



PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
Council Chambers A, Keene City Hall
March 30, 2022
6:00 PM

A. AGENDA ITEMS

1. Danya Landis/Machina Kitchen and ArtBar - Request to Use City Public Parking Spaces - Parklets
2. Rules of Order – Section 15 – Conflicts of Interest - City Attorney

B. MORE TIME ITEMS

NON PUBLIC SESSION

ADJOURNMENT



CITY OF KEENE NEW HAMPSHIRE

ITEM #A.1.

Meeting Date: March 30, 2022

To: Mayor and Keene City Council

From: Danya Landis

Through: Patricia Little, City Clerk

Subject: **Danya Landis/Machina Kitchen and ArtBar - Request to Use City Public Parking Spaces - Parklets**

Council Action:

In City Council March 17, 2022.

Referred to the Planning, Licenses and Development Committee.

Recommendation:

Attachments:

1. Communication_Machina Kitchen & ArtBar

Background:

Machina Kitchen and ArtBar is requesting use of public parking spaces in front of her establishment for the location of parklets that would be used to expand the outdoor dining spaces for the restaurant.

[March 13, 2022]

Dear Honorable Mayor Hansel and City Council:

Machina Kitchen and ArtBar, located at 9 Court Street in downtown Keene, requests the permission to build a parklet so the community members can enjoy our food and beverages (including alcohol) outdoors. This past year our business has been able to strive through adaption, because of this we are thinking outside the box and reinventing our space to fit the needs and the wants of our customers. Even though restrictions have been loosening for COVID-19, many people will prefer outside seating indefinitely. The impact of having outdoor seating made our business last year, and we likely wouldn't be open today if it had not been for the opportunity. Beyond that, we believe that our patio made Court Street more inviting, lively, beautiful, and a more active space.

Last year, the city generously bagged four parking spots in front of our restaurant. This made it possible for us to have six 6-person tables and four 4-person tables in the public right of way (area marked in blue in the below photo). Blocking off these spots was incredibly helpful because the sidewalk in front of Machina is narrow and obstructed by several light posts and mature trees.

Left image: showing the location of the tables and parking spots / Right image: Our patio last season (2021)



We understand we have a limited amount of space accessible for a patio. Our sidewalk is narrowed by the trees and light posts, and we do not have the space to have a deck on the side or rear of our building (both are private property owned by the church). Building a parklet in the parallel parking spaces will expand our seating and create a more enjoyable dining experience in the warmer months. We would be continuing the beauty of downtown by bringing it up Court Street and allowing a safer environment for both our customers while eliminating the concern of the public pulling into the reserved parking spaces. Parklets are becoming very common in New Hampshire cities and have allowed restaurants to provide a more beautiful and verdant environment. Creative solutions, like parklets, have helped restaurants adapt to COVID-19 restrictions and encourage active and safe downtowns.

www.machinaarts.org
9 Court Street, Keene NH
(603) 903-0011

For inspiration, here are some fun options for parklets that have been created in other cities:



Now for the exciting part- Machina would like to create our own parklet within three parking spots in front of our restaurant at 9 Court Street!

Capacity: We plan to have five 6-person tables and four 4-person tables amounting in forty-six outdoor seats. We currently have capacity for ninety people inside the restaurant. Our bathroom configuration allows for a combined indoor/outdoor capacity of up to 150-persons.

Ground: The parklet will have a wooden deck, flush with the curb, that will allow for proper drainage and creates a smooth transition from the sidewalk to the parklet. The walking space between the curb and the building is eleven feet. The seating will start six feet away from the building to allow for handicap accessible public walking space on the sidewalk.

Base: The base of the fence will be heavy pressure treated lumber that will run the entire length of the fence. This will ground and hold the parklet from moving and will also support the fence. The nine-inch base will create transition between the deck and the road that is similar to the existing 6-inch sidewalk. The fence surrounding the parklet will be anchored to the deck.

Fence: The fence will be constructed using eight-foot tall 4x4 pressure treated posts, supporting either side of the 8-foot-long fence sections (made from painted plywood). Posts will have knee braces that connect to the framework adding extra support. The patio will be well lit with automatic LED lighting and reflective tape on the outside of the fence for visibility as well as cement planters in front of the fence facing Main Street.

