

- **CONFLICT OF INTEREST**

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There are two standards for conflict of interest—the financial conflict of interest standard applies to every question made by an elected or appointed City and Borough official or employee, and a special standard of bias or prejudice applies to the special category of quasi-judicial decisions.

Financial conflict of interest: An Assembly Member or a member of a board or commission should not vote or even participate in a discussion of a matter in which he or she has a “substantial financial interest.” The law defining a “substantial financial interest” is attached. If you think you MIGHT have a conflict of interest, you should DISCLOSE the facts at the meeting and ask the presiding officer to rule on whether you have a substantial financial interest. This allows the presiding officer and the body as a whole to make the determination. Disclosure also helps cure the likelihood that the body’s action will survive legal challenge.

Prejudice/improper motives: A special set of rules applies when the Assembly or a board or commission is asked to apply the law to a certain set of facts, because then the matter is quasi-judicial. Examples of quasi-judicial decisions are zoning cases and tax appeals. When a matter is quasi-judicial, financial interest is not the only consideration—you might have a conflict of interest based entirely on how you feel about the people involved. In a quasi-judicial matter, you should not vote or participate in any way if you feel that you cannot be fair. One rule of thumb is that if somebody’s name is in the motion and it’s not a contract award or a vote on somebody getting a job, it’s probably quasi-judicial and you should consider your state of mind.

PUBLIC PARTICIPATION IN MUNICIPAL MEETINGS

All meetings of the Assembly and City and Borough boards and commissions must be public unless there is a legally conducted executive session. The public has a right to attend and listen and review the materials to be considered at the meeting (sometimes called “the packet”). State law also requires that members of the public attending public meetings be given a “reasonable opportunity” to be heard. This right to be heard does not give a right to be heard on every topic the Assembly or boards or commissions consider, and the presiding officer can impose reasonable time limits when members of the public do speak.

USE OF SEPARATE LEGAL COUNSEL FOR BOARDS AND COMMISSIONS

The Charter provides that there be a City and Borough Attorney. The Sitka General Code provides that the City and Borough Attorney shall be responsible for providing legal services for the City and Borough. Any board or commission considering the engagement of separate legal counsel should (a) consult with the City and Borough Attorney first and (b) have an appropriation approved by the Assembly that will cover this expenditure.

--Clifford J. Groh, II
City and Borough Attorney
March 30, 2005

1.04.080 Conflict of interest.

- A. No member of the assembly, elected or appointed official, municipal employee or official may participate in official action in which the assembly person, elected official, employee or official has a substantial financial interest.
- B. If a member of the assembly or other municipal board or commission has a substantial interest in an official action, that member shall declare the substantial financial interest and ask to be excused from the vote on the matter.
- C. Upon a request made under subsection B of this section, the following procedure shall be followed:
 - 1. The presiding officer shall rule on the request by a member to be excused from the vote.
 - 2. The assembly, board or commission may override the decision of the presiding officer on the request to be excused by a majority vote.

D. As used in this section, "substantial financial interest" means an expectation of receiving a non-trivial pecuniary or material benefit. A substantial financial interest of a person includes any substantial financial interest of that person's immediate family. A person has a substantial financial interest in an organization in which that person has an ownership interest, or is a director, officer, or employee. A person has a substantial financial interest in a decision if a substantial financial interest of that person will vary with the outcome of the decision. A substantial financial interest does not include the following: a personal or financial interest which is not of the magnitude that would exert an influence on an average, reasonable person; a personal or financial interest of a type which is generally possessed by the public or a large class of persons to which that official or employee belongs; or an action or influence which would have an insignificant or conjectural effect on the matter in question.

- E. As used in this section, "immediate family" of a person means anyone related to that person by blood, marriage, or adoption or who lives in that person's household.