authorized to use its best efforts to apply a conflict analysis consistent with these rules.
3. *Mayor:*
- a. When the mayor participates as a member of the assembly, the rules and conflict analysis set forth in this section shall apply.
 - b. In all other matters, an interest held by the mayor shall be disclosed to the Board of Ethics prior to official action for determination and instruction on management of the interest.
4. *Rule of necessity:* The Board or body may apply the rule of necessity when the body is legally required to act and it lacks enough members to take valid official action solely due to members being disqualified by a shared or substantially similar conflict of interest
5. *Finality of Ruling:* Participation in an official action in accordance with the terms of this chapter shall be considered ethical action in fulfillment of the duties of the public servant. A public servant may not be sanctioned for acting in compliance with the final determination of the appropriate decision maker.
6. *Certification of Election:* Notwithstanding paragraph E.2.c., an assembly member's candidacy in a municipal election does not preclude the assembly member's participation in certification of the municipal election or other matters relating to conducting a regular or special election, except for a recall election involving that member.