



## CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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### **Council Discretionary Funding**

Charter Sections: 2601(5), (10), (12), (18), and (20); 2604(a)(1)(a),  
(a)(1)(b), (b)(1)(a), (b)(2), (b)(3), (c)(6)(b), and (e);  
2605

Opinions Cited: 92-22, 93-21, 94-28, 99-6, 2008-2, 2008-6

### **Advisory Opinion No. 2009-2**

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The Conflicts of Interest Board (the “Board”) has received a number of requests on behalf of Members of the City Council for advice regarding their sponsoring of discretionary funding for various not-for-profit organizations. The Council Members have typically asked whether they may sponsor such funding for particular not-for-profit organizations with which they have some sort of affiliation. Since the Board anticipates receiving similar requests in the future, and since the subject of Council discretionary funding is a matter of public interest, the Board issues this public opinion to set forth its determinations in these matters.

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## Background

The City's procurement rules provide that "[t]he source selection requirements of these Rules *shall not apply* to contract awards made from line item appropriations and/or discretionary funds to community-based not-for-profit organizations or other public service organizations identified by elected City officials other than the Mayor and the Comptroller." 9 Rules of the City of New York Section 1-02(e) (emphasis added). Pursuant to this authority, Members of the City Council have for decades included in the City's annual budget, as passed by the Council, awards to community-based not-for-profit organizations ("CBOs"). Recipients of this funding number in the many hundreds and provide a wide range of services throughout the City. Award amounts are as low as \$500 and as high as hundreds of thousands of dollars. The annual total of such awards reaches tens of millions of dollars.

As noted above, the Board has received from the Council a number of requests for advice as to whether it would violate the City's conflicts of interest law (Chapter 68 of the City Charter) for a Council Member to sponsor a particular proposed award to a CBO with which the sponsoring Member had some sort of personal connection. The Board is advised that these requests were generated largely as the result of a Council initiative whereby Members disclosed in writing all their affiliations with entities for which they proposed to sponsor funding. While the Board in this Opinion identifies certain affiliations that will not disqualify a Member from sponsoring funding, the Board supports the Council's continuation of that initiative because, among other reasons, some of the outcomes the Board reaches herein turn on relatively close factual distinctions and because this Opinion does not address all possible scenarios.

In answering these requests for advice, the Board has addressed a number of questions arising under Chapter 68, some of which were of first impression, and has sought to give clear and comprehensive advice, for both City elected officials and for the public, as to impact of the City's conflicts of interest law on this discretionary funding process.

### Relevant Law

Charter Section 2604(b)(2) prohibits a public servant from engaging in “any business, transaction or private employment, or having any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.”

Section 1-13(d) of the Rules of the Board provides that it shall be a violation of Charter Section 2604(b)(2) for a public servant to, among other things, “aid, induce or cause” another public servant to “intentionally or knowingly” violate any provision of Section 2604.

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her position as a public servant “to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.” Charter Section 2601(5) defines those “associated” with a public servant to include a spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest. Charter Section 2601(12) defines an “interest” as “an ownership interest in a firm or a position with a firm,” and Charter Section 2601(18) defines “position” as including an “officer, director, trustee, employee or any

management position” in a firm, as well as serving as “an attorney, agent, broker or consultant” to a firm.

Charter Section 2604(b)(1)(a) provides as follows:

“A public servant who *has an interest in a firm* which is not prohibited by subdivision a of this section,<sup>1</sup> shall not take any action as a public servant particularly affecting that interest, *except that* (a) in the case of *an elected official*, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies.” (Emphasis added.)

As reflected in the Charter Revision Commission’s statement concerning Section 2604(b)(1)(a), the purpose of this exception, permitting *elected* officials to take official action that may affect their interests in firms, is that “[r]equiring elected officials to recuse themselves in these situations would prevent them from executing *the essential functions they have been elected to perform*” (Volume II, Report of the Charter Revision Commission, December 1986-November 1988, p. 174) (emphasis added). Accordingly, applying the terms of that Section, the Board in Advisory Opinion No. 92-22 permitted a Council Member to sponsor discretionary funding, and to vote on the budget bill containing that funding, for a not-for-profit organization on whose board of directors he sat *ex officio*, provided that, as Section 2604(b)(1)(a) requires, he disclosed his interest on the records of the Council and to the Board.

