



AGENDA OF THE JOINT FINANCE/PERSONNEL COMMITTEE

**MONDAY, NOVEMBER 2, 2020, 3:00 PM
AMENDED**

Virtual Meeting. Public may join via Zoom.

A. ZOOM MEETING INFORMATION.

- I. This item contains documents which provide call in information and instructions for the Zoom Meeting.

B. Roll Call.

- I. Members: Ald. Barbara Dorff, Ald. Veronica Corpus-Dax, Ald. Bill Galvin & Ald. Brian Johnson.

C. Approval of the Agenda.

D. Approval of Minutes.

- I. Approval of the Finance Committee minutes from the October 13, 2020 meeting.
2. Approval of the Personnel Committee minutes from the October 13, 2020 meeting.

E. Regular Business.

- I. Consideration with possible action on the request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.
 - a. Engineering Aide
2. For consideration and possible actions the request from Green Bay Metro Fire Department to institute a rate increase for ambulance services.
3. Report to committee an after the fact approval for emergency Pine St. Ramp Repairs for the sum of \$56,985. Sole Source Attached.

4. Approval for purchase of refuse truck from Envirotech Equipment for the sum of \$248,875 to replace equipment that is unrepairable. Sole Source attached.
5. Approval for purchase of refuse truck from Fredrickson Supply for the sum of \$285,000 to replace equipment that is unrepairable. Sole Source Attached.
6. For consideration with possible action on a request to borrow \$340,000 from the State Trust fund loan for a five year term for Revaluation Assessment Service approved at the August 18, 2020 Common Council meeting.
7. Update with possible action on tax litigation matters pending before the Tax Appeals Commission and in Circuit Court.

The Committee may convene in closed session pursuant to Section 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

8. Resolution authorizing 2020 transfer of \$45,000.00 from contingency for legal expenses related to Georgia Pacific tax appeal for real estate and personal property.
9. Report of the Claims Committee.

The Committee may convene in closed session pursuant to Section 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Committee may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

10. A request by Ald. Wery to the Finance committee which states: Due to ongoing reasons of 'inadequate staffing' and 'prioritizing of tasks' in our Law Dept, I am requesting we hire City Ethics Inc, or a similar qualified party, to draft revisions to the city's Code of Ethics and Code of Conduct as recommended in their 2018 findings paid for by the City of Green Bay.

F. Review and approval of the Mayor's recommended 2021 budget including out-of-state travel requests..

1. Common Council (page 15).
2. Mayor's Office (pages 19-20).
3. Administrative Services (pages 29-30).
4. Information Technology and Equipment Replacement (pages 39-42).
5. Law (page 49).

6. Municipal Court (pages 54-55).
7. Human Resources (pages 62-63).
8. Community & Economic Development (pages 75-76).
9. Police Department (pages 84-86).
10. Fire Department (pages 95-97).
11. Public Works includes Engineering, Operations, Traffic and Equipment replacement (pages 105-112).
12. Parks, Recreation & Forestry and Equipment Replacement (pages 125-128).
13. Miscellaneous (page 133).
14. Sanitary Sewer (pages 143-145).
15. Parking Division (pages 147-149).
16. Storm Sewer (pages 151-155).
17. Transit (pages 160-161).
18. Bay Beach (pages 168-171).
19. Debt Service (pages 173-174).
20. Neighborhood Enhancement (pages 176-177).
21. Workers Compensation (page 179).
22. General Liability (page 180).
23. Health Insurance Escrow (page 181).
24. Revenue - General Fund (pages 183-193).
25. Revenue - Sanitary Sewer (page 194).
26. Revenue-Parking Division (page 195).
27. Revenue - DPW Equipment Replacement (page 196).
28. Revenue - Storm Sewer (page 197).
29. Revenue - Transit (pages 198-199)
30. Revenue - Bay Beach (page 200).
31. Revenue - Debt Service (pages 201-202).
32. Revenue - Equipment Replacement Funds (pages 203-208).
33. Revenue - Neighborhood Enhancement (page 209).

34. Revenue - Workers Compensation (page 210).
35. Revenue - General Liability (page 211).
36. Revenue - Health Insurance Escrow (page 212).

G. Informational.

1. The next Finance Committee meeting will be held on Tuesday November 17, 2020 at 4:30 PM.
2. The next Personnel Committee meeting will be held on Tuesday November 17, 2020 at 4:30 PM.
3. 2020 Contingency Account \$93,322.00.

H. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
- 2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Joint Finance/Personnel Committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

Virtual Meeting Instructions



Joint Finance/Personnel 11-2-20

Zoom Meeting Information

Join Zoom Meeting

<https://us02web.zoom.us/j/87902458781>

Meeting ID: 879 0245 8781

Passcode: 928483

One tap mobile

+13126266799,,87902458781#,,,,,0#,,928483# US (Chicago)

+19292056099,,87902458781#,,,,,0#,,928483# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 879 0245 8781

