Municipal Responsibility 101
Ethics & Conflicts of Interest

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Disclosure & Transparency
So now you’re a public official...

Now What?
- Held to a higher standard of public trust and integrity
- Lead by example
- You’re spending the public’s money
- You’re here to represent the public’s best interest; not your own
- What have I gotten myself into...!?!

Hold each other accountable!
- You are responsible for holding your fellow public officials accountable.

Or the voters may do it for you...
Ethical Obligations are Driven by Two Primary Sources

• STATE LAW
  • Title 29 – Conflicts of Interest and Public Meetings
  • AS 29.20.010 – Conflicts of Interest
  • AS 29.20.600 – Oaths of Office

• MUNICIPAL CODE
  • Example: City Code Chapter 2.36, Code of Ethics
  • City Code 2.36.060, General standards of Ethical Conduct
  • City Code 2.36.070-090, Conflict of Interest provisions

AS 29.20.600 - Oaths of Office

• “Before taking office a municipal official shall affirm in writing that the duties of the office will be honestly, faithfully, and impartially performed by the official.”

AS 29.20.010 - Conflicts of Interest

• (a) Each municipality shall adopt a conflict of interest ordinance that provides that
  • (1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;
  • (2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;
  • (3) the decision of the presiding officer may be overridden by the majority vote of the governing body; and
  • (4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.
Alaska Supreme Court Weighs In:

• Under common law, “the focus ... [is] on the relationship between the public official’s financial interest and the possible result of the official's action, regardless of the official's intent.”


Know and Follow Your Municipal Code.

• Hold yourself to a higher standard.

• Your constituents’ perception of an ethics violation or a conflict of interest can be as damaging as the existence of an actual ethics violation or conflict of interest.

DO I HAVE A CONFLICT OF INTEREST??
If you think you may have a conflict, say something!

• The worst thing you can do is to do nothing.

• Talk to staff, mayor, attorney, or someone in advance to determine whether a conflict exists.

• Despite advice you may receive from other sources, your municipal governing body retains authority to determine whether a conflict exists.

Figuring Out If You Have a Conflict of Interest.

• Do you have competing interests?
  ▫ Personal?
  ▫ Familial?
  ▫ Financial?
  ▫ Do you feel conflicted?
What if I Have a Conflict? - Step 1

• **Put it on the record.**

"Madame Chair, members of the Council, I believe I have a conflict of interest in the Council's consideration of Resolution 2019-34 because my brother is the owner of the company being considered for the road maintenance contract."

What if I Have a Conflict? - Step 2

• **Do not** participate in the matter being considered.
• **Do not** influence the discussion.
• **Do not** attempt to directly or indirectly influence the municipal body or an individual’s consideration of the matter.

What if I Have a Conflict? - Step 3

No, really. **DO NOT** vote on any matter where you have a conflict.
Conflict of Interest: Voting.

City Code 2.36.090

• A. The mayor shall declare to the council any substantial financial interest he has in an official action.

• B. A member of the council or other city board or commission shall declare any substantial financial interest the member or a member of their immediate family has in an official action and ask to be excused from a vote on the matter.

COI: Voting (cont).

• C. The presiding officer shall rule on a request by a member of a city body to be excused from a vote.

• D. The decision of the presiding officer on a request by a member of a city body to be excused from a vote may be overridden by the majority vote of the body's membership.

Conflicts of Interest: Additional Provision Options

Can your municipality have its cake AND eat it, too?
COI: Additional Provision Options (cont.)

• Your municipality can define what “substantial financial interest” means.

• City Code 2.36.030: “Substantial financial interest” means a financial interest that is of a magnitude that it would be the primary reason for a person’s act to benefit himself or herself or a member of his or her immediate family. A substantial financial interest does not include a financial interest of a type that is generally possessed by the public or by a large class of persons to which the public official belongs.

COI: Additional Provision Options (cont.)

• “Substantial Financial Interest” means “a direct or indirect pecuniary or material benefit, privilege, interest, or contractual relationship accruing as a result of the City’s consideration of a matter.”

• Define “financial interest.”

COI: Additional Provision Options (cont.)

• Consider defining “financial interest” to include any pecuniary interest:
  a. Of a member of an official’s immediate family or employer.
  b. In an entity in which an official or a member of the official’s immediate family has an ownership interest, or is a director, officer, or employee.
A determination that a public official has a substantial financial interest in a matter shall be considered on a case-by-case basis evaluating these factors:

- a. Whether the financial interest is a substantial part of the matter under consideration.
- b. Whether the financial interest directly and substantially varies with the outcome of the matter under consideration.
- c. Whether the financial interest is monetarily significant.
- d. Whether the financial interest is beyond the type typically possessed by the public at large or a large class of persons to which the city officer belongs.

