

COUNCIL ETHICS RULE 1 -- CONFLICTS OF INTEREST – RELATING TO CONTRACTS

Proposed Rule: A Councilmember shall not vote on any contract in which the Councilmember has a conflict as set forth in MCL 15.321, the state contracts statute. This statute is the sole definition of conflicts as related to contracts and it states:

(1) Except as provided in sections 3 and 3a of the state statute,¹ **a public servant shall not be a party, directly or indirectly, to any contract** between himself or herself and the public entity of which he or she is an officer or employee.

(2) Except as provided in section 3, **a public servant shall not directly or indirectly solicit any contract** between the public entity of which he or she is an officer or employee and any of the following:

(a) Him or herself.

(b) Any firm, meaning a co-partnership or other unincorporated association, of which he or she is a partner, member, or employee.

(c) Any private corporation in which he or she is a stockholder owning more than 1% of the total outstanding stock of any class if the stock is not listed on a stock exchange, or stock with a present total market value in excess of \$25,000.00 if the stock is listed on a stock exchange or of which he or she is a director, officer, or employee.

(d) Any trust of which he or she is a beneficiary or trustee.

(3) In regard to a contract described in subsection (2), **a public servant shall not do either of the following:**

(a) Take any part in the negotiations for such a contract or the renegotiation or amendment of the contract, or in the approval of the contract.

(b) Represent either party in the transaction.

The conflict restrictions of this statute **do not apply to “contracts between public entities.”**

Rationale: All Councilmembers are governed by the state conflicts law and it is helpful to remind the public that this is the only applicable law on this topic, notwithstanding anything to the contrary in the City Charter.

Source: MCL 15.321 (See statute at “Contracts” tab attached)

Example: A Councilmember employed by the University of Michigan would properly vote on a contract between the City and the University as the conflict prohibition does not apply to a contract between two public entities as set forth in MCL 15.324(1)(a).

A spousal “relationship” is not a contract conflict that has been recognized under Act 317. The Attorney General found that no conflict existed under Act 317 where an attorney represented the school district (under a contract) where his wife worked as a teacher (under a contract.) Mich AG No. 6736. So while the attorney’s wife has a contract with the school district, he is not a party to her contract **directly or indirectly** under the statute.

COUNCIL ETHICS RULE 2 -- CONFLICTS OF INTEREST – FINANCIAL MATTERS

Proposed Rule: A Councilmember shall not vote on a question in which the member has a financial interest, other than a financial interest which is part of the general public interest. In other words, the Councilmember's financial interest must be direct and unique to the councilmember and not a financial interest shared by other members of the public. This rule does not apply to a vote on a contract, which is governed by Rule 1.

Rationale: The provision makes clear that the Charter provision language only applies to matters other than contracts.

Source: Charter, Section 4.4(i).

Examples: A Councilmember should not vote on a resolution for the City to condemn his or her own property because he or she has a financial interest in this matter.

A Councilmember is not disqualified from voting on an assessment, even when the assessment is limited to the street the Councilmember lives on. This has been held to be a legislative vote, where the Councilmember's interest is in common with the public subject to the taxation.

COUNCIL ETHICS RULE 3 -- CONFLICTS OF INTEREST – COUNCILMEMBER'S OWN CONDUCT

Proposed Rule: A Councilmember shall not vote on any questions involving the Councilmember's own conduct including those of excusal and discipline of that Councilmember . This rule does not apply to a vote on a contract, which is governed by Rule 1.

Rationale: The provision makes clear that the Charter provision language only applies to matters other than contracts.

Source: Charter, Section 4.4(i).

Example: To the extent there was a vote to excuse a Councilmember from voting or a vote to discipline a Councilmember, that Councilmember could not vote on that excusal or on his discipline.

COUNCIL ETHICS RULE 4 -- CONFLICTS OF INTEREST – OTHER REASONS FOR EXCUSAL FROM VOTING

Proposed Rule: It is required that all Councilmembers vote on all matters, unless excused after a vote of the Council. Other than conflicts governed by the state conflicts statute, conflicts involving financial interest (but not governed by the contracts statute), and matters involving the Councilmember's own conduct, other requests for excusal shall generally be weighed against the policy expressed in the City Charter in favor of voting on all matters. A Councilmember may be excused if the Councilmember asserts that he or she has a personal relationship with the matter at issue that 1) impairs his or her exercise of independence of judgment on the matter, or 2) creates a situation with conflicting fiduciary duties.

Rationale: This provision provides the reasons for which a Councilmember may ask for excusal from voting on a matter not governed by Rules 1 through 3.

Source: Charter, Section 4.4(f)

Example: A Councilmember is the chairperson for a non-profit organization's fundraising committee for a new building. If the site-plan is before the Council for approval and the Councilmember asserts conflicting fiduciary duties, the Council could excuse the Councilmember from voting on the site-plan.