
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 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, 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, the representatives 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.

Evaluation: 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.
1. Employees. Employees shall disclose potential conflicts of interest to their department director or designee. The employee’s disclosure shall contain the same information as specified for board members and elected officials in paragraph E2.a. below. The department director or designee shall determine if the conflict is permissible or prohibited. Either the employee or director may request an advisory opinion from the board of ethics and final determination resides with the Board of Ethics.
 2. Board and Commission Members and Elected Officials: Members and officials shall disclose potential conflicts of interest to the body:

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- 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:
 1. A detailed description of the interest.
 2. Whether the interest is financial or personal. If the interest is financial, the disclosure shall include the size of the interest.
 3. 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.
 4. 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.
 5. How does the matter coming before the body impact the interest, including:
 - i. whether the interest is a substantial part of the matter under consideration,
 - ii. whether the impact on the interest directly varies with the outcome of the official action.
 - iii. 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 (1) 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 (2) 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 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, 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 private interest, the decision of the presiding officer may be overridden by the majority vote of the body. The body may also 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 make 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 matter, an interest held by the mayor shall be disclosed to the board of ethics prior to official action for determination and management of the interest.

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4. *Rule of necessity:* The board may apply the rule of necessity when the assembly is legally required to act and it lacks enough members to take valid official action solely due to assembly 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 member or official may not be sanctioned for acting in compliance with the final determination of the appropriate decision maker.
 6. *Certification of Election:* 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 calling a regular or special election, except for a recall election.

(AO No. 2017-42 , § 1, 3-21-17)