Structure: Our parklet will be designed to be easily assembled and disassembled and will not affect the current city infrastructure. We have hired Landis Carpentry to design and build our parklet. They are a local professional contracting business that has experience with building houses and foundations. This section of Court Street has a twenty-five miles per hour speed limit and our parklet will be clearly visible from oncoming traffic in either direction.

www.machinaarts.org
9 Court Street, Keene NH
(603) 903-0011

Diagrams

Visual of parklet in space



Distance between the start of the parklet and the corner of Main St

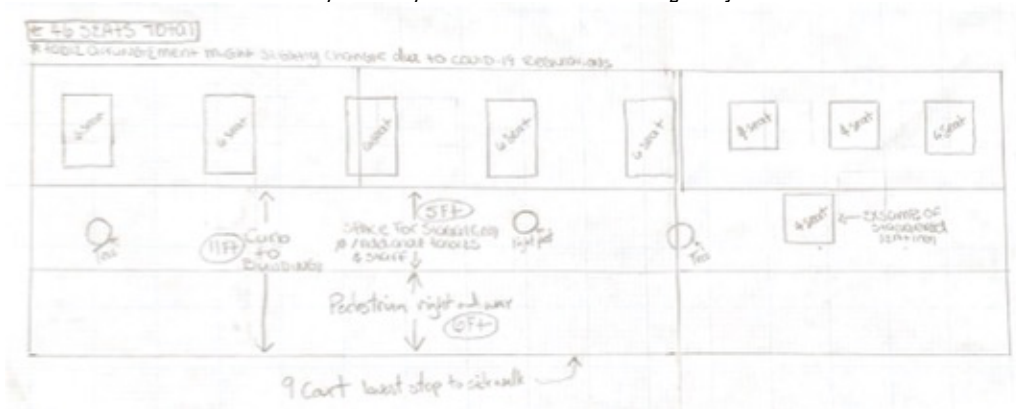


Distance of parklet from the intersection of Court St and Vernon St

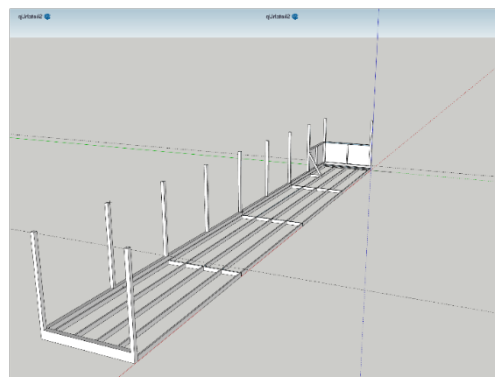
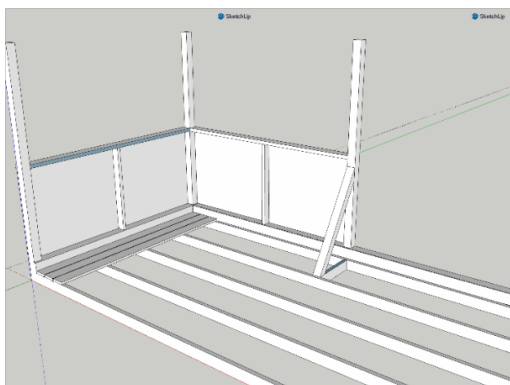
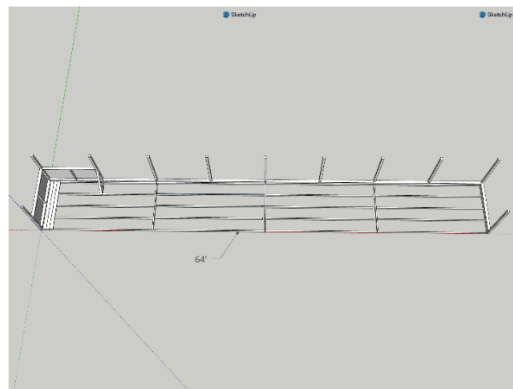
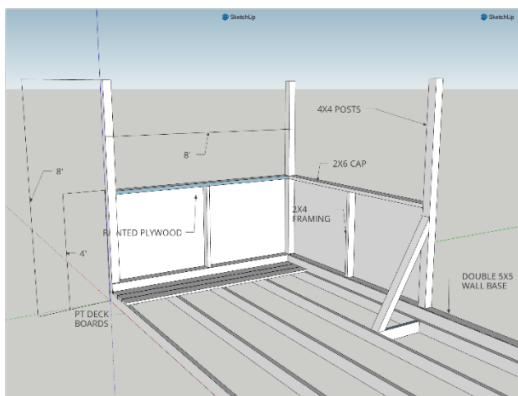