Two years later, in Advisory Opinion No. 94-28, the Board again considered application of the policy underlying Section 2604(b)(1)(a). There, a Council Member sought advice about actions he proposed to take that would not affect any interest of his own, but would assist a local

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<sup>1</sup> An interest that would be “prohibited by subsection a of this section” is an interest in a firm doing business with the City (or, in the case of a part-time public servant, with his or her own agency). *See* Charter Section 2604(a)(1).

real estate developer who was also a business partner of the Member in an unrelated venture – *i.e.*, a person “associated” with the Member within the meaning of Charter Section 2604(b)(3). On the face of Section 2604(b)(3), the actions the Council Member proposed to take would be prohibited precisely because they would benefit an “associated” person. However, citing the Charter Revision Commission’s statement, *supra*, that “[r]equiring elected officials to recuse themselves in these situations would prevent them from executing the essential functions they have been elected to perform,” the Board determined in Opinion No. 94-28 that, with disclosure to the Board and on the records of the Council, Council Members could take actions, such as voting on legislation, that were “essential functions they have been elected to perform,” even if such actions benefited associated persons.<sup>2</sup>

On the specific facts presented in Opinion No. 94-28, the Board determined that *sponsoring and voting* for City legislation, and resolutions in the Council promoting state legislation, that might benefit the developer with which the Member was associated, were permissible “essential functions,” but that contacting City agencies and community groups on behalf of the developer was not an “essential function.” The Board thus concluded that, with the disclosure specified in Section 2604(b)(1)(a), sponsoring and voting for such legislation would not violate the Charter, while the other proposed actions would violate the prohibition in Section

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<sup>2</sup> The Board added that disclosure was also required under Charter Section 2605, which states that “[n]o public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.”

2604(b)(3) against taking official action to benefit associated persons, a violation that could not be cured by the disclosure provided for in Section 2604(b)(1)(a).

### Discussion

In considering the application of these Charter provisions, and the Advisory Opinions discussed above, to the requests for advice recently presented and likely to be presented by Council Members regarding “members items,” the Board recognized one category as to which applicable precedent provided relatively clear guidance. Members who proposed funding that would benefit persons or entities with whom or which they had some kind of affiliation, but would benefit neither the Council Members themselves nor any person or firm with whom or which they were “associated” within the meaning of Charter Section 2601(5) – for example, a not-for-profit organization that employed the Member’s cousin or a contributor to the Member’s campaign committee, neither of which fall within the definition of “associated” parties set forth in Charter Section 2601(5) – were advised that sponsoring such funding would not violate Chapter 68.

A second category, lacking such clear precedent, involved proposed sponsoring of funding that, but for the possible application of the policy underlying Charter Section 2604(b)(1)(a), as applied in Advisory Opinion No. 94-28, would plainly violate Charter Section 2604(b)(3), since the proposed funding would benefit “associated” persons or entities (for example, an organization on whose board the Member sat or that rented office space from the Member). This group of requests presented a clear question for the Board: should the reasoning of Advisory Opinion No. 94-28 be extended to apply the policy underlying Charter Section

2604(b)(1)(a) to proposed discretionary funding that would benefit “associated” persons of the sponsoring Member, regardless of the nature of the association – *i.e.*, should the disclosure paradigm of Charter Section 2604(b)(1)(a) provide a safe harbor against a Section 2604(b)(3) violation in any or all such cases? That question, in turn, required the Board to determine whether the *sponsorship* of discretionary awards by Members of the City Council was, in the language of the Charter Revision Commission Report, an “essential function” Members were elected to perform.

In examining this issue, the Board noted that, unlike disqualification from *voting* on a Council bill, disqualifying a Council Member simply from *sponsoring* funding for a particular group would not disenfranchise a Council Member’s constituents. The Board accordingly concluded that *sponsoring* discretionary awards is **not** within the category of “essential functions” protected, with the requisite disclosure, by Charter Section 2604(b)(1)(a). In contrast, *voting* on a budget containing such awards sponsored by other Council Members, including grants that a Member himself or herself could not have sponsored because they benefited persons or firms “associated” with the Member, would be permissible, provided that the Member made the disclosure required by Section 2604(b)(1)(a). In so concluding, the Board has now *overruled* Advisory Opinion Nos. 92-22 and 94-28 to the extent that those opinions might be read to hold that sponsoring such awards is an “essential function” and therefore, in cases where the funding would benefit an “associate” of the sponsoring Member, a violation of Charter Section 2604(b)(3) might be cured by the disclosure provided for in Charter Section 2604(b)(1)(a). We note that while we address here only sponsoring of discretionary Council funding, the Board may

in the future be presented with analogous situations where it would likewise conclude that the sponsoring of actions that would confer a particular private or personal advantage on the sponsoring Member or his or her associates would not fall with the “safe harbor” of disclosure provided for in Charter Section 2604(b)(1)(a).