Passcode: 928483

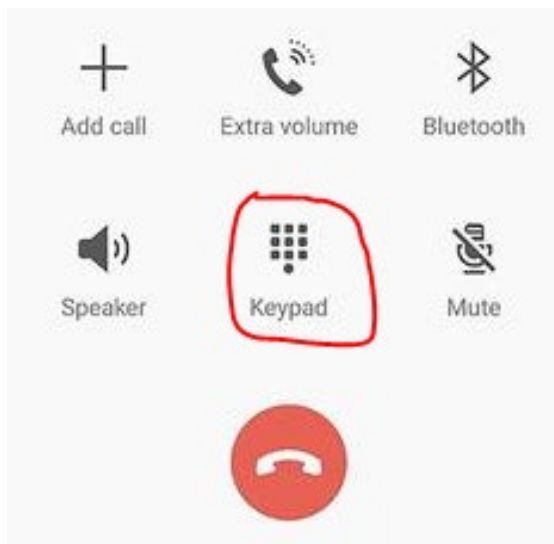
Find your local number: <https://us02web.zoom.us/j/87902458781>

Additional Information

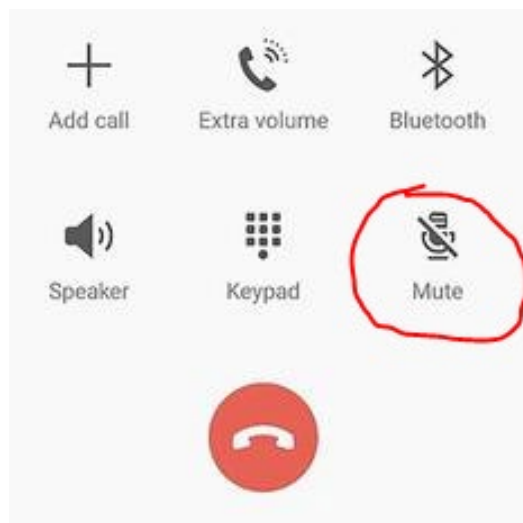
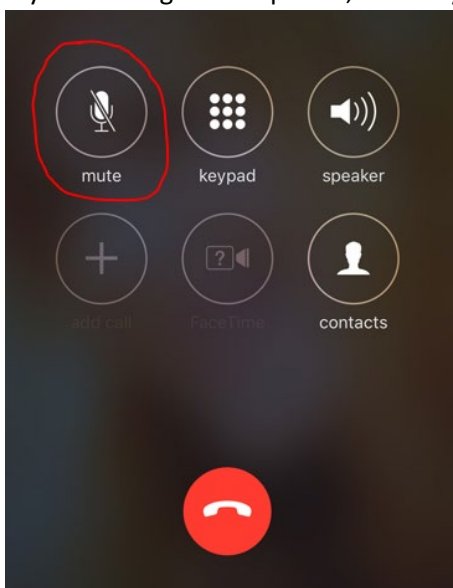
1. Wisconsin Open Meetings Law still applies
 - a. Persons interested in speaking to an item must give their name and address
 - b. Committee/Commission/Board members will still follow *Roberts Rules of Order*
2. All zoom meetings will have a password in the instructions. Please enter when prompted.
3. Please log into the Zoom meeting 10 minutes before the meeting starts to ensure proper technology is working.
 - a. If you are a Board Member, please log into [CivicClerk](#) with a computer, laptop, or tablet device.
4. Once you are in the meeting please mute yourselves.
 - a. You may unmute yourself when you are called upon to speak.
5. Waiting room
 - a. When you call in, all callers/participants will be placed in a “waiting room.”
 - b. Persons on the agenda will be admitted to the meeting, and then once the item is concluded, the host will permanently mute you from the meeting (you can still hear the meeting).
6. Using Zoom with a tablet or computer
 - a. Tablet—you will be asked to sign in. Download the app either with the Apple Store or the Play Store
 - b. Computer—you will be asked to sign in. You may download the app or click on the link to open Zoom in your browser.
7. Registering
 - a. The host may ask you to register for the meeting. A registration link will be sent to you along with the invite. You’ll receive another email confirming that you’re registered for the meeting.
 - b. If you’re using a phone, your registration will still be tied to an email.
8. Raising your hand
 - a. Committee members—you can either use CivicClerk and request to speak or you can “raise your hand” in the zoom meeting (you’d need to use a computer or tablet) to let the host know you’d like to speak. You can also un-mute yourselves and start speaking.
 - b. Persons on the agenda—you can “raise your hand” but you’d need to use a computer. You will be allowed to speak, per Wisconsin Open Meetings Rules, once the committee has “opened the floor for interested parties to speak.” Once the committee is finished with your agenda item, the host will mute you permanently, unless the committee opens the floor again.
9. What devices should I use?
 - a. Smart phone (please see more detailed instructions on page 3)
 - b. Land line
 - c. Tablet—well in advance of the meeting, please download the Zoom Meeting app before you join a meeting by using either the Apple Store or the Play Store. You will be asked to input your name, thus identifying you for the meeting. You’ll also be asked to verify your email.
 - d. Computer—well in advance of the meeting, please download the Zoom Meeting app, but you can also click on a link to open the Zoom Meeting in your browser. You will be asked to input your name, thus identifying you for the meeting.
 - e. For tablet and computer users—if you download the app you will be asked to verify your email.
10. Zoom etiquette
 - a. Muting yourselves when you’re not talking will prevent your background noise from interfering with others’ ability to listen to and participate in the meeting.
 - b. If you’re using a telephone, please identify yourself with your phone number and name before you speak. Zoom meeting hosts can see only your telephone number and will ask you to identify yourselves.
11. Closed session
 - a. Persons in the Zoom meeting will be put into a waiting room while the committee meets in Closed Session. Participants will be admitted back into the Zoom meeting once the committee reconvenes in Open Session.
 - b. Persons watching live on YouTube will see a gray screen with the City logo during closed session.
12. Persons interested in attending anonymously or listening to the meeting may call in by dialing *67 followed by the phone number above.