Diagrams cont.
Created by Landis Carpentry

Top view of parklet in relation to building & objects



Left image: dimensions of the structure (shown incomplete) / Right image: Top view of the full structure (shown incomplete)





We are incredibly grateful for your attention and consideration of our request. We are very invested in making our city an amazing space for all to thrive and we believe the allowance of our restaurant to create this parklet will only add to the beauty and vibrance of our city; as well as help our business grow and prosper.

I am happy to address any questions or concerns- I welcome you to call or email me,

My best,

Danya Landis, Machina Arts LLC
Partner, Co-Founder, Art Director
Direct: (603) 205-0135
Email: danya@machinaarts.org

03/13/2022
Date

www.machinaarts.org
9 Court Street, Keene NH
(603) 903-0011



CITY OF KEENE NEW HAMPSHIRE

ITEM #A.2.

Meeting Date: March 30, 2022
To: Mayor and Keene City Council
From: Planning, Licenses and Development Committee, Standing Committee
Through:
Subject: Rules of Order – Section 15 – Conflicts of Interest - City Attorney

Council Action:

In City Council March 17, 2022.

Voted unanimously to suspend the Rules of Order to allow action on the item. Voted with 12 in favor and three opposed to refer the item back to the Planning, Licenses and Development Committee for further discussion.

Recommendation:

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends that the City Attorney draft an amendment to Section 15 of the Rules of Order in accordance with the background notes of the Committee's discussion.

Attachments:

1. SECTION 15 - Conflict of Interest REDLINED

Background:

Chair Bosley said the Committee did a lot of work on this as well last year. She said this issue was important to her and she briefly recalled the moment she realized that the Conflict of Interest section of the Council's Rules of Order needed tuning-up. She said the instance regarded a Councilor requesting a budget increase for a non-profit board. She said he was green on the Council at the time, and it was her first budget season. She was caught off guard and was uncomfortable when it happened on the Council floor, and was unclear about her responsibility because it was not spelled out clearly anywhere, nor was the individual's responsibility to disclose. She realized then that the Rules needed to be clearer on what the responsibilities as fellow Councilors are when they encounter such a situation. Chair Bosley said that an important thing for her was adding the obligation for members to complete what the Rules refer to as a Statement of Interests, which "shall identify each person in a Councilor's household or persons, employers, and any boards and commissions, organizations, and associations, or other entity which person is a member of, and whether the person holds a leadership position in that organization. The Statements of Interest shall be available at the office of the City Clerk for public inspection." She said this Council had talked a lot about transparency and that this was just another opportunity to prove they were being transparent. She said there were a lot of grey areas, and they should always err on the side of caution. The Council would make the decision whether someone is recused. Still, the Chair said not having that information available publicly would diminish transparency. She said she loved the language that the

PLD Committee had worked on and thought it was smart. She thought it missed the mark because the greater document failed last year. She hoped that they could clean-up the language and get it back in front of the full Council again. She welcomed comments and questions from the Committee.

Vice Chair Giacomo said he was not on the Council when they voted on this matter last time. He continued stating that he has a serious problem with the end of the first full paragraph. He was fine with it saying “membership and organization generally, and not in the leadership capacity, shall not be considered personal conflict of interest.” However, he found the next sentence deeply problematic: “A conflict of interest shall be deemed to exist when a Councilor’s spouse, parent, child, or other member of the Councilor’s immediate family has a conflict of interest.” Vice Chair Giacomo said they had just finished defining a conflict of interest as either pecuniary or personal and thus having a child in a certain program that the City sends something to, that child would not be getting a benefit. He added that “child” is not restricted to kids and until very recently a majority of the Council had children of adult ages, who do not live at home. He thought that if there was going to be a family clause, it had to be strictly pecuniary interest, otherwise it would get into a complicated grey area very quickly. He thought the list he quoted could be pared down to the spouse or other person who contributes to the household income to keep it about finances. While that section did not work for him, he thought it was a good amendment overall.