Substantial financial interest does not include:

- a. A financial interest of such limited magnitude that it would not influence an average, reasonable person.
- b. A financial interest in which the outcome of a decision would have only an insignificant or conjectural effect.
- c. A financial interest which is obtained through a competitive process.

Should the conflicted city council member get to participate in discussions?

Should the conflicted city council member get to remain seated with the other members during the discussion?
Conflict of Interest: DUAL OFFICES?

- Generally, dual-office holding is prohibited by basic principles of municipal law.
- **EXAMPLE:** A City of North Pole charter provision prohibiting dual-office holding, and requiring the removal of a city employee (police officer) when that employee was elected to the city council, was valid and constitutional.
- **CHECK YOUR CODE** to see if it prohibits you from holding dual offices.

Conflict of Interest: NEPOTISM?

COI: Nepotism (cont.)

- Nepotism is generally defined as an official granting favors to family members, specifically - jobs.
  - **Example:** a Mayor hires their child to be the Mayor’s Chief of Staff, and hires their spouse to be the Director of Government Affairs.
- Alaska law prohibits legislators and executive branch employees from engaging in nepotism.
  - AS 24.60.090; AS 39.90.020
  - What about your municipal code???
COI: Nepotism (cont.)

- Nepotism or the appearance thereof can be a tricky issue in Alaska.
  - Alaska law doesn’t directly address the issue of nepotism in municipal government.
  - Many of our Alaskan municipal communities are small, rural, and isolated.
  - Our work may require us to work alongside immediate and distant family members in order to complete our official duties.
- **CHECK YOUR MUNICIPAL CODE** to see if it addresses nepotism.

Conflict of Interest:
Commercial Activity.

COI: Commercial Activity (cont.)

City Code Example 2.36.070. Public officials should not:
- A. Use city property or equipment for non-city purposes, unless that use is available to the general public on the same terms;
- B. Use city property, equipment, or staff to conduct campaign activity unless that use is available to the general public on the same terms;
- C. Use information within the public official’s knowledge or purview to advance the personal interest of the public official or the official’s immediate family;
- D. Accept any form of gift, loan or gratuity in exchange for the performance of the public official’s duties;
• E. Engage in business with the city, or be a party to the purchase of goods or services for the use of the city from any person or organization in which the public official or a member of the official’s immediate family has a substantial financial interest, unless the financial interest is first disclosed, and the transaction or purchase is approved in advance by the city council or secured through competitive bidding;

• F. Take any action to influence the city’s solicitation of any bid or proposal from a person or organization in which the public official or a member of the official’s immediate family has a substantial financial interest;

• H. Represent, advise or assist a person or organization for pay or other benefit to the public official in any matter involving the public official’s public duty.
Brecksville City Councilman Jack Petsche is now facing an Ohio ethics investigation after his company, USA Roofing, was awarded and performed on a $150,000 roofing contract on the city’s new police station.

Petsche did not adequately disclose to city leaders that his company was awarded the contract and may now face criminal charges for potentially violating state ethics law and the city charter.

D.C. Council member Jack Evans has been fined $20,000 by the city's ethics agency for using government resources and touting his influence as an elected official while soliciting employment from local law firms.

Evans’s contact with the law firms violated rules that prohibit the use of government resources for personal reasons and using the prestige of office for private gain.

Bronx Councilman Andy King is under scrutiny for allegedly misusing funds, involving wife in council activity; claims follow earlier sexual-harassment violation.

King accused of:
- Misusing City funds and letting wife work on council business.
- Sexual harassment.
- Previously disciplined for similar behavior.
Conflicts of Interest: Gifts, Loans and Travel.

COI: Gifts, Loans, and Travel (cont.)

City Code 2.38.080.
• A. Public officials of the city shall not request or receive a gift, loan or trip, personally or for the official’s immediate family members, if:
  • 1. That gift, loan or trip would tend to influence the public official in the discharge of his or her official duties; or
  • 2. The public official may be involved in any official action directly affecting the donor or lender.

COI: Gifts, Loans and travel (cont.)
• Travel, subject to the following restrictions:
  • a. All travel accepted must be for furtherance of a valid public purpose, and
  • b. All travel accepted must be approved in advance by the mayor in consultation respectively with the city council.
Unique Ethics Issues Triggered by Travel

- Whenever and wherever you travel, you are a representative of your community and of your municipal government.
- Travel should not be treated like a vacation.
- Do not extend your trip at the municipality’s expense.
- If your municipal code permits you to consume alcohol while traveling, consume responsibly!

Permissible Travel or Ethics Violation?
Permissible Travel and/or Gifts, or Ethics Violation?

Permissible Gifts or Ethics Violation?

Questions?