

## Memorandum

**To:** Mayor Keough and City Council

**From:** Justin Breyer, Interim City Manager and City Clerk

**Re:** Discussion of: Conflicts of Interest

**Date:** March 5, 2021

---

During prior City Council Goal Setting Work Sessions, members of Council identified "Conflicts of Interest" as a topic that they wanted to discuss as part of the slate of on-going work sessions. As previously discussed, staff contacted City Attorney Scott Munzel to arrange for him to present and lead a facilitated discussion of the topic. This work session has been scheduled for Wednesday, March 10<sup>th</sup>. City Attorney Munzel has provided the attached memo as an outline for the discussion. Also attached is the last draft of the Conflict of Interest Ordinance that was presented to City Council during the December 28, 2020 meeting.

**SCOTT E. MUNZEL, P.C.**  
**ATTORNEY AT LAW**

[WWW.MUNZELLAW.COM](http://WWW.MUNZELLAW.COM)

**9 JEFFERSON COURT**  
**ANN ARBOR, MI 48103**  
**734 904 0310**

[SEM@MUNZELLAW.COM](mailto:SEM@MUNZELLAW.COM)

To: Justin Breyer, Dexter Interim City Manager  
From: /s/Scott Munzel  
Re: Conflict of Interest Workshop  
Date: March 5, 2021

The City Council is considering adopting a Conflict of Interest ordinance, as required by Dexter Charter Section 5.06, and will hold a workshop to discuss conflict of interest issues. The Charter language is brief and prohibits use of public office for private gain or the appearance of private gain. There is also a Michigan statute regarding conflicts of interest, MCL 15.321 et seq., but it is limited to contracts between an official and the public body on which he or she is a member. Below are several concepts that I suggest we discuss:

1. Goal- maintain the highest confidence that decisions are being made in the best interests of the citizens of Dexter
  - fundamental fairness for all citizens/ due process
  - the law is the “floor”; goal is to prevent appearance of conflict
2. Concept of a conflict of interest- a set of circumstances where the City official’s actual or perceived interests could be involved in or affected by a decision being made by some City body
  - direct (or indirect) financial interest
  - family members or related parties
  - wide variety of circumstances could create or suggest a conflict of interest
3. Disclosure- concept that if all the information is known, the body can make an informed decision with integrity
  - how to handle disclosures
  - how the body can proceed after the disclosure
4. Violations- how to handle violations procedurally and punishment for violating the conflict of interest ordinance
5. Application to various groups within City government and responsibilities
  - City Council
  - Boards and commissions
  - City Manager
  - City employees

**City of Dexter  
Ordinance No. 2020 – XX  
Conflict of Interest Ordinance**

**SECTION 1. Title**

This Ordinance shall be known and cited as the City of Dexter Conflict of Interest Ordinance.

**SECTION 2. Preamble**

The City of Dexter Charter calls for the adoption of a Conflict of Interest Ordinance. The purpose of this Ordinance is to establish standards of conduct for all elected and appointed City officials regarding conflicts of interest so as to enhance public confidence in the government of the City of Dexter, to avoid unethical conduct by City officials, and to avoid the appearance of impropriety by City officials.

**SECTION 3. Definitions**

Public Official - ~~includes~~ all City of Dexter elected and appointed officials, including but not limited to members of City Council, Boards, Commissions, Committees; and City employees.

Conflict of Interest – when there exists the possibility that the interests of the City may diverge from, or be in conflict with, the interests of a Public Official. Such a Conflict of Interest could include, but is not limited to, situations involving a Public Official and:

- (1) a financial benefit not shared with a substantial segment of the public for any of the following:
  - a. The Public Official;
  - b. A member of the Public Official's immediate family or relative;
  - c. An employer of the Public Official other than ~~of~~ the City;
  - d. Any business in which the Public Official, a member of the Public Official's immediate family, or a relative of the Public Official has a financial interest; or
  - e. Any business with which the Public Official, a member of the Public Official's immediate family, or a relative of the Public Official is negotiating or seeking employment or any other business or professional relationship.
- (2) a matter concerning his or her own conduct;
- (3) a matter concerning land owned by him or her or which is adjacent to land owned by him or her;
- (4) a matter involving a corporation, company, partnership, or any other entity in which he or she is a part owner, or any other relationship with a corporation, company, or partnership;

- (5) a matter concerning his or her spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents in-law, grandparents in-law, or members of his or her household;
- (6) a matter where his or her employee or employer is an applicant or agent for an applicant;
- (7) a matter in which, due to particular circumstances, the Public Official believes there may be the appearance of improper bias that could ~~affect~~<sup>taint</sup> the outcome or process if the Public Official participates.

**SECTION 4. Prohibited Conduct-Conflict of Interest**

~~(1)~~ A Public Official shall not intentionally take or refrain from taking any action on; induce or attempt to induce any other Public Official to take or refrain from taking any official action on; deliberate on; vote on; or review any matter before the City for which they have a Conflict of Interest.