With this background, we address six different fact patterns, derived from the specific requests for advice submitted to the Board concerning Council Members’ sponsorship of discretionary funding. These six scenarios are not exhaustive, and in future cases the outcome may turn on the specific facts of the individual case. Council Members should therefore seek the advice of the Board whenever they are in doubt.

*Scenario 1: The Council Member has a paid position with the organization for which the Member proposes to sponsor funding.*

In this scenario, the Member is a paid employee (or paid officer or director) of the entity for which he or she proposes to sponsor a discretionary appropriation. To begin with, it should be noted that in many such cases, whether or not the Member proposes to sponsor Council funding, the Member’s status as a paid employee of a CBO funded by the City will, absent a waiver from the Board pursuant to Charter Section 2604(e), violate Charter Section 2604(a)(1)(b), which prohibits regular City employees from holding positions with any firm engaged in business dealings with the City.<sup>3</sup> Beyond the possible prohibition on holding such a

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<sup>3</sup> Council Members are, for the purposes of Chapter 68, “regular employees” of the City. See Charter Sections 2601(20) and 2601(10).

position, the Board has advised Council Members that they *may not sponsor* discretionary funding for CBOs for which they are paid officers, directors, or employees. The Member is plainly “associated” with the CBO within the meaning of Charter Section 2601(5), because the Member has a business or financial relationship with the CBO and therefore, under Charter Section 2604(b)(3), may not use his or her City position to benefit the CBO. Sponsoring funding for the CBO that employs the Member would accordingly violate Section 2604(b)(3), since, as noted above, the Board has now concluded that the “safe harbor” of Charter Section 2604(b)(1)(a) does not apply to sponsoring discretionary Council funding. However, with the disclosure provided for in Charter Section 2604(b)(1)(a), the Member may *vote* on a budget containing such an appropriation sponsored by another Member.<sup>4</sup>

Certain entities, such as CUNY and SUNY, have previously been determined by the Board to be governmental agencies, and not “firms” within the meaning of Charter Section 2604(a), thus permitting public servants to hold positions with such entities notwithstanding their business dealings with the City. *See* Advisory Opinion No. 99-6. Nevertheless, the Board held that public servants who hold positions with such entities are still subject to the provisions of Charter Sections 2604(b)(2) and (b)(3), and therefore are still “associated” with those entities and barred from taking official action to benefit them. Accordingly, while a Council Member may

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<sup>4</sup> The Board cautions, however, as it did in Advisory Opinion No. 93-21, that if Members were to propose a “reciprocal arrangement,” whereby two Members would each sponsor an appropriation for an entity for which the other could not permissibly sponsor funding, “such conduct could constitute a transaction in conflict with the proper discharge of the Council member’s official duties, in violation of Charter Section 2604(b)(2).” *See* Advisory Opinion No. 93-21 at 7. The Board also notes that the disclosure required to cure an otherwise impermissible vote must be made at the time of *each* such vote. For example, the Member must make the disclosure each year in the case of an organization that receives funding annually.

hold a position at a CUNY or SUNY college without a waiver from the Board, the Member would still be barred from sponsoring (but not from voting on) funding for that college.

*Scenario 2: The Council Member is an unpaid member of the board of directors of the entity for which the Member proposes to sponsor funding.*

In this scenario, the Member is an *unpaid* member of the governing body of the CBO for which the Member proposes to sponsor funding. In this case, just as in the case where the Member holds a paid position, the Member is “associated” with the CBO, because service on an entity’s board is a “business or other financial relationship” with that entity, and thus falls within the definition of “associated” in Charter Section 2601(5). *See* Advisory Opinion No. 2008-6 at 8. It would therefore violate Chapter 68 for a Member to sponsor an appropriation for such an entity, but, with the disclosure provided for in Charter Section 2604(b)(1)(a), the Member may vote on a budget containing such an appropriation sponsored by another Member.