Calling into the Zoom meeting using a smartphone

1. Dial the phone number listed at the beginning of this document.
2. When prompted, enter the Meeting ID number followed by #
 - a. If you're using a smartphone, you can access the keypad by clicking "Keypad" on your screen



3. Once you are in the meeting, notify the meeting host that you are in and state your name.
4. If you do not need to talk, please make sure your phone is on **Mute**
 - a. If you're using a smartphone, look at your screen and click the Mute button



- b. If you're using a computer, you should see a Mute button in the Zoom application





Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.1

Consideration with possible action on the request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.

a. Engineering Aide

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Request to Fill Memo 11.2.2020
2. Engineering Aide - Paque

MEMORANDUM



Human Resources Department

To: Personnel Committee
Joe Faulds, Human Resources Director

From: Sarah Fidler
Human Resources Generalist

Re: Request to Fill Vacant Positions

Date: November 2, 2020

The Human Resources Department is requesting authorization to fill the following replacement positions approved as part of the 2020 budget and all subsequent vacancies resulting from internal transfers. The justification reports are attached.

- Engineering Aide – Replacement position due to the resignation of Jonathon Paque effective October 23, 2020. Salary range: \$18.73 – \$23.96 per hour.

**Position Fill Request
Justification Report
October 27, 2020**

Position Title: Engineering Aide

- 1. If this position is a replacement position, please indicate the reasons for the vacancy. If this is not a replacement position, please indicate the reasons for requesting the position.**

 X Replacement Position _____ Not a Replacement Position

This is a replacement position for Jonathon Paque who resigned on October 23, 2020.

- 2. Is this position included in the current budget? If not, please list how this position will be funded (grant, internship, etc.). Please list the salary range of the position.**

Yes, this position is funded through two (2) different funding sources: Sanitary Sewer District budget and Storm Water Utility budget. Salary range: \$18.73 - \$23.96/hour.

- 3. Please list the functions and any special information regarding this position.**

Inspects routine public works construction projects for compliance with the plans and specifications for the project.

Performs sanitary sewer and storm sewer CCTV review, makes preliminary determination as to defects and possible repairs necessary.

Performs CAD and manual drafting assignments and other office work as directed.

Performs basic GIS data entry.

Prepares necessary reports and maintains records related to inspection of public works construction projects and the storm water facility maintenance program.

Performs concrete field testing and coordinates and schedules testing of materials with material testing consultant. Assists Storm Water Technician with collection and field measurement of storm water outfall samples.

Operates surveying, concrete testing, and other equipment as necessary.

Assists Engineering Technicians on engineering surveys by serving as an instrument person, and rod person, and by performing other manual tasks such as driving stakes, clearing brush from survey lines, and searching for survey monuments as directed.

Assists with the development and implementation of various education programs, including those related to storm water information and education programs.

Works with other City Departments to coordinate and assist with various Public Works projects/programs

- 4. Does the position generate revenue or reduce expenses? If so, provide an estimated amount.**

The position does not generate revenue.

- 5. Please explain why current staff is unable to absorb duties of this position.**

One (1) Engineering Aide was eliminated from the staff in 1997 as well as a related Engineering Technician position in 2007. Although engineering operations have been improved by technology, the size of the City continues to grow and the new storm water permit along with the EPA Consent order has imposed additional duties that will be shared by the Engineering Utility Division Staff.

- 6. If duties of position are presently being done, how are they done?**

Remaining staff are attempting to continue doing the primary duties and tasks in as efficient manner as possible. Presently, the assigned duties and tasks are not being completed.

- 7. What service would be reduced or eliminated if this position is not filled?**

If the position would be eliminated, sanitary sewer and storm sewer CCTV review would be hampered in that other already busy staff would need to absorb those additional tasks which are already being impacted. Additionally, aiding with CADD and GIS would also be impacted.

- 8. What are the alternative methods and costs of accomplishing the work?**

Consultants are used to supplement staff for specialized projects. However, it is more cost effective, and better continuity is maintained, with a City employee that knows and understands DPW Engineering policies and procedures.

- 9. Are there union issues?**

None.

- 10. Other supporting comments.**



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.2

For consideration and possible actions the request from Green Bay Metro Fire Department to institute a rate increase for ambulance services.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. GBMFD Proposed Billing Rates
2. 2020 GREEN BAY SCT COMBINED REC RATES 10.26.2020



“BETTER BY THE BAY”

Metro Fire Department
EMS, Training & Support Services

Ryan Gibbons
Assistant Chief

Date: 10/28/2020
To: Diana Ellenbecker – Green Bay
Brad Lange - Allouez
Diane Wessel – Bellevue
From: Assistant Chief Ryan Gibbons
Subject: Proposed GBMFD Ambulance Rate Increase

LifeQuest Services provides ambulance billing services for the Green Bay Metro Fire Department (GBMFD). LifeQuest reviews all ambulance reports for proper billing and coding compliance. They submit invoices and collect payment from customers that GBMFD has the privilege to serve. These claims are submitted to Medicare, Medicaid, private insurance and private pay individuals. As LifeQuest provides billing services to multiple clients across the country they are the subject matter experts in this field.