~~(2) No Public Official shall vote on, or participate in any deliberations on, any question or issue in which he or she has a Conflict of Interest.~~

**SECTION 5. Disclosure and Determination of Conflicts of Interest**

Members of City Council and Members of City Boards, Commissions, and Committees

- (1) Whenever a ~~potential~~ Conflict of Interest exists, ~~the Public Official~~<sup>members of City Council and City Boards, Commissions, and Committees</sup> must notify the City, either orally on the record at a meeting of the public body involved, or in writing filed with the City Manager, prior to the Public Official taking any other action in the matter. The City Manager shall preserve all written disclosure statements in accordance with the City's records retention schedule. In either case it shall be made a part of the record of a regular meeting of the most appropriate public body, and in either case (written or verbal) shall include:
  - a. The identity of all persons involved in the Conflict of Interest.
  - b. The source and type of the Conflict of Interest
  - c. The source and amount of monetary value or equivalent derived from the Conflict of Interest that may be considered as resulting from employment, investment or gift.
- (2) Immediately following~~Once~~ a ~~potential~~ Conflict of Interest ~~has been~~<sup>being</sup> made a part of the record, the City Council, or the appropriate board, commission, or committee may act to provide direction to the Public Official with the Conflict of Interest regarding their participation at the meeting and any future conduct relating to the item for which the Public Official has the Conflict of Interest. The City Council, Board, Commission, or Committee may direct the Public Official to:
  - a. Cease to participate during discussion of the item at any meetings ~~before which~~<sup>where the</sup> matter is considered; or

~~a.b.~~ Cease to represent one's self before the public body, its members, boards, committees, commissions, the public, or staff on the matter; ~~and or~~

~~b.c.~~ During deliberation of the matter before the public body, I leave the meeting room until discussion or consideration of that agenda item is concluded.

(3) If a Conflict of Interest is disclosed by a member of the City Council, or a City Board, Commission, or Committee, and no action is immediately taken by the City Council, Board, Commission, or Committee, that Conflict of Interest shall not be subject to future sanctions or violations through this Ordinance (unless there is a change in the circumstances that created the Conflict of Interest).

#### City Manager

(1) Whenever a Conflict of Interest exists involving the City Manager, the City Manager must notify the City Council, either orally on the record at a meeting of the public body involved, or in writing, prior to taking any other action in the matter. In either case it shall be made a part of the record of a regular meeting of the most appropriate public body, and in either case (written or verbal) shall include:

a. The identity of all persons involved in the Conflict of Interest.

b. The source and type of the Conflict of Interest; and

c. Amount of monetary value or equivalent derived from the Conflict of Interest that may be considered as resulting from employment, investment or gift.

(2) Immediately following a Conflict of Interest being made a part of the record, the City Council, or the appropriate board, commission, or committee may act to provide direction to the City Manager regarding his or her participation at the meeting and any future conduct relating to the item for which the City Manager has the Conflict of Interest. The City Council, Board, Commission, or Committee may direct the City Manager to:

a. Cease to participate during discussion of the item at any meetings where the matter is considered; or

b. Cease to represent one's self before the public body, its members, committees, commissions, the public, or staff on the matter; or

c. Leave the meeting room until discussion or consideration of that item is concluded; or

~~a. Cease to represent one's self before the public body, its members, committees, commissions, the public, or staff on the matter; or~~

d. Direct a member of the City staff other than the City Manager to be responsible for a project or administrative action. The City Manager shall cease involvement in the project or administrative action for which they have a Conflict of Interest.

(3) If a Conflict of Interest is disclosed by the City Manager, and no action is immediately taken by the City Council, Board, Commission, or Committee, that Conflict of Interest shall not be subject to future sanctions or violations through this Ordinance (unless there is a change in the circumstances that created the Conflict of Interest).

#### City Employees

(1) Whenever a Conflict of Interest exists, City employees (other than the City Manager) must notify the City Manager in writing prior to taking any action in the matter. The City Manager shall preserve all written disclosure statements in accordance with the City's records retention schedule. The disclosure shall include:

a. The identity of all persons involved in the Conflict of Interest.

b. The source and type of the Conflict of Interest; and

c. Amount of monetary value or equivalent derived from the Conflict of Interest that may be considered as resulting from employment, investment or gift.

(2) Immediately following a Conflict of Interest being made a part of the record, the City Manager may act to provide direction to the City employee regarding his or her participation at the meeting and any future conduct relating to the item for which the City employee has the Conflict of Interest. The City Manager may direct the City employee to:

e. Cease to participate during discussion of the item at any meetings where the matter is considered; or

f. Cease to represent one's self before the public body, its members, committees, commissions, the public, or staff on the matter; or

g. Leave the meeting room until discussion or consideration of that item is concluded; or

h. Direct a member of the City staff other than the City employee to be responsible for a project or administrative action. The City employee shall cease involvement in the project or administrative action for which they have a Conflict of Interest.