Councilor Ormerod said he had a similar question, wanting to understand the intent, because it seemed far reaching to include children, parents, and siblings. In his case he has five siblings living in three different countries on a number of boards that could someday move to Keene. He really wanted to understand that it seemed that if the Council wants to disclose all the boards they are on, do they have to declare all the boards their family members are on too? He sought clarification and guidance on what seemed pretty onerous. Would it have to be done each January? Say he changes boards in the middle of the year, or his small company is sold to a larger global player. He thought pecuniary interest was a good idea to simplify things but he was truly trying to understand the intent to arrive at something less onerous.

Chair Bosley said that in her situation, she asked the Council to recuse her for her spouse’s employment over a financial matter, because the employer was requesting City funds. While she would not say which way she would have voted, but if she had voted against it, that could negatively impact her spouse’s employment if they thought his wife was unsupportive. She did not know whether she was far reaching, but she felt that there was a really close connection with spouses. However, she did not think this needed to go as far as parents and children; her mind went to adult children and not preschool. Thus, she wanted this section tuned-up and asked the City Attorney if it was possible. The City Attorney replied in the affirmative, stating that the language presented was the original Conflict of Interest clause, when there was no personal interest, only pecuniary. Over time, he said that questions and concerns were raised about personal aspects in addition to financial. The old Rule also included fiduciary obligations, which generally requires a lawyer to figure out. Whereas he said one does not have to be a lawyer to identify an individual who might be voting on something they could receive money from. Thus, he said the presented language was a way to try moving away from fiduciary aspects toward a more generalized personal aspect that people can understand. Back to the specific point, the City Attorney said he could craft language that basically says for spouses, parents, children or other members of the household, that it must be a pecuniary interest, to remove this issue; it does not matter whether an adult or minor child is in or out of the household, if there is a pecuniary interest and financial advantage it would be a conflict of interest. He would craft the language making it specifically pecuniary.

Councilor Ormerod still wondered about the Statements of Interest. He wondered about if a Councilor is a shareholder in a place, which are often private and non-disclosable, so he was trying to understand the intent of that. He was also trying to understand, for example, if a Councilor who

invests thematically and handles that through a third party, whether that is cleared from fiduciary. He wants to have people who to invest in the community, bring more business, create economic development, grow the tax base, and provide the quality of life. He thought some clarification on that would help. He asked the intent and burden/scope of the Declaration of Interests. The City Attorney said it was fairly narrow and it was modeled to a small extent on the statement that is required by individuals who sit on boards for the State of NH. This applies to identifying one's employer but that does not mean that you must disclose your status as a shareholder in a corporation. On the other issue of boards, commissions, or organizations of which you are a member, the City Attorney said that you would simply disclose those, but it only means something if you are in a leadership role, which must be disclosed. He said it was drafted with the intention to not reach further than that.

Councilor Ormerod asked how often the Statement of Interests must be updated and the City Attorney said annually each January. Councilor Ormerod posited that he was serving in a leadership capacity on a board that were absorbed by a larger corporation, whether he would have to notify the City Clerk immediately of an updated membership or just each January. The City Attorney said there were two reasons for this: 1) to let the world know to the extent that they want to know. It only must be updated once per year in January. However, if a Councilor's personal circumstances change during the year and now fall within the conflict of interest policy, it would be incumbent on the Councilor to disclose to the City Clerk and City Council, which would determine whether it was a true conflict. Chair Bosley thought it only really happened when a negotiation or a financial matter comes before the Council; she thought the Keene Young Professionals Network (YPN) was a good example, with Councilors sitting on that Board and coming to the Council asking for a license. She said there was no financial gain for the YPN for that license, but they are going to the Finance, Organization, and Personnel Committee seeking funds, which changes the conversations. The Chair thought that those were the subtle nuances that need to be exposed on when it is appropriate to disclose a conflict and to allow the Council to decide whether to err on the side of caution; as opposed to an individual sitting quietly with the knowledge that they could be doing something that could be perceived as un-transparent.

Councilor Ormerod said he could go for that. He had questions on the employment issue because he is self-employed and has sources of passive income like many others, all of which he said would be onerous to list. The City Attorney replied that if you are self-employed, you simply must list that, no clients or anything else.

The City Attorney noticed that the word "household" was undefined in the Rules, which he would rectify. So, he would make a defined phrase for "household" as the pecuniary interests regarding parents, children, or other immediate members of a Councilor's family.