LifeQuest does their best to maximize our reimbursements for services using multiple different methods, providing timely and accurate claims. One of the ways that they do this is to survey other ambulance service billing rates in the region. They then provide us with this information, and make recommendations for acceptable rates to maximize our reimbursement levels.

In this revision LifeQuest has suggested that we add a SCT Base Rate (Specialty Care Transport). GBMFD does not provide this service in normal day to day operations. It is becoming more frequent during the pandemic for GBMFD ambulances to transfer patients between facilities. These transfers, depending on services provided, can be billed at the SCT higher rate if the criteria is met to meet this level of service. If this billing rate level is not in place it is not able to be used, thus foregoing additional revenue funds.

It is the recommendation of the GBMFD leadership to institute the rate increases as put forth by LifeQuest as noted in the attachment. The new rates will generate increased revenue for each municipality served by GBMFD ambulance services. The conservative estimate is \$6000 annually to the City of Green Bay based upon patient payer mix.

It is also recommended that a lift assist fee be established for staffed care facilities (ie. Nursing Home and Assisted Living).



“BETTER BY THE BAY”

Metro Fire Department
EMS, Training & Support Services

Ryan Gibbons
Assistant Chief

Lift Assist with no medical treatment or assessment fee per calendar year:

1 to 3 - no fee

4 to 5 - \$150

6 to 7 - \$300

8 to 9 - \$450

Each additional \$500 per incident

Invoices will be billed to the facility and not the patient

Green Bay Metro Fire Dept – Allouez

Recommended Rates EMT-P with SCT

See Attached Survey for Comparisons, including Geo-Zip
October 26, 2020

<u>BLS Base Rate</u>	<u>Current</u>	<u>Recommended New Rate</u>
➤ Resident	\$ 725.00	\$ 750.00
➤ Non-Resident	\$ 830.00	\$ 850.00
▪ Non-Resident rates are reimbursed by virtually all-private insurance companies.		

ALS1 Rates – ALS1 Base Rate would be charged when it is medically necessary or an assessment by an advanced life support (ALS) provider is given and does one or more ALS interventions.

➤ Resident	\$ 825.00	\$ 900.00
➤ Non-Resident	\$ 950.00	\$ 1,025.00
▪ Non-Resident rates are reimbursed by virtually all-private insurance companies.		

ALS2 Base Rates – ALS2 Base Rate would be charged when it is medically necessary to administer at least three different medications by intravenous push/bolus or continuous infusion or provide one or more of the following ALS procedures; manual defibrillation/cardioversion, endotracheal intubation, central venous line, cardiac pacing, chest compression, surgical airway, intraosseous line.

➤ Resident	\$ 950.00	\$ 1,155.00
➤ Non-Resident	\$ 1,080.00	\$ 1,200.00

SCT Base Rate - SCT Base Rate would be charged when it is medically necessary for a critically injured or ill patient to be transferred from one hospital to another hospital. The level of service being provided has to be beyond the scope of the paramedic. This is necessary when a beneficiary’s condition requires ongoing care that must be provided by one or more health professionals in an appropriate specialty area, e.g., nursing, medical respiratory care, cardiovascular care, or a paramedic with additional training.

➤ Resident	\$ 0.00	\$ 1,300.00
➤ Non-Resident	\$ 0.00	\$ 1,425.00



N2930 State Road 22 Wautoma, WI 54982
Phone: 888-777-4911 Fax: 855-642-7228
www.lifequest-services.com

Green Bay Metro Fire Dept – Allouez

Recommended Rates EMT-P with SCT

See Attached Survey for Comparisons, including Geo-Zip
October 26, 2020

Mileage – Charges for mileage must be based on loaded mileage only, from the pickup of a patient to arrival at the destination.

➤ Resident	\$ 13.00	\$ 16.00
➤ Non-Resident	\$ 13.00	\$ 16.00

BLS On Scene Care – This is charged when your service responds to a call, provides treatment, and the patient refuses transport and/or is simply not transported.

➤ Resident	\$ 350.00	\$ 375.00
➤ Non-Resident	\$ 450.00	\$ 475.00

ALS On Scene Care – This is charged when your service responds to a call, provides treatment including an ALS assessment or at least one ALS intervention. The rate should equal the ALS base rate because of the level of service given, example being, treating a diabetic who then does not require transport.

➤ Resident	\$ 450.00	\$ 475.00
➤ Non-Resident	\$ 550.00	\$ 575.00

Reminder – By increasing your rates; with insurance companies, your service’s approved reimbursable rates should increase.

- Yes, we would like to adopt the recommended rates, adding SCT, effective _____, 20_____.
- No, we would not like to adopt the recommended rates. _____, 20_____.
- Yes, we would like to adopt the rates with changes indicated, effective _____, 20_____.