#### ~~**SECTION 6. Advisory Opinions Regarding Potential Conflicts of Interest**~~

~~Any Public Official may request that the City Attorney provide an advisory opinion interpreting the effect or application of this Ordinance generally, or on questions directly relating to the propriety of their conduct in a particular situation.~~

#### **SECTION 6.7. Investigation of Complaints; Hearing**

(1) Upon acquiring reasonable information or belief about a violation of this Ordinance by a member of City Council, the complaint shall be referred to City Council, which upon a majority vote of the remaining members may shall refer the complaint to the City Attorney

for investigation. When such an that investigation is complete, the City Attorney shall provide the City Council with the results of the investigation. By a majority vote of the remaining members, the City Council may call for a hearing at a regular or special meeting of the City Council to determine whether or not a violation did in fact occur and, if so, what penalties should be imposed for the violation.

(1)(2) Upon acquiring reasonable information or belief about a violation of this Ordinance by ~~a Public Official (except City employees),~~ a member of a board, commission, or committee, or the City Manager, the complaint shall be referred to City Council, which upon a majority vote ~~may~~ shall refer the complaint to the City Attorney for investigation. When ~~such an that~~ investigation is complete, the City Attorney shall provide the City Council with the results of ~~the~~ the investigation. By a majority vote, the City Council may call for a hearing at a regular or special meeting of the City Council to determine whether or not a violation did in fact occur and, if so, what penalties should be imposed for the violation.

~~(2)(1) Upon acquiring reasonable information or belief about a violation of this Ordinance by a member of City Council, the complaint shall be referred to City Council, which upon a majority vote of the remaining members shall refer the complaint to the City Attorney for investigation. When that investigation is complete, the City Attorney shall provide the City Council with the results of the investigation. By a majority vote of the remaining members, the City Council may call for a hearing at a regular or special meeting of the City Council to determine whether or not a violation did in fact occur and, if so, what penalties should be imposed for the violation.~~

(3) The City Manager shall perform or shall have performed an investigation into complaints against City employees regarding ~~potential~~ Conflicts of Interest.

(4) Nothing in this Ordinance shall be construed to diminish or impair the rights of any City employee under any provision of a collective bargaining agreement in effect on the effective date of this Ordinance, nor the City's obligation to comply with any collective bargaining agreement.

## **SECTION 7. Advisory Opinions Regarding Potential Conflicts of Interest**

Any Public Official may submit in writing to the City Manager a request that the City Attorney provide an advisory opinion interpreting the effect or application of this Ordinance generally, or on questions directly relating to the propriety of their conduct in a particular situation. The City Manager may approve or deny the request. If the request is denied, the requestor may submit an appeal of the request to the City Council.

## **SECTION 8. Violations and Penalties**

A Public Official who is a member of City Council who violates this Ordinance is subject to censure by the unanimous vote of the remaining members of the City Council. Except for City employees, any other Public Official who violates this Ordinance is subject to censure by the unanimous vote of the City Council, and/or by a majority vote, removal from their position on such board, commission, or committee. A Public Official who is a City employee who violates this Ordinance may be subject to discipline, including termination (provided such discipline is consistent with any contractual obligations). The

penalties identified in this Ordinance are not exclusive remedies, and any and all penalties or forfeitures provided for by law may also be enforced.

### **SECTION 9. Retaliation Prohibited**

- (1) The City shall not discipline, discharge, threaten, or otherwise discriminate against a City employee in regards to the terms and conditions of his or her employment because the employee, or a person acting on behalf of the employee, has reported, is believed to have reported, intends to report, or is believed to intend to report, either verbally or in writing, a violation or suspected violation of this Ordinance, unless the employee knows or reasonably should know that the report is false.
- (2) The City shall not discipline, discharge, threaten, or otherwise discriminate against a City employee in regards to the terms and conditions of his or her employment because the employee is requested by the City to participate in an investigation or hearing regarding an alleged violation of this Ordinance.
- (3) A board, commission, committee, or City Council shall not discipline, censure, threaten, or otherwise discriminate against a Public Official because that Public Official-, or a person acting on behalf of that Public Official, has reported, is believed to have reported, intends to report, or is -believed to intend to report, either verbally or in writing, a violation or suspected violation of this Ordinance, unless the Public Official knows or reasonably should know that the report is false.
- (4) A board, commission, committee, or City Council shall not discipline, censure, threaten, or otherwise discriminate against a Public Official because the Public Official is requested by the City to participate in an investigation or hearing regarding an alleged violation of this Ordinance.

### **SECTION 10 Supplement to State Law**

This City of Dexter Conflict of Interest Ordinance supplements State law, including but not limited to~~contained at~~ MCL 15.321-330, which applies to contracts between, and solicitation of contracts by, a Public Official and the City of Dexter entity on which he or she is an officer or employee.

### **SECTION 11: Inconsistencies Repealed**

Any and all other ordinances or resolutions or parts thereof in conflict with this Ordinance are repealed.

### **SECTION 12: Severability**

If any section, clause or paragraph of this Ordinance be declared invalid by a court of competent jurisdiction, such action will not affect the validity of the Ordinance as a whole or its parts, other than the part declared to be invalid.

### **SECTION 13: Saving Clause**

Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing,

under any act or ordinance hereby repealed; nor shall any previously-existing legal right or remedy of any character be lost, impaired or affected by this Ordinance.