Chair Bosley pointed out a housekeeping issue under quorum and remote participation, where there was still reference to a "Chairman," which should be changed to "Chair." The City Attorney agreed.

Vice Chair Giacomo thought that like anything, there were a lot of "devils in the details" on this matter. Regarding Councilors who sit on other boards, he said the Keene YPN instance presented a really curious situation because the YPN is not its own organization, but merely a sub-organization under Hannah Grimes, which is the actual fiscal agent and 501(c)3 partner for the YPN. Thus where the money for the festival was going got quite confusing. He said this brought up that one person on "our Board" was also on the Hannah Grimes Board and controls their checkbooks, bank accounts, and everything else. So, he said there could be "weirdness that arises with this." Ultimately, he said it was about being honest and declaring what you can and being open about. Vice Chair Giacomo said that last year at the FOP meeting vote on the YPN money, Councilors Giacomo and Remy offered, and the Council voted to recuse them. It was a split vote, however, with only half the Council seeing the conflict. He said it is about honesty and not about trying to find loopholes.

The Chair thought that ultimately, everyone wanted to walk away from making these decisions feeling good about the fact that everyone came to the table with good intentions. She said that was it for her. Additionally, Chair Bosley said she believed that even in the situation she cited earlier, there were not bad intentions, but it did not feel right to her. She said from the public perception, there were any number of ways to spin things and everyone is human and should just do as well as they can each day. The Chair thought this was a good move forward.

The City Attorney confirmed that a draft would go to Council and then would come back to PLD for one more vote, unless the Rules of Order were suspended at the Council meeting.

Councilor Remy said the only thought he had when getting into employment and sources of income was that “substantial” sources of income might be more appropriate. He thinks that if he received \$1 million each year from a park organization that was influencing his decision to make more parks in the City, but it was not his employer, it would still influence his decision and be a conflict of interest. He understood that it towed the line of campaign matters but thought it was conflict. The City Attorney clarified that the Councilor was saying that if for some reason a Councilor received funding in some fashion from a parks organization and there was a matter before the council dealing with a change to City parks, which Councilor Remy was saying would trigger a conflict of interest for him. Councilor Remy replied in the affirmative. He said, for example, if he received a significant campaign contribution as source of income and the donor came before the Council asking for something, he thought that would be a conflict of interest. He did not think anyone was getting substantial campaign contributions, but thought to Councilor Ormerod’s point, that there were other sources of income that can generate conflicts.

The City Attorney said at some point he would have to default because you cannot draft over everything. He had to default back to what they just talked about—you have to act in good faith and if you are not going to, there is no policy in the world that can catch that unless someone calls it out in another manner. Thus, he said he did not want to make the language so complicated that it is hard to understand and apply. The City Attorney thought the high points of risk were whether someone is getting money directly for something before the Council as a clear pecuniary interest that someone should not vote on or whether someone has a personal interest like the one Councilor Remy described where it is not directly pecuniary.

Chair Bosley provided an example. She posited that a Councilor had a piece of real estate they wanted to sell to the City, but their employment is not selling real estate. She did not think that Councilor should vote on the City’s decision to purchase the land. The City Attorney confirmed that would be a pecuniary interest. The Chair continued stating that invariably what the City Attorney was saying was that if an individual had an interest in some organization and a contract with the City were negotiated, it would also be a conflict.

The City Manager said they were trying to get at the idea of even if it is not one’s employer. For example, if a self-employed Councilor had a contract with Stantec and received a substantial amount of money from them, that would be a financial interest but not a direct employer. Councilor Remy said he was trying to account for those things outside a direct employer. He considered the Statement of Interest and the Chair agreed, asking how far that should go. The City Attorney reminded that they were conflating things at this point. He said the language regarding pecuniary interest is fairly broad and would cover the situation the City Manager just explained, but it would not fall into a Statement of Interest potentially, because it does not fall into one of those categories. The City Attorney continued that the Statement of Interest is sort of an alert to what these categories are, it does not remove the obligation for the individual to state that they have a conflict.

Chair Bosley thought education of the Council about this particular Rule was needed in addition to cleaning-up the language. She said the Rules are a lot to absorb as a new Councilors and ongoing education is important. The Chair requested comments from her peers on the Committee to ensure everyone was on the same page.