The Board made one exception to this prohibition on sponsoring Council funding in cases where the Member’s service on the CBO’s board of directors is *ex officio* – *i.e.*, solely by virtue of his or her status as a Council Member. The Board addressed *ex officio* board memberships in Opinion No. 2008-6 in the context of public officials’ private-sector fundraising for not-for-profit entities. In that Opinion (at n. 4), the Board

recognize[d] an exception . . . where the official serves on the entity’s board of directors as part of his or her City job. Such *ex officio* positions may occur as a matter of law (*e.g.*, a statute provides for the appointment) or may occur *de facto* (*e.g.*, the official serves on the board only for his or her term in office). In such cases, the conflicts of interest law will not prohibit fundraising because, unlike the case where the official serves the not-for-profit in his or her personal capacity (*e.g.*, as an alum), the *ex officio* board member has no private interest that conflicts with his or her public duties.

Several Members who sought the Board's advice about sponsoring grants to entities on whose boards they serve asserted that they serve in an *ex officio* capacity. In some cases, the CBO was a business improvement district (a "BID") in the Member's Council district on whose governing board the local Council Member (along with representatives of the Mayor, the Comptroller, and the Borough President) is mandated to serve pursuant to Administrative Code Section 25-414(b). Thus, under the distinction made in Advisory Opinion No. 2008-6, because a statute provides for the membership on the governing body (*i.e.*, the *ex officio* position occurs *as a matter of law*), the Member is not serving the BID in his or her personal capacity, and therefore there is no association that would implicate the Charter's recusal requirement. Accordingly, the Board has advised that Members may sponsor grants for BIDs on whose governing boards they serve.

In other cases, although there was no statutory basis for the board membership, the Board determined that, under the specific circumstances, the Member's board service was still part of the Member's official responsibilities – *i.e.*, the membership was "*de facto*" *ex officio* under the criteria of Opinion No. 2008-6. The Board cautions that it will carefully scrutinize assertions of "*de facto*" *ex officio* board membership to insure that the exception does not engulf the prohibition. In so doing, the Board will look to such factors as whether the CBO is located in the Member's district, whether the organization's by-laws provide for membership by the Member representing that district, whether previous holders of the same Council seat also held a board position, and whether the Member held the position prior to taking office.

One case presented recently to the Board is illustrative: the CBO for which the Member proposed to sponsor funding was formed to support one of the City's parks and worked closely with the Department of Parks and Recreation in the operation of the park; the organization's by-laws provided that both the Parks Commissioner and the Council Member for the district adjoining the park (the Member's district) would serve on the board of directors; the Member's predecessor had served on the entity's board during his term of office; and the Member joined the board only upon his election to the Council. The Board in that case had little difficulty determining that the Member's service on the entity's board was part of his official City responsibility, that he therefore had an official rather than a personal association with the entity, and accordingly that it would not violate Chapter 68 for him to sponsor a discretionary appropriation to that CBO.<sup>5</sup>

*Scenario 3: The Council Member is an honorary member of the board of directors, or is a dues-paying member, of the CBO for which the Member proposes to sponsor funding.*

In this scenario, the Member is not an employee, officer, or voting member of the governing body of the not-for-profit organization for which the Member proposes to sponsor funding, but still has some kind of affiliation, albeit one involving no fiduciary responsibility. In one variation presented by several Members, the Member is designated as an unpaid "honorary" member of the board of directors of a not-for-profit organization that provides social services in

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<sup>5</sup> On the same rationale – that the Member's relationship to the CBO is not personal, but a function of the Member's City position – the Board has permitted Members to sponsor funding for CBOs from which they happen to rent space for their district offices, since the obligations under such leases are the City's, not the Council Member's.

the Member's district. In these cases, while the Member's name is listed in some publications of the organization as a member of its "honorary board," the Member has no legal rights or responsibilities, including no voting role, at the organization. In these cases, the Board has concluded that, unlike a voting member of the organization's governing body, the Member has no position at or "business or financial relationship" with the organization and is therefore not "associated" with the organization. Accordingly, the Member may sponsor funding for the organization.

In another variation, also presented by several advice requests, the Council Member does not occupy any leadership position at the funded CBO, but simply belongs to an association in the community where the Member lives, paying modest annual dues along with all other members of the organization. These community associations typically address a range of quality of life issues in their neighborhoods. In these cases, as in the case of the "honorary" board member, the Board has determined that the Council Member does not have a business or financial relationship with the CBO and accordingly may sponsor grants for the organization. The Board cautions, however, that if presented with a case involving a CBO to which the Council Member makes substantial personal contributions, or which is sufficiently small (for example, if it consisted of only ten members) that the Council Member must be considered an active participant, the Board might conclude that sponsoring a discretionary grant to the organization would in fact benefit the Council Member himself or herself, in violation of Charter Section 2604(b)(3).

