

Conflict of Interest Summary for City of Cedar Rapids City Officials

Amended September 9, 2011

Introduction:

The Home Rule Charter for the City approved on June 14, 2005, prohibits the use of public office for private gain and required the establishment of a Board of Ethics to deal with financial conflicts of interest issues involving City Officials. Most of the issues involve either the acceptance of gifts by City Officials or the existence of relationships that might result in financial gain to City Officials in connection with their status as such.

The initial Ordinance proposed by the first Board of Ethics members implementing the Charter's direction was adopted by the City Council on August 15, 2007. The Ordinance, No. 039-07, was subsequently amended at the suggestion of the Board of Ethics on February 24, 2010 and June 14, 2011.

The Ordinance applies to a limited group of individuals defined as City Officials. They include the members of the Cedar Rapids City Council, the City Clerk, the City Attorney, the City Manager, the Chief of Police, the Fire Chief, and any member of a City board or commission who is appointed or approved by the City Council.

The Ordinance does not apply to City employees who are not in the above positions. City staff has authority over those employees.

In addition to the provisions in the Ordinance, there are separate state statutes that restrict gifts to public officials.

Key Definitions

1. City Official's Immediate Family: spouse, parents or children, parents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, stepparents, stepbrothers or stepsisters, domestic partners and stepchildren.
2. Business entity or organization:
 - a. by which you or immediate family are employed, or
 - b. in which you or immediate family has 5% or more ownership or voting power interest.
3. Private Financial Interest/Private Gain: any direct or indirect economic benefit or other consideration to City Official or their Immediate Family or their Business Entity

or Organization that is not otherwise a benefit or other consideration to the general public and does not similarly benefit the general public.

4. Official Action: any act taken by a City Official in furtherance of the City Official's duties and powers as a City Official even if such action is advisory only and not binding on the City or any board, commission, agency or officer.

What is a Conflict of Interest Action?

The Ordinance is violated when a conflict of interest action occurs in one or more of the five following situations:

1. As a City Official you take an action or vote when you have, or reasonably can be expected to have, a Private Financial Interest or expect a Private Gain in the outcome *that is separate from the general public's financial interest or gain.*

See Board Advisory Opinions:

- 11/26/07 to Council Member Shey
- 11/24/08 to Mayor and Council re Replacement Housing Task Force
- 9/28/09 to Council Members Podzimek and Shey
- 1/13/10 to Council Member Swore
- 6/14/11 amendments to Section 6.22(c)(8)&(9) of the Ordinance

The keys to avoiding a Conflict of Interest Action in this respect are to:

- Recognize the facts and circumstances that could lead to a Conflict of Interest Action;
- Recuse (not participate) from discussion about the matter;
- Explain why you have recused to staff and other City Officials so that they know to avoid involving you in the discussion;
- Request that the minutes/notes of the meetings reflect your recusal and the basis for it; and
- Abstain from taking any action or vote and have a record made of that abstention.

2. As a City Official you accept a gift or other thing of value contrary to Iowa law or the City of Cedar Rapids Municipal Code.

The key to avoiding this sort of Conflict of Interest Action is:

- Understand what constitutes a “gift” and who might be a “restricted donor” as those terms are used in the State Statutes. Consult with the City Attorney if necessary.

Board of Ethics would normally refer a question or an allegation to the appropriate official responsible for enforcing these provisions.

3. You act in a private capacity on matters dealt with as a public official.

See Board Advisory Opinions:

- 11/24/08 to Mayor and Council re Replacement Housing Task Force
- 9/28/09 to Council Members Podzimek and Shey
- 1/13/10 to Council Member Swore

Example: You are paid by a friend to develop a proposal for a library building and you are a member of the library board.

The key to avoiding this type of Conflict of Interest Action is the same as identified under Section 1 above.

4. You use confidential City information for purposes other than your duties as a City Official.

No Advisory Opinions have been issued by the Board of Ethics on this matter as of this time. The issues addressed indicate that in the course of your service as a City Official you may learn of confidential information, or information that is not generally available to the public. A City Official should refrain from using such information for the benefit of private individuals, including the City Official.

Again, the key to avoiding this type of Conflict of Interest Action is to be alert and aware of it and to recognize those situations where you may be made aware of confidential information. Once you are aware, make sure you make no private use of that information.

Example: As a member of the Airport Commission's long range planning committee, you learn non-public information about potential future property expansion and pass the information on to your brother to purchase part of the land.

5. You appear before a city entity on behalf of the private interests of a third party. You do not fully and completely disclose to City staff that you are a City Official and that your appearance is not on behalf of the third party in your official capacity as a City Official.

See Advisory Opinion:

- 6/30/09 to Airport Commissioner Thies

The keys to avoiding the Conflict of Interest appearance problem are to:

- Disclose to city agency representative your position as City Official;
- Disclose appearance in your personal capacity for a third party and not in official capacity;
- Disclose lack of connection between appearance and jurisdiction of your duties as a City Official; and
- Make record of your disclosure before the agency.

This Conflict of Interest Action has been particularly at issue since the adoption of the Ordinance. The policy reflected by the Board's opinions thus far has been to be proactive and disclose your official status before your appearance. Recognize, too, that an "appearance" can occur not only when you personally appear before a board or commission, but also when a business partner or employee does as well.

Board Procedure

The Ordinance and the Board's Rules and Procedures are posted at the City's website:

<http://www.cedar-rapids.org/government/boardsandcommissions/regulatoryaffairs/boardofethics>.

The website also includes a complaint form, the Advisory Opinions issued by the Board, and other Letters issued by the Board.

Complaint:

Any person can file a complaint with the City Clerk alleging that a conflict of interest action has occurred. The Board conducts a screening inquiry to determine whether or not it has jurisdiction over the complaint.

Penalty:

The Board has the authority to impose a range of penalties for a violation of the Ordinance. The range includes a private warning, public reprimand, administrative fine, and/or ordering or prohibiting certain conduct.

Advisory Opinions:

Only City Officials can request advisory opinions. The request is filed with the City Clerk and the Board issues a written opinion.

Advisory Opinions are useful tools for educating all City Officials and the public. They also assist the Board in identifying areas of the Ordinance that may need amendments.

The Board encourages City Officials to submit the requests as soon as possible after the official becomes aware of an issue. The Board also encourages City Officials to seek guidance from the City Attorney who may be familiar with previous similar issues.