



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

August 11, 2022

**MEMORANDUM**

**SUBJECT:** Impartiality Determination to Participate in Certain Matters Involving the City of Boston

**FROM:** Justina Fugh  
Alternate Designated Agency Ethics Official and  
Director, Ethics Office

**TO:** Sanjay Seth  
Chief of Staff and Senior Advisor for Climate and Equity  
Region 1

As Chief of Staff and Senior Advisor for Climate and Equity for the United States Environmental Protection Agency (EPA) Region 1, you seek permission to participate in specific party matters involving the City of Boston. Within the last year, prior to being selected for this position, you served as Climate Resilience Manager for the City of Boston's Environment Department.

I understand that you are not vested in any defined benefit plan with the City of Boston so you do not have any financial conflict of interest. What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Chief of Staff and Senior Advisor for Climate and Equity, you have a "covered relationship" with your former employer, the City of Boston, pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year after you resigned from the City of Boston, which was July 7, 2022, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which the City of Boston is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). This cooling off period ends on July 7, 2023.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Chief of Staff and Senior Advisor for Climate and Equity in particular matters that involve the City of Boston with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the City of Boston. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – From October 2020 to July 2022, you served as Climate Resilience Program Manager for the City of Boston's Environment Department. In this role, you lead the climate resilience and adaptation portfolio for the City of Boston. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the City of Boston. States and local governments share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state and local governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – You are not vested in any defined benefit plan with the City of Boston so do not have any financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – As Region 1's Chief of Staff and Senior Advisor for Climate and Equity, your area of responsibility covers Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, Vermont, and 10 Tribal Nations. In your role, you are expected to communicate freely with all of the cities, states, and tribes in your Region, including the City of Boston.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the City of Boston that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Chief of Staff and Senior Advisor for Climate and Equity in such matters will be of importance to the Regional

Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in specific party matters that involve the City of Boston, but not on the very same specific party matters on which you worked on personally and substantially while employed by the City. In the event that EPA believes it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you are advised to consult with an ethics official to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while an ethics official considers whether the Agency's interest in your participation outweighs any impartiality concern. This determination will remain in effect for the remainder of your cooling off period.

While I have issued you this determination to interact with the City of Boston with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves the City as a specific party. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to consult with an ethics official should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or (202) 564-1786.

cc: David W. Cash, Regional Administrator, Region 1  
Deborah Szaro, Deputy Regional Administrator, Region 1  
Carl Dierker, Regional Counsel, Region 1  
LeAnn Jensen, Regional Ethics Counsel, Region 1