*Scenario 4: A person “associated” with the Council Member is a paid employee or paid officer or director of the CBO for which the Member proposes to sponsor funding.*

In this scenario, the Member is “associated” within the meaning of Charter Section 2601(5) with an employee or paid officer or director of the organization for which the Member proposes to sponsor funding – for example, the Member’s spouse or sibling works for the organization. The Council’s funding will plainly benefit the organization, but the relevant question is whether the funding will also benefit *the associated party*. The Board considered a similar fact pattern in Advisory Opinion No. 2008-2, which involved voting by community board members:

The outcome in this situation depends on whether or not the associated person appears reasonably likely to benefit materially from the vote. In making that determination, the Board will look to such factors as the person’s position at the organization (the higher-ranking the person, the more likely that he or she will benefit), the size of the organization (the smaller the organization, the more likely that any given employee will benefit), and the nexus between the matter before the community board and the person’s work at the organization

Advisory Opinion No. 2008-2 at 8.

The Board applied the same analysis in responding to several requests for advice from Council Members who proposed to sponsor grants to entities that employed their close relatives. In one case, the Member’s spouse had a periodic part-time paid position at a large cultural organization in the Member’s district, and the Member proposed to sponsor a grant to assist in the renovation of one of the organization’s facilities. In that case, because the organization was a large one, because the Member’s spouse held a low-ranking part-time position, and because there was no nexus between the spouse’s work and the renovation to be aided by the proposed funding, it did not appear reasonably

likely that the Member's spouse would benefit from the proposed funding, and the Board accordingly advised that the Member could sponsor the funding. In another case, the Member's adult child was a mid-level employee at one facility, outside the Member's district, of a not-for-profit organization that provided recreational services to youth throughout the City. The Member proposed to sponsor a small grant to support the programs the organization provided within the Member's district. As in the first case, the Board concluded that the Member's child did not appear likely to benefit from the proposed funding and thus advised the Member that sponsoring the funding would be permissible. In contrast, in a case where the Member's spouse held a leadership post in a small not-for-profit organization for which the Member proposed to sponsor a relatively large general support grant, the Board concluded that the proposed funding would almost certainly benefit the Member's spouse and accordingly advised that sponsoring the grant would violate Chapter 68.

*Scenario 5: An "associated" person of the Council Member is an unpaid member of the board of directors of the CBO for which the Member proposes to sponsor funding.*

In this scenario, unlike the prior one, the Council Member's associate – for example, the Member's spouse or parent – is not a paid officer or employee of the proposed recipient of funding but is instead an unpaid member of the organization's board of directors. As in the prior scenario, there is no doubt that the organization itself will benefit from the proposed funding, but it is not the organization with which the Member is associated. The Member is associated with

the organization's unpaid board member, so the question is whether *the board member* will benefit from the proposed funding.

This scenario presents a question of first impression for the Board that has implications beyond discretionary funding by the legislative branch. For example, if an uncompensated not-for-profit board member could be said to benefit from funding for the organization, executive branch employees engaged in contract procurement and administration would likely be required to recuse themselves from matters involving not-for-profits on whose governing boards any "associated" persons served. However, convinced that uncompensated not-for-profit board members do not "benefit" from funding to the organizations they serve, and mindful that a determination to the contrary might well have the undesirable consequence of discouraging people from serving on not-for-profit boards, the Board concluded that the presence of someone "associated" with a Council Member as an unpaid member of the governing board of a CBO will not, standing alone, bar the Member from sponsoring funding for the organization. Consistent with this determination, the Board advised Council Members whose parent, spouse, or partner served as an unpaid board member of a not-for-profit organization that served the Member's district that sponsoring funding to support the organization's services would not violate Chapter 68.

*Scenario 6: A member of the Council Member's staff has an affiliation with the CBO for which the Member proposes to sponsor funding.*

In this scenario, the Council Member has no affiliation with the CBO to be funded, but one of the Member's subordinates has some connection with it. The Council's operating budget

permits each Member to hire a small number of employees to staff the offices that the Member maintains in his or her district and near City Hall. Since these employees are often residents of the Member's Council district, they sometimes have affiliations with not-for-profit organizations that serve the Member's district: some are members or unpaid board members of these CBOs; others have close relatives who are paid employees of these organizations; and others have close relatives who serve as unpaid board members of these organizations. In light of such affiliations of their employees, may the Council Member sponsor funding for these organizations?