Signature

Title

Date

Print Name



N2930 State Road 22 Wautoma, WI 54982

Phone: 888-777-4911 Fax: 855-642-7228

www.lifequest-services.com

Green Bay Metro Fire Department Rate Survey for SCT Rates 10/26/2020

Description Charge	Ashwaubenon Public Safety Level of Service: EMT-P	De Pere Fire Rescue Level of Service: EMT-P	Kaukauna Fire Dept Amb Service Level of Service: EMT-P	City of Manitowoc Fire Dept Level of Service: EMT-PCC	Two Rivers Fire Dept. Level of Service: EMT-PCC	Green Bay Metro Fire Dept Level of Service: EMT-P	Green Bay Metro Fire Dept- Allouez Rates	Average	Recommended Rates with SCT Rates	Increase
Service in Same Geo-Zip Area										
BLS - Resident	\$650	\$590	\$660	\$805	\$725	\$725	\$725	\$697	\$750	\$25
BLS - Non Resident	\$850	\$780	\$785	\$905	\$825	\$830	\$830	\$829	\$850	\$20
ALS1 - Resident	\$750	\$710	\$845	\$860	\$850	\$825	\$825	\$809	\$900	\$75
ALS1 - Non Resident	\$900	\$838	\$970	\$960	\$1,000	\$950	\$950	\$938	\$1,025	\$75
ALS2 - Resident	\$875	\$870	\$875	\$960	\$1,025	\$950	\$950	\$929	\$1,155	\$205
ALS2 - Non Resident	\$1,000	\$1,000	\$1,000	\$1,060	\$1,150	\$1,080	\$1,080	\$1,053	\$1,200	\$120
SCT - Resident	* Note: Average is based on twelve other services in Wisconsin that have SCT rates. See accompanying spreadsheet.					N/E/C	N/E/C	\$1,496	\$1,300	\$1,300
SCT - Non Resident						N/E/C	N/E/C	\$1,615	\$1,425	\$1,425
Mileage - Resident	\$15	\$16	\$15	\$16	\$20	\$13	\$13	\$15	\$16	\$3
Mileage - Non Resident	\$16	\$16	\$15	\$16	\$20	\$13	\$13	\$16	\$16	\$3
Oxygen	\$75	\$75	\$60	\$65	B/P	B/P	B/P	\$72	B/P	B/P
Spinal Immobilization	B/P	\$25	\$150	\$150	B/P	B/P	B/P	\$108	B/P	B/P
BLS On Scene Care - Res.	\$250	\$255	\$150	\$310	\$275	\$350	\$350	\$265	\$375	\$25
BLS On Scene Care-Non Res.	\$300	\$255	\$250	\$360	\$325	\$450	\$450	\$323	\$475	\$25
ALS On Scene Care - Res.	\$400	\$485	\$250	\$310	\$500	\$450	\$450	\$401	\$475	\$25
ALS On Scene Care-Non Res.	\$600	\$485	\$300	\$360	\$600	\$550	\$550	\$508	\$575	\$25

Service bundles disposables
B/P = Bundled Pricing
N/E/C = No Existing Charge

Updated: 10/26/2020 clg

Co# 257
Brown County
Green Bay Metro Fire Dept.
Chief Ryan Gibbons
501 S. Washington St., Green Bay, WI 54301



N2930 State Road 22 Wautoma, WI 54982
Phone: 888-777-4911 Fax: 855-642-7228
www.lifequest-services.com

SCT COMPARISON RATES FOR RATE SURVEY

GREEN BAY METRO FIRE DISTRICT

10/26/2020

	LEVEL OF SERVICE	SCT RESIDENT	SCT NON-RESIDENT
SERVICE IN WISCONSIN WITH SCT RATES			
SERVICE IN SAME GEO-ZIP			
Ashland (City of)Fire Dept	P-CC	\$1,775	\$1,925
Baldwin Ambulance Service	P-CC	\$1,936	\$2,068
Beaver Dam Fire Dept.	P-CC	\$1,450	\$1,550
Chippewa Fire District	P-CC	\$1,825	\$1,950
Green County EMS, Inc.	P	\$1,550	\$1,650
Lisbon (Town of) Fire Dept. EMS	P-CC	\$1,300	\$1,400
Manitowoc (City of) Fire Dept.	P-CC	\$1,085	\$1,185
Marshfield Fire and Rescue Dept.	P-CC	\$1,250	\$1,500
Nekoosa Ambulance Service	P-CC	\$1,550	\$1,575
Reedsburg Area Ambulance	P	\$1,800	\$2,000
United Emergency Medical Response	P-CC	\$950	\$950
Wausau Fire Dept. (City of)	P-CC	\$1,475	\$1,625
AVERAGE		\$1,496	\$1,615



N2930 State Road 22 Wautoma, WI 54982

Phone: 888-777-4911 Fax: 855-642-7228

www.lifequest-services.com



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

Calvin Winters

AGENDA ITEM # E.3

Report to committee an after the fact approval for emergency Pine St. Ramp Repairs for the sum of \$56,985. Sole Source Attached.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Pine St. Ramp Repairs Single Source- Emergency

City of Green Bay, Wisconsin
REQUEST FOR APPROVAL OF "NO SUBSTITUTE" PURCHASE SPECIFICATION

TO : Purchasing Division/Administrative Services

DATE: 10/19/20

FROM: Department/Division *Public Works - Parking Division*

REQUISITION #

List "No Substitute" Item(s) here:

Purchase of repair services for failed post-tensioning tendons in Pine Street Ramp. Damage to tendons has eliminated factor of safety for Level 2 of the ramp, jeopardizing our ability to continue to use the ramp at Level 2 and allow vehicles to travel above Level 2 to higher levels.

Select One:

- 1) One Time Purchase Estimated Cost: \$ 56,985
- 2) Annual Commodity purchase: Estimated annual cost: \$
- 3) Item may be purchased again: Indicate term: Estimated Annual Cost: \$
- Example: 1 year, indefinite, etc. Long term requests will be reevaluated periodically)

We request approval of a "NO SUBSTITUTE" specification for the purchase of the subject item(s)

Check appropriate justification(s). Provide DETAILED explanation(s) below.

