



MUNICIPALITY OF ANCHORAGE
Board of Ethics

April 6, 2023

Advisory Opinion 2022-10

Relevant Ethics Topic: Conflicts of Interest – AMC 1.15.060

Enclosure: (1) Assembly Ordinance No. 2023-37

This advisory opinion responds to a request from Assembly Chair LaFrance for further guidance on the interpretation of AMC 1.15.060 regarding conflicts of interest. Assembly Chair LaFrance waived confidentiality regarding this request.¹

On August 10, 2022, Assembly Chair LaFrance requested an advisory opinion regarding the interpretation and application of AMC 1.15.060. Chair LaFrance said application of the disclosure requirement regarding conflicts of interest has proven difficult. Past chairs and other assembly members have requested an updated version including additional definitions and outlining in detail the procedure to disclose a conflict of interest, and the procedure for the body following the disclosure.

The Board agreed that AMC 1.15.060 could be revised to provide greater clarity and detail. The Board provided review and input on a proposed ordinance to repeal and reenact AMC 1.15.060, which Assembly Chair LaFrance brought forward on March 21, 2023. (Enclosure 1). The Board believes the revision to AMC 1.15.060 addresses the concerns raised in the request and that the revised version of this section will better assist public servants in upholding and applying the Code of Ethics.

APPROVED by the Municipality of Anchorage Board of Ethics this 6th day of April, 2023.

Rebecca Windt Pearson, Chair
Aesha Pallesen, Vice Chair
Terry Kelly

Copy to:

- (1) Assembly Chair LaFrance
- (2) Municipal Clerk for electronic publication

¹ See AMC 1.15.150.D (“A request for advice is confidential unless confidentiality is waived by the person requesting an advisory opinion.”)

Submitted by: Assembly Chair LaFrance
Assembly Vice Chair Constant
Assembly Member Petersen
Prepared by: Assembly Counsel's Office
For reading: March 21, 2023

ANCHORAGE, ALASKA
AO No. 2023-37

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY REPEALING AND**
2 **REENACTING ANCHORAGE MUNICIPAL CODE SECTION 1.15.060,**
3 **CONFLICTS OF INTEREST.**
4

5 **WHEREAS**, the Anchorage Municipal Charter § 17.03 requires that Assembly
6 Members, elected officials, and members of boards and commissions “may not
7 participate in any official action in which the person or a member of the person's
8 household has a substantial financial interest unless after disclosure of the interest
9 [the person’s] participation is approved by a majority of the body”; and
10

11 **WHEREAS**, the Charter requirement has been codified by ordinance in the
12 Municipal Ethics Code at AMC section 1.15.060; and
13

14 **WHEREAS**, application of the Ethics Code disclosure requirement has proven
15 difficult, and past chairs, the current chair, and Assembly Members have requested
16 an updated version including additional definitions and outlining in detail the
17 procedure for disclosure and the procedure for the ruling of the body following the
18 disclosure; and
19

20 **WHEREAS**, this ordinance is brought forward after review and discussion in
21 numerous meetings of the Assembly Ethics and Election Committee, Assembly
22 leadership, and the Rules Committee, and review and input from the Board of
23 Ethics; now, therefore,
24

25 **THE ANCHORAGE ASSEMBLY ORDAINS:**
26

27 **Section 1.** Anchorage Municipal Code section 1.15.060 is hereby repealed and
28 reenacted to read as follows (in accordance with AMC section 1.05.050B., the
29 current text of the section to be repealed is attached as Exhibit A):
30

31 **1.15.060 Conflicts of interest.**

- 32 A. *Interest.* An “interest” is a commitment, obligation, duty, goal, or
33 expected benefit.
- 34 B. *Private Interest.* A private interest is an interest affecting, belonging,
35 or accruing to an individual or private entity as distinct from the public
36 at large. Public servants are understood to possess their own
37 interests as well as those of their immediate family, their household,
38 and organizations in which the public servant has an ownership
39 interest or, even if no compensation or profit accrues to them, serves
40 as a director, officer, or employee. Private interests may include:
41 1. *Financial Interest* – the receipt or expectation of the receipt of a
42 pecuniary benefit.