There is no basis for concluding that a Council Member, indeed any public servant, is "associated" within the meaning of Charter Section 2601(5) with his or her City subordinates. Thus, even if funding for a CBO might benefit one of the Member's subordinates (as it might if, for example, the staff member were a paid employee of the organization), the funding would not, standing alone, benefit *the Council Member*, nor any person or entity associated *with the Member*. Accordingly, the Board has advised, a staff member's connection with the CBO to be funded will not, standing alone, bar the Council Member from sponsoring funding for that organization.

Nevertheless, Council staff members are also public servants subject to Chapter 68 and must take care not to violate Chapter 68 in their own rights. Thus, to begin with, as noted above, the staff member's mere status as a paid employee of a firm receiving discretionary Council funding would, absent a waiver from the Board, violate Charter Section 2604(a)(1)(a). Similarly, a Council staff member's status as an unpaid board member of a not-for-profit organization receiving a Council discretionary grant would, absent approval by the Council Speaker, also violate Chapter 68. *See* Charter Section 2604(c)(6)(b). Likewise, if the staff

member's affiliation with the CBO is in one of the categories, discussed above, that would have barred the Council Member from sponsoring funding if the Council Member had that affiliation (for example, if the staff member's spouse is in a paid leadership position at the CBO), then *the staff member must be recused from any involvement in the Council Member's sponsorship*. Finally, the Council Member must be careful not to induce a violation by his or her subordinate, which inducement would be a violation of Board Rules Section 1-13(d) *by the Council Member*. Accordingly, if the staff member has an affiliation with the CBO to be funded that would require his or her recusal and if the Member knows or should know of that affiliation, *the Member* will violate Chapter 68 by assigning any duties to the subordinate in connection with sponsoring funding for that CBO.

### Conclusion

1) A Council Member may not sponsor discretionary funding for an entity at which the Member is a paid employee, officer, or director; but, with disclosure on the official records of the Council and to the Board, the Member may vote on a budget containing such an appropriation sponsored by another Member.

2) A Council Member may not sponsor discretionary funding for an entity on whose board of directors the Member serves as an unpaid member; but, with disclosure on the official records of the Council and to the Board, the Member may vote on a budget containing such an appropriation sponsored by another Member. A Council Member may, however, sponsor

funding where the Member serves on the board of directors *ex officio* as part of his or her Council duties.

3) A Council Member may sponsor discretionary funding to a not-for-profit entity of which the Member is an “honorary,” unpaid, and/or non-voting member of the board of directors, if the Member has no legal rights or responsibilities in such a role. A Council Member may likewise sponsor discretionary funding to a community association of which the Member is merely a dues-paying member and where the association has a large number of members and the annual dues are nominal.

4) A Council Member may sponsor discretionary funding for an entity where the Member’s spouse, domestic partner, parent, child, sibling, or other “associated” person is a paid officer or employee only where it does not appear reasonably likely that the associated person will benefit from that funding. In making that determination, the Board will look to such factors as the associated person’s position at the organization (the higher-ranking the person, the more likely that he or she will benefit), the size of the organization (the smaller the organization, the more likely that any given employee will benefit), and the nexus between the proposed funding and the associated person’s work at the organization.

5) A Council Member may sponsor discretionary funding for a not-for-profit organization where the Member’s spouse, domestic partner, parent, child, sibling, or other “associated” person is an unpaid member of the board of directors.

6) A Council Member will not violate Chapter 68 merely by sponsoring discretionary funding for a not-for-profit organization where a member of the Member’s Council staff has some affiliation, because public servants are not “associated” with their subordinates within the

meaning of Chapter 68. However, the involvement of the Council staff members themselves in the sponsorship process may in some circumstances violate Chapter 68 by virtue of their affiliation, or an associated person's affiliation, with City-funded not-for-profits. So, too, Members who knowingly involve such disqualified subordinates in the sponsorship process may themselves violate Chapter 68's prohibition against inducing violations by other public servants.

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Because, as noted above, some of the conflicts in this area are fact-dependent, the six common scenarios discussed above are illustrative and not exhaustive. **Any Council Member who is in doubt about when sponsoring discretionary funding is permissible should consult with the Board before sponsoring funding for any organization with which the Member or any "associated" person may be affiliated.**



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