



# CITY OF CONCORD

## REPORT TO MAYOR AND THE CITY COUNCIL

**FROM:** Rules Committee  
**DATE:** August 5, 2015  
**SUBJECT:** Proposed Amendments to the Council Rules and Ethics Ordinance

### **Recommendation:**

Accept this report and set the attached ordinance amending the following ordinance for a public hearing on June 8, 2015:

Amending the Code of Ordinances, Title I, General Code; Article 1- 6, Code of Ethics

On January 14, 2015, April 23, 2015, May 7, 2015 and August 5, 2015, the Rules Committee met pursuant to a referral from the City Council to review the City Council Rules and recommend any amendments thereto.

### **Discussion**

The Rules Committee has proposed several amendments to the Ethics Ordinance, to remove ambiguity in the Ordinance, which makes it easier apply, understand and enforce. The proposed Code of Ethics Ordinance, as amended, is attached and the amendments are set forth below:

#### **1-6-2 Purpose – Proposed Amendments**

The Rules Committee recommends that the City Council make three amendments to the Purpose Section.

First, the Rules Committee recommends that the Council remove the reference which provides that the ethics ordinance includes “a process by which one may obtain guidance regarding potential ethical issues.” The ethics ordinance does not provide a means for City Councilors or any other City of Concord Board, Commission or Committee members to seek guidance on ethical issues. To the extent that the Council, Commission or Committee requires legal guidance on an ethical issue, the City Solicitor’s office may provide such guidance. By way of clarification, the City’s Ethics Board is a quasi-judicial board which reviews ethical complaints against City Councilors, Board, Commission and Committee members.

Second, the Rules Committee recommends that the Council remove the statement: “Officers and Officials, whether appointed or elected, shall act in the best interest of the City.” Although this is an appropriate statement, it is a requirement that does not belong in the Purpose Section. Also, the theme of this statement is captured in the Preamble Section.<sup>1</sup>

Third, the Rules Committee recommends that the Council remove the statement: “They shall disclose any personal financial or other interests in the matters that come before them for action and shall remove themselves from decision making if they have a conflict of interest.” This statement is a requirement that does not belong in the Purpose Section. Also, this requirement has been amended under Article 1-6-4, Recusal, which provides the basis and standards for when an officer or elected official shall recuse from a matter before any City of Concord Public Body.

### 1-6-3 Definitions – Proposed Amendments

The Rules Committee recommends that the City Council revise Article 1-6-3, Definitions of the Code of Ethics Ordinance to amend the definition of the term “Conflict of Interest” and to add three defined terms: “Legislative Matter,” “Public Body” and “Quasi-Judicial Matter.”

With respect to the term “conflict of interest,” the Rules Committee recommends removal of the phrase “is defined as an actual conflict of interest” because this is an ambiguous phrase due to the use of the term “actual.” This statement also appears to be superfluous language not necessary for the definition. The Rules Committee also recommends removal of the term “business” as it is overly broad and ambiguous. Instead, the Rules Committee proposes including the phrase “the interests of any organization in which the person is a member of a governing body” to require that no person subject to this ordinance shall participate in a matter where they are a member of a governing body of another organization and those interest are before a Concord Public Body. The Rules Committee also recommends removal of the phrase “apparent conflict of interest” as the term is ambiguous. The conflict of interest definition would be amended as follows:

*Conflict of Interest.* A conflict of interest *exists* [~~is defined as an actual conflict of interest~~] when a person takes an action or makes a decision that would affect his or her financial interest, [~~business or those of a~~]*the financial interests of the person’s family member or the interests of any organization in which the person is a member of a governing body.* [~~An apparent conflict of interest is one that does not affect a person’s financial interests, but does call into question his or her objectivity and independence.~~]

---

<sup>1</sup> By way of background, the Code of Ethics, Section 1-6-1, Preamble, states as follows: The citizens of Concord are entitled to a fair, ethical, and accountable City government. The effective functioning of democratic government requires that all of its officials, whether elected or appointed, comply with both the letter and the spirit of the laws and be independent, impartial, and fair in their judgment and actions. Public Office is to be used for the public good, not for personal gains. Public deliberations and processes must be conducted in an atmosphere of respect and civility and openly, unless legally confidential. To this end, the City Council adopts this Code of Ethics for all of its officers and officials, whether elected or appointed.

The Rules Committee recommends adding definitions for the terms “Legislative Matter,” “Public Body” and “Quasi-Judicial Matter.” The term “Public Body” is adopted from New Hampshire’s Right-to-Know law and provides a basis for the applicability to this Ordinance under the Recusal. The terms “Legislative Matter” and “Quasi-Judicial Matter” are necessary to provide a basis for when an officer or elected official is required to physically step away from the panel when a conflict of interest occurs. The proposed definitions are as follows:

*Legislative matter: A matter involving a policy or rule/law making decision. Common examples of a legislative function in the municipal context are City Council voting on an ordinance adoption or amendment, voting on the budget or the planning board adopting subdivision regulations.*

*Public Body: The Concord City Council, subcommittee, or subordinate body thereof, or advisory committee thereto and any City of Concord board, commission or committee.*

*Quasi-judicial matter: A matter wherein the public body is bound to notify and hear the parties, and can only decide after weighing and considering evidence and arguments presented to them. Common examples of quasi-judicial functions in the municipal context are planning and zoning boards acting on applications under their jurisdiction.*

#### **1-6-4 Recusal.**

The Rules Committee recommends the addition of a new article addressing the requirements for recusal. The proposed article sets forth the standard for an officer or elected official to recuse his or herself from a matter when there is a conflict of interest. The new proposed article references different requirements for legislative matters and quasi-judicial matters to address when an officer or elected official is required to physically step away from the panel when a conflict of interest occurs. In summary, the officer or elected official is required to physically leave the room for a quasi-judicial matter, but may remain at the panel for a legislative matter. Under either circumstance, no officer or elected official shall introduce, ask questions, speak on or vote on any motion, ordinance, resolution or issue in which he/she has a conflict of interest and shall disclose the reason for the conflict of interest as soon as it becomes known to the officer or official. The proposed article is as follows:

*Whenever a matter comes before any City of Concord Public Body, no officer or elected official shall introduce, ask questions, speak on or vote on any motion, ordinance, resolution or issue in which he/she has a conflict of interest and shall disclose the reason for the conflict of interest as soon as it becomes known to the officer or official. If the matter before the Public Body is a legislative matter, the officer or elected official who has a conflict of interest may remain seated on the panel during the term of the recusal. If the matter before the Public Body is a quasi-judicial matter, the officer or elected official who has a conflict of interest shall physically leave the room until consideration of the matter is completed.*

*In acting upon a matter involving more than one subject, such disclosure and recusal are required only with respect to the portion or portions affected by a conflict of interest, and not to the matter as a whole.*