1. Sole Source – The below signed has searched the market and verified that no comparable item is available.
2. Single Source – Although comparable items are available, THIS is the only brand/model that will work.
3. Item(s) is (are) only acceptable replacement part(s) known for _____ (Identify)
4. Continuity of design is overriding consideration (ex: playground equipment or street furniture)
5. Safety: *Damage to Pine Street Ramp structural members - specialty repairs*
6. Other:

*Explanations shall contain sufficient information and justification for the items to be considered and approved as "NO SUBSTITUTE" items. Failure to do so will result in the request being denied and returned to the originator.

*Recommending Department Head will be available to defend said recommendation to the appropriate City Committee and/or Common Council.

PLEASE EXPLAIN YOUR REASONS FOR THIS REQUEST (additional info may be attached on a separate sheet):

Post-tensioning tendons in the Pine Street Ramp were discovered to be damaged and not functioning. City contracted with Walker Consultants to determine the degree and extent of damage. Walker has determined that damage to the post-tensioning tendons has eliminated all factor of safety from ramp design. Continued operation could exceed design capacity, resulting in structural failure. Option evaluated were to close off affected sections of ramp until project could be scoped and competitively bid. This would result in a loss of approximately one-quarter to one-third of the ramp capacity (more than 400 stalls). It is unknown how long the damage has been in place and whether or not we can properly brace the structure. This type of repair is also only performed by specialty contractors. Given the need to make the ramp safe, and the unique nature of the repairs, recommendation is to consider the situation as an emergency and award a sole source contract to Western Specialty Contractors.

Approvals:

Requestor:

Date:

Department Head:

Date: 10/19/2020

Purchasing Manager:

Date: 10/20/2020

Steven Grenier

From: Trista Hobbs <Trista.Hobbs@greenbaywi.gov>
Sent: Thursday, October 15, 2020 7:10 AM
To: James Brunette; Steven Grenier
Subject: FW: Green Bay Pine Street PT Restoration
Attachments: Pine Street Ramp - PT Repair 2020-Proposal.pdf

I would like to get this done asap as an emergency. Most of these are within the slab that we currently have open or in the location of the shoring. Let me know your thoughts and how I should proceed.

Thanks,

Trista Hobbs

Assistant City Engineer – Special Projects
City of Green Bay
Department of Public Works
100 N. Jefferson Street, Room 300
Green Bay, WI 54301
Office: (920) 448-3114
Cell: (920)660-7508
tristaho@greenbaywi.gov

From: David Grandbois <DavidLG@westernspecialtycontractors.com>
Sent: Wednesday, October 14, 2020 7:59 PM
To: Retterath, Michael <MRetterath@walkerconsultants.com>
Cc: Trista Hobbs <Trista.Hobbs@greenbaywi.gov>; Jeff Lambrecht <Jeff.Lambrecht@greenbaywi.gov>; Froemming, Scott <SFroemming@walkerconsultants.com>
Subject: RE: Green Bay Pine Street PT Restoration

Mike & Trista,

Attached is our proposal based on the information you provided below for your review.

If you have any questions or concerns please let me know.

Regards,

David Grandbois | Assistant Branch Manager

Western Specialty Contractors

111 Lowry Ave., NE | Minneapolis, MN 55418

Cell: 612.685.7107 | Office: 612.781.7100 x2612 | Fax: 612.781.7177



CAREERS



LINKEDIN



PROJECT
VIDEOS



BLOG



WEBSITE



EMAIL

From: Retterath, Michael <MRetterath@walkerconsultants.com>
Sent: Tuesday, October 13, 2020 8:40 AM
To: David Grandbois <DavidLG@westernspecialtycontractors.com>

Cc: Trista Hobbs <Trista.Hobbs@greenbaywi.gov>; Jeff Lambrecht <Jeff.Lambrecht@greenbaywi.gov>; Froemming, Scott <SFroemming@walkerconsultants.com>

Subject: Green Bay Pine Street PT Restoration

Importance: High

Dave,

Please see attached plan for locations of broken PT at the Pine Street parking ramp.

We have 11 tendons broken as noted at Level 2 and Level 3 with one single tendon location to be verified at Level 3. Please provide a cost per tendon for the following scope:

- Remove and replace existing anchors at interior construction joint. Include rapid-repair mortar and backup/hairpin mild reinforcing. Provide new encapsulated anchor system. (Traffic membrane by City)
- Provide coupler to existing tendon at exterior curb. Provide shrink-wrap encapsulation at coupler. (concrete pour-back and membrane by City)
- Provide center-stressing splice at inflection point. Provide shrink-wrap encapsulation at coupler. (concrete pour-back and membrane by City)
- Provide approximately 45 feet new ½" diameter new tendon with grease. Stress to 80% Fu.

Walker scope:

- Provide limited CD's for design build with Western
- Provide pre-construction conference call (City staff/Western/Walker attend)
- Provide calculated elongations and gauge pressure to field (City and Western Staff)
- Walker to verify stressing remotely. Photos and field measurements by City and Western staff. Field report by Walker

Please let me know if you have any questions.

