

January 31, 2014

To: Members of the Housing and Community Development Committee

CC: Theresa Wellman  
Hilary Raftovich

From: Karen Hardwick, City Attorney

Re: Potential Recusal from Consideration of CDBG Applications

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You have asked whether selected members of the Housing and Community Development Committee (HCDC) must recuse themselves from participating in a meeting to allocate Community Development Block Grant (CDBG) funds among non-profit organizations and, if so, more specifically whether they must recuse themselves from:

1. Voting on a grant to an applicant with whom they are affiliated (including serving on the board, working for the organization, etc);
2. Joining in the discussion as to whether the applicant with whom they are affiliated should receive a grant;
3. Discussing and voting on the applications of organizations with which they have no affiliation if all of the grants are to be allocated from a single pool of funds; and
4. Participating in the proceeding so that the committee can achieve a quorum even if they intend to recuse themselves from particular matters before the body.

Briefly stated, my answers are as follows:

**1 & 2.** A member of the HCDC must recuse himself from participating in the discussion and the vote on a grant to any organization with which he is affiliated, whether as a board member, employee, consultant or otherwise. *See* Annapolis City Code § 2.08.040.A. (conflict of interest arises from “participating on behalf of the City in any matter which would have a direct financial impact” on an organization or other

“business entity with which the . . . “official” is “affiliated.”) (excerpted text appears on following page).

**3.** To avoid even the appearance of a conflict of interest, a committee member should recuse himself from discussing or voting on the applications of other, unrelated organizations **if**:

- (a) the organizations compete against another for an allocation from a single pool of funds to be shared among all eligible applicants; and
- (b) denying or reducing the amount of a grant to an “unrelated” organization would have the effect of increasing the funds available for the applicant with whom the committee member is affiliated;

*See Annapolis City Code § 2.08.040.A.* (conflict of interest arises from “participating on behalf of the City in any matter which would have a direct financial impact” on an organization or other “business entity with which the . . . “official” is “affiliated.”)(excerpted text appears on following page).

**4.** Any recusal should occur prior to the discussion and voting and should be recorded in the minutes. Members who intend to recuse themselves may be counted for the purpose of determining whether a quorum exists such that the meeting properly may be convened.

Please note that the members of the committee have the option of securing an exception or advisory opinion from the Ethics Commission. Specifically, §2.08.090 - Exemptions and Modifications authorizes the Ethics Commission to:

- grant exemptions and modifications to the sections of this chapter pertaining to conflicts of interest and to financial disclosure, if it determines that application of those provisions would:
  - A. Constitute an unreasonable invasion of privacy;
  - B. Significantly reduce the availability of qualified persons for public service; and
  - C. Not be required to preserve the purposes of this chapter.

## EXCERPTS FROM THE CITY OF ANNAPOLIS CODE OF ETHICS

The actual prohibition of conflicts of interests appears in City Code § 2.08.040, and the rationale for the recusal appears in the City of Annapolis Ethics Policy (excerpted and highlighted below).

### [2.08.040 - Conflicts of interest.](#)

No elected or appointed official, employee, or appointee of the City shall engage in any of the following acts, which are deemed to be conflicts of interest:

A. Participating on behalf of the City in any matter which would have a direct financial impact, as distinguished from the public generally, on the employee, official or appointee, the employee's, official's or appointee's spouse or independent child, **or a business entity with which the employee, official or appointee is affiliated**; (this includes non-profits with whom you are affiliated)

### [2.08.040 - Conflicts of interest.\(Policy\)](#)

The proper operation of representative government requires that public officials and employees be independent, impartial, and responsive to the general public whom they represent; that public office not be used to advance personal gain; and that the public maintain a high degree of trust in their public officials and employees. Recognizing these principles, the City Council declares that it is the policy of the City, in enacting these provisions, that:

A. Elected and appointed officials and employees shall not engage in any business or transaction or have a financial interest, direct or indirect, which is incompatible with the proper discharge of official duties or would tend to impair

independence of judgment or action in the performance of official duties.

B. Designated elected and appointed officials and employees, and candidates for public office, shall disclose fully their financial interests in order to ensure that the interests present no conflict with their public duties.

C. Elected and appointed officials or employees shall not engage in any activity or participate in any transaction which would create, or tend to create, a conflict of interest in the exercise of their public or official duties.

D. Individuals, firms or organizations of any type which seek to influence elected or appointed officials, agencies or employees in the performance of their official duties have an obligation to register with the City as lobbyists and to disclose fully certain information as to their activities as lobbyists in order that the general public may be assured that no conduct resulting in a conflict of interest or interfering with the proper discharge of official duties has occurred.