- 1 2. *Personal Interest* –the receipt or expectation of the receipt of a
2 benefit, including but not limited to a special privilege, contractual
3 relationship, or promotion of a business or political interest.
- 4 C. *Official action:* For purposes of this code, official action means
5 participation in a process, including deliberation, in which a decision
6 or recommendation is reached. Official action does not include:
- 7 1. Clerical or ministerial action on a matter. For purposes of this
8 chapter, clerical or ministerial describes an act or duty that
9 conforms to an instruction of prescribed procedure with limited
10 or no use of judgment by the person performing the act or duty.
- 11 2. Action on a matter that does not substantially evaluate or
12 impact the merits of the recommendation or decision.
- 13 D. *Conflict of Interest.* A conflict of interest is a conflict between the
14 private interest of a public servant and the official responsibilities of
15 the public servant in the context of an official action.
- 16 1. *Permissible conflict of interest:* A public servant may participate
17 in an official action in which the public servant has a minor or
18 inconsequential private interest. The assembly recognizes that
19 in a representative democracy, public servants are drawn from
20 society and, therefore, cannot and should not be without
21 personal and financial interests in the decisions and policies of
22 government. Standards of ethical conduct need to distinguish
23 between those minor and inconsequential conflicts that are
24 unavoidable in a free society, and those conflicts of interest that
25 are substantial and material.
- 26 2. *Prohibited conflict of interest.* A public servant shall not
27 participate in an official action in which the public servant has a
28 substantial private interest. The determination of whether a
29 private interest is substantial is determined based on the
30 balancing of two factors:
- 31 a. Size: the significance of the private interest in financial
32 amount or personal importance.
- 33 b. Connection: the link between the official action and the
34 private interest.
- 35 3. *Evaluation of the conflict.:* Interests that are large in size and
36 direct in connection are substantial interests (prohibited
37 conflicts of interest). Interests that are insignificant in size and
38 remote/indirect in connection are not substantial interests
39 (permissible conflicts of interest). The more significant the size
40 of the interest, the less direct the connection needs to be to
41 make the interest substantial.
- 42 E. *Duty and Procedure for Disclosure.* When a public servant has a
43 potential conflict of interest, the public servant has a duty to disclose
44 the interest for appropriate evaluation.
- 45 1. *Employees:* Employees shall disclose potential conflicts of
46 interest to their department director or designee, or if the
47 employee is a director or a higher-level position, to the Ethics
48 Board. The employee's disclosure shall contain the same
49 information as specified for board members and elected
50 officials in paragraph E.2.a. below. The department director or
51 designee shall determine if the conflict is permissible or

1 prohibited. Either the employee or director may request an
2 advisory opinion from the Board of Ethics and the final
3 determination resides with the Board of Ethics.

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

7 a. Prior to comment, deliberation, public hearing, or
8 decision on any matter coming before the board,
9 commission, or body (collectively referred to as "body"),
10 the member or official shall disclose in a public meeting
11 the nature of the interest in sufficient detail to permit the
12 other members of the body to determine if the private
13 interest is substantial. The disclosure of the interest to
14 the body shall include the following information:

15 i. A detailed description of the interest.

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

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

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

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

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

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

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

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

49 c. The member of the body making the disclosure shall not
50 participate in the deliberations except to answer

- 1 questions from the body on the interest, nor vote on
 2 whether the private interest is substantial.
- 3 d. If the presiding officer exercises parliamentary authority
 4 by making an initial ruling on a disclosure of a private
 5 interest, the decision of the presiding officer may be
 6 appealed to the body for a majority vote. If the conflict is
 7 with only a discrete part of the action, the body may
 8 divide the question to avoid a conflict on a part of the
 9 official action but allow participation on the whole.
- 10 e. Following disclosure and a ruling by the chair or body,
 11 the jurisdiction of the Board of Ethics is limited to the
 12 sufficiency of the disclosure.
- 13 f. Under circumstances not directly addressed under this
 14 section, the body is authorized to use its best efforts to
 15 apply a conflict analysis consistent with these rules.
- 16 3. *Mayor:*
- 17 a. When the mayor participates as a member of the
 18 assembly, the rules and conflict analysis set forth in this
 19 section shall apply.
- 20 b. In all other matters, an interest held by the mayor shall
 21 be disclosed to the Board of Ethics prior to official action
 22 for determination and instruction on management of the
 23 interest.
- 24 4. *Rule of necessity:* The Board or body may apply the rule of
 25 necessity when the body is legally required to act and it lacks
 26 enough members to take valid official action solely due to
 27 members being disqualified by a shared or substantially similar
 28 conflict of interest
- 29 5. *Finality of Ruling:* Participation in an official action in
 30 accordance with the terms of this chapter shall be considered
 31 ethical action in fulfillment of the duties of the public servant. A
 32 public servant may not be sanctioned for acting in compliance
 33 with the final determination of the appropriate decision maker.
- 34 6. *Certification of Election:* Notwithstanding paragraph E.2.c., an
 35 assembly member's candidacy in a municipal election does not
 36 preclude the assembly member's participation in certification of
 37 the municipal election or other matters relating to conducting a
 38 regular or special election, except for a recall election involving
 39 that member..

40
 41 (AO No. 2017-42 , § 1, 3-21-17)

42
 43 **Section 2.** This ordinance shall be effective immediately upon passage and
 44 approval by the Assembly.