Thanks,

Mike

Michael H. Retterath, PE

Director - Building Envelope, Forensics & Restoration

Employee Owner



1660 S. Highway 100, Suite 545 | Minneapolis, MN 55416

D 952.225.5392 | O 952.595.9116 | M 612.281.3025

www.walkerconsultants.com | [Blog](#) | [Facebook](#) | [LinkedIn](#) | [Twitter](#)

PROPOSAL/CONTRACT

Trista Hobbs
City of Green Bay

October 14, 2020

Concrete
Restoration

Masonry
Restoration

Stadium
Restoration

Balcony
Restoration

Plaza
Restoration

EIFS
Restoration

Historic
Restoration

Wall Coating

Caulking &
Sealants

Deck Coating

Planter
Waterproofing

Below Grade

Stone
Cleaning &
Restoration

Tuckpointing

Epoxy
Flooring

Cementitious
Coating

Post Tendon
Repair

Barrier
Tendon
Repair

Expansion
Joint
Restoration

Carbon Fiber

Epoxy
Injection

WE (Western) HAVE PREPARED A PROPOSAL FOR: ***Pine Street Ramp - PT Repair 2020***

SCOPE OF WORK: We propose to furnish and install all necessary labor, materials, equipment, supervision, and insurance, as shown on the attached insurance addendum, to complete the following:

1. Slab P/T Tendon Repair : 11 Each

- Mobilization will consist of the time necessary to properly mobilize and demobilize the project. Also included is the time necessary for the proper supervision to manage the project and the necessary equipment and material to assist in the mobilization and supervision of the project.
- BARRICADE RIBBON / BARRICADE FENCING: Temporary barricades will be installed to close off the work area while performing our work. The pedestrian and vehicular barricading will be limited to orange or yellow barricade ribbons, as well as, the necessary signs to enclose our work area.
- Working on a per tendon budget, we will do exploratory demolition of the concrete slab/beam to determine the cause and location of the broken post tension tendon(s). Once the location has been determined, we will remove the broken section of tendon and splice on new tendon as required. This will consist of exposing the post tension tendon on either side of the break and splicing on a new section of tendon using both a splice chuck and a center stressing device (aka "dog bone"). Once installed, we will stress the tendon per the engineered specifications. After the tendon has been properly stressed, we will patch back the concrete in the excavated areas.
- Includes the replacement of 45' of cable on each cable, 11 thus, for a total of 495'
- Includes the installation of a coupler, dog bone and a new dead-end anchor on each cable, 11 thus.
- Includes the concrete demolition on all openings.
- Includes the fast setting repair mortar and rebar installation on the new dead-end anchorage openings only.
- Includes engineered calculation and virtual oversight by Walker Consultants
- Excludes all shoring
- As a budgetary cost estimate, each tendon repair will be approximately \$4,635.00 which includes up to 12 SF of concrete demo and patch back of 4 SF, 45 LF of new PT tendon, (1) splice chuck, (1) center stressing device, (1) dead end anchorage and wedges and the necessary equipment to perform the repairs.

\$50,985.00

2. Contingent Heating Allowance :

- In the event that the weather does not allow for the proper conditions to pour back the concrete for the dead-end anchorages, this will provide a contingency for scaffold & poly enclosure above and below the full depth patch and a propane heat source.

Concrete Restoration

Masonry Restoration

\$6,000.00

Stadium Restoration

Balcony Restoration

TOTAL: \$56,985.00

Plaza Restoration

PROJECT SPECIFIC QUALIFICATIONS

EIFS Restoration

1. The compressive strength of the concrete repair materials shall meet or exceed the strength specified by the engineer.
2. No warranty is provided since we are only providing a cable patch.
3. Owner shall be responsible to remove all vehicles and anything else in the area of the repairs (including pedestrians) above and/or below work areas due to the safety hazards associated with this work.

Historic Restoration

Wall Coating

GENERAL QUALIFICATIONS:

Caulking & Sealants

1. Normal working hours, Monday through Friday have been used for this proposal.
2. We have included one mobilization for the project. Additional mobilizations will result in additional charges.
3. Permits (are/are not) included for our portion of the work.
4. Barricades/sidewalk protection will be provided as described above.
5. Power lines in or near work areas shall be covered/protected by owner at no expense to contractor.
6. This work will be performed by Western's own UNION CREWS.
7. Our proposal supports OSHA's 29 CFR 1926.1153 Respirable Crystalline Silica Standard.
8. Notwithstanding anything in this Agreement, Western shall be entitled to additional compensation and/or time extension for any delays, disruptions, impacts, suspensions, acceleration, out of sequence work, or any other increased costs or damages incurred as a result of any virus (including COVID 19 or other coronavirus), pandemic, epidemic or consequences flowing therefrom. In addition, Customer agrees to waive all consequential, actual or liquidated damages against Western arising out of any delay, disruptions or impacts to the Work resulting from the above events.

Deck Coating

Planter Waterproofing

Below Grade

Stone Cleaning & Restoration

Tuckpointing

Epoxy Flooring

Cementitious Coating

Post Tendon Repair

Barrier Tendon Repair

Expansion Joint Restoration

Carbon Fiber

Epoxy Injection

Acceptance: By signing this proposal, the Purchaser accepts as a binding contract all of its terms and conditions, including the General Conditions and the Special Conditions on this page and all Continuation Pages of this proposal. This Proposal shall expire automatically unless the above named purchaser shall have delivered a copy of this Proposal, duly signed by it, to Western on or before the 30th day from the date hereof. No modification by Purchaser to this Proposal, or to the General Conditions, shall become a part of the contract unless specifically agreed to in writing by Western, and shall automatically make this Proposal void and of no effect.