Councilor Johnsen stated that three Councilors were recently elected to the Keene School Board and wondered if there would be a point at which they have a conflict. The City Attorney said to remember that this is about pecuniary interest in a private financial matter that is generally unavailable to the public, which is the same reason that Councilors can vote on the budget even though they are taxpayers; it is why Councilors can vote on the Zoning Ordinance even though they may be subject to the Ordinance. Those members would need to state that they are on the School Board.

The Chair asked about the Wilson Dam project. The City Attorney stating that it would present a more direct issue because that is a direct cost to their employer and not to the Board they are on, so it would fall into that same sort of gap category. The City Attorney said that if a Councilor is in a leadership position on a Board that would benefit from a negotiation with the City then they should recuse.

The Chair said they could come up with a million scenarios. She thought having this conversation was the important part because it planted these seeds with people, who can ask further questions of the City Attorney. The Chair felt they had some direction and with no further comments, she entertained a motion.

Vice Chair Giacomo made the following motion, which Councilor Ormerod duly seconded.

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends that the City Attorney draft an amendment to Section 15 of the Rules of Order in accordance with the background notes of the Committee's discussion.

**PROPOSED AMENDMENT
RULES OF ORDER OF THE CITY COUNCIL**

SECTION 15. VOTING AND CONFLICT OF INTEREST. Every Councilor present when a vote is required shall state their vote except when the Councilor has a conflict of interest in the matter under consideration.

A conflict of interest shall be defined to exist when a proposed action, decision, or discussion ("~~Issue~~"); before the City Council for consideration, would affect the Councilor's pecuniary or personal interests. A pecuniary interest is any private financial interest, whether in the form of money, property or other commercial or financial consideration, the primary significance of which is an economic gain to the Councilor which is not otherwise available to the public generally ("~~Pecuniary Interest~~"). A personal interest is any non-pecuniary interest by a Councilor in the outcome of an ~~matter~~ Issue in which the Councilor has an interest, and which would (or could be reasonably perceived to) inhibit the impartial judgment of, or decision on, the ~~matter~~ Issue by a Councilor ("~~Personal Interest~~"). Membership in an organization generally, and not in a leadership capacity, shall not be considered a ~~personal~~ conflict of interest. A conflict of interest shall be deemed to exist when a Councilor's spouse, parent, child, or other member of the Councilor's immediate family living in the same household ("~~Immediate Family~~") has a Pecuniary conflict of interest in a proposed Issue.

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A Councilor with a conflict of interest on a Council agenda shall file with the City Clerk the written particulars of the conflict of interest for inclusion on the Council agenda. If the conflict becomes known to a Councilor during a meeting, the Councilor should immediately disclose the particulars of the conflict of interest. The question of whether or not a conflict exists will then be decided by a majority vote of the Councilors present. The Councilor who may have a conflict of interest shall not vote on the question of the existence of the conflict of interest. When a conflict of interest is determined by the City Council to exist, the member having the conflict shall be prohibited from participating in the discussion and the vote on the ~~matter~~ Issue. Except at a duly noticed public hearing, or a public meeting, in which the public is allowed to speak, no Councilor having a conflict of interest may discuss the ~~issue~~ Issue in which he or she has a conflict with any other Councilor in any other place or any other time. If a Councilor with a conflict of interest wishes to speak at a public hearing, or in a public meeting, the Councilor shall do so from the audience section of the meeting.

Any Councilor having reasonable grounds to believe that another Councilor has a conflict of interest may raise the issue on his or her own motion. The Mayor shall also be subject to the Rule on Conflict of Interest notwithstanding whether or not the Mayor is entitled to vote on an ~~matter~~ Issue. The question of whether or not a conflict of interest exists is subject to debate. The question will then be decided by the Council as set forth above.

The Mayor and Councilors shall file with the City Clerk in January of each year a Statement of Interests on a form prepared for that purpose by the City Clerk. The Statement of Interests shall identify for the Mayor and for each Councilor and for each other person in the ~~household~~ Immediate Family the person's employer, and for the Mayor and for each Councilor, any board, commission, organization, association, or other entity which the ~~person~~

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| Mayor and Councilor is a member of, and whether or not the person holds a leadership position in that organization. The Statement of Interests shall be available in the Office of the City Clerk for public inspection.

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