45
 46 PASSED AND APPROVED by the Anchorage Assembly this _____ day
 47 of _____, 2023.

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Chair

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 222-2023

Meeting Date: March 21, 2023

1 **From: Assembly Chair LaFrance, Vice Chair Constant, and Assembly**
2 **Member Petersen**

3
4 **Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY REPEALING**
5 **AND REENACTING ANCHORAGE MUNICIPAL CODE SECTION**
6 **1.15.060, CONFLICTS OF INTEREST.**

7
8 The current conflict of interest provision is set forth in the Ethics Code at Anchorage
9 Municipal Code (AMC) section 1.15.060. Employees, members of boards and
10 commissions, and elected officials are required to disclose potential conflicts of
11 interest prior to participation in official action, and may only participate with approval
12 of the body or the person's department head. This requirement is grounded in the
13 Charter, state law, and judicial case law.

14
15 In practice, the current provision has proven difficult to apply. This ordinance
16 provides additional definitions, outlines the information that should be provided in
17 order to make an adequate disclosure, and further sets forth the procedure for
18 determining when a disclosure should lead to recusal or non-participation by the
19 employee or public official making the disclosure.

20
21 This ordinance is brought forward by the Assembly Ethics and Elections Committee
22 after numerous meetings with the committee, the Assembly Rules Committee and
23 with Assembly Leadership, as well as input and review by the Ethics Board.

24
25 There are no anticipated economic effects by adding this section to code, so a
26 summary of economic effects is not provided.

27
28 **We request your support for the ordinance.**

29
30 Prepared by: Assembly Counsel's Office

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32 Respectfully submitted: Suzanne LaFrance, Assembly Chair
33 District 6, South Anchorage, Girdwood and Turnagain
34 Arm

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36 Christopher Constant, Assembly Vice Chair
37 District 1, North Anchorage

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39 Pete Petersen, Assembly Member
40 District 5, East Anchorage

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42 Attachments: Exhibit A, current text of AMC section 1.15.060

Exhibit A – current text of AMC 1.15.060

1.15.060 Conflicts of interest.

- A. *Minor or substantial conflict of 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.
- B. *Public interest:* A public servant shall place the public interest above any financial or private interest when taking official action. If a public servant's private relationships or interests prevent the servant from placing the public interest above a financial or private interest, or will diminish the public trust, the public servant shall disclose this fact on the record and shall be excused from participation.
- C. *Definition of 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. *General rule—Conflict of interest and official action:* A public servant shall not participate in an official action in which the public servant or a member of the public servant's immediate family has a substantial financial or private interest. Prior to participation in official action, the public servant shall disclose financial or private interests for determination of whether they are substantial.
- E. *Substantial financial or private interest:* Whether the financial or private interest disclosed is substantial shall be determined on a case-by-case basis, with evaluation and balancing of these factors:
 - 1. Whether the financial or private interest is a substantial part of the matter under consideration.
 - 2. Whether the financial or private interest directly and substantially varies with the outcome of the official action.
 - 3. Whether the financial or private interest is immediate and known or conjectural and dependent on factors beyond the official action.
 - 4. Whether the financial or private interest is significant monetarily.
 - 5. Whether the financial or private interest is of a type which is generally possessed by the public or a large class of persons to which the member belongs.
 - 6. Other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.
- F. *Procedure for disclosure:*
 - 1. *Employee:* A municipal employee shall disclose to the designated ethics officer the nature of the interest and how the employee's duties could influence the official action. The ethics officer shall determine if the interest is substantial, or refer the matter to the board of ethics.
 - 2. *Board members and elected officials:*
 - a. Prior to comment, deliberation, or decision on a matter coming before the body, the member or official shall disclose the nature of the interest in sufficient detail to permit the other members of the body to determine if the interest is substantial.

Exhibit A – current text of AMC 1.15.060

- b. If the presiding officer exercises parliamentary authority by making an initial ruling on a disclosure of financial or private interest, the decision of the presiding officer may be overridden by the majority vote of the body.
 - c. The member of the body making the disclosure shall not rule or vote on whether the financial or private interest is substantial.
 - d. A member or official shall not be sanctioned for acting in compliance with the determination of the body if the financial or private interest is fully and fairly disclosed.
 - e. The jurisdiction of the board to determine a violation under this chapter by an elected official for participation in a matter after disclosure of a financial or private interest is expressly limited to the sufficiency of the disclosure.
3. *Mayor:* The potential for conflict of interest presented by a financial or private interest held by the mayor shall be disclosed prior to action to either the municipal ethics officer, or to the board of ethics for determination and management of the potential for conflict of interest. Advice rendered by the ethics officer is subject to review by the board.
 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 shared or substantially similar conflict of interest from participating in the matter.
 5. *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.

(AO No. 2017-42 , § 1, 3-21-17)