Concrete
Restoration

Masonry
Restoration

Stadium
Restoration

Balcony
Restoration

Plaza
Restoration

EIFS
Restoration

Historic
Restoration

Wall Coating

Caulking &
Sealants

Deck Coating

Planter
Waterproofing

Below Grade

Stone
Cleaning &
Restoration

Tuckpointing

Epoxy
Flooring

Cementitious
Coating

Post Tendon
Repair

Barrier
Tendon
Repair

Expansion
Joint
Restoration

Carbon Fiber

Epoxy
Injection

Date Accepted: _____

Western Specialty Contractors

[Purchaser]

By: _____

David Grandbois

Title: _____

Estimator

Manager: _____

GENERAL TERMS OF THE CONTRACT

1. CHANGES IN THE WORK. It is understood that the type of work called for in this Agreement may require changes as the work progresses. Contractor will perform changes in the work (including changes requested by Customer) only after consultation with the Customer, and execution of a written agreement covering the changes in the scope of the work including any changes in Contract Price and time for performance.

2. PAYMENT TERMS. Payment of the Contract Price, shall be made monthly upon receipt of an invoice for portion of the Work performed during that month. If any invoice remains unpaid to the 20th day following receipt by Customer, Customer agrees to pay Contractor interest at the rate of ten percent (10%) per annum from the due date until paid.

3. TAXES. Contractor's price includes applicable taxes imposed on the work or materials included in this contract, to the extent required by law to be collected by Contractor. Such taxes may be separately itemized on invoices.

4. SECURITY FOR PAYMENT. Customer understands that if Contractor is not paid it can assert a lien against the property. Contractor will issue waivers of its lien rights only to the extent it receives payment.

5. DELAYS AND CLAIMS.

A. Liability Only for Acts Within Contractor's Control. Contractor will be excused and will not be liable for any damages, whether direct, incidental or consequential, for any delay or failure in performance (including but not limited to delays due to strikes, fires, accidents, acts of God and delays in performance by Contractor's suppliers and carriers) except to the extent caused by, or within the direct control of Contractor.

B. Notice of Claims, When. Any claims by Customer against Contractor must be presented in writing with particulars to Contractor within twenty days after they arise; otherwise Contractor shall have no responsibility or liability for such claims.

6. INSURANCE AND INDEMNIFICATION.

A. Customer shall purchase and maintain property insurance on its property and liability insurance to cover the acts or omissions of its agents and employees at the Site.

B. Contractor maintains insurance as shown on the attached Insurance Addendum. A certificate showing coverage limits and Carriers will be issued to Customer prior to beginning work at the Site.

C. Contractor agrees to indemnify Customer from any loss, damage or expense which Customer suffers as a result of claims asserted against Customer by third parties (including Contractor's employees) which arise out of Contractor's work at the Site, to the extent caused by the negligent acts or omissions of Contractor or anyone for whom Contractor is responsible. Customer agrees to indemnify Contractor for any loss, damage or expense, which Contractor suffers as a result of claims asserted against Contractor by third parties (including Customer's employees) which arise out of Customer's activities at the Site, to the extent caused by the negligent acts or omissions of Customer or anyone for whom Customer is responsible.

7. LIMITED WARRANTY AND EXCLUSIVE REMEDIES.

A. Workmanship. For a period of one year from the date of substantial completion of Contractor's Work covered hereby, Contractor warrants that it will promptly repair or replace any improper or defective workmanship performed by Contractor under this contract; provided that Contractor has been paid for all work performed, and Contractor has received written notice from Customer of any such defective workmanship within 20 days after Customer first becomes aware thereof (provided such is within the aforesaid one-year period). Contractor will not pay for any inspections or repairs performed by others prior to receipt of notice and a reasonable opportunity to make repairs, if warranted.

B. Warranty on Materials. Contractor warrants that it will use only new materials unless specified otherwise in this Contract, and will deliver to Customer standard warranties as issued by the manufacturer of the materials, if available. Contractor shall have no obligation under any such manufacturer's warranty, and shall not be required to seek changes to terms of such standard warranties.

C. Disclaimer of Other Warranties. THE PROVISIONS IN PARAGRAPHS A AND B ARE THE EXCLUSIVE WARRANTIES PROVIDED TO CUSTOMER AND ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

D. Mold Exclusion. Contractor specifically excludes from any and all warranties connected with this Work any warranty against the growth, infestation or spread of mold, mildew, or other fungal, bacterial or biological substance however caused.

8. OBLIGATIONS OF CUSTOMER AT SITE OF WORK

A. Site Conditions. For work performed by Contractor at the site, Customer shall provide without charge to Contractor (i) sufficient and proper space for handling and storing the materials and equipment of Contractor;; (ii) sufficient power and water for the performance of the Work; (iii) removal of all obstructions to performing the Work as economically as possible.

B. Unanticipated Conditions. If Contractor encounters unanticipated conditions or structural features, not reasonably ascertainable upon such inspection or testing as was allowed by Customer, Contractor will so advise Customer, and the parties will work out a mutually acceptable adjustment to the Work, the Contract Price, and the time of completion prior to continuation of the work.

C. Asbestos, Lead, Mold and PCB. Contractor specifically excludes the abatement of any hazardous material, including but not limited to asbestos, lead, mold or polychlorinated biphenyl ("PCB"). Customer warrants that the Work will not expose Contractor's workers or any other persons to contact with or exposure to such substances. If Contractor encounters material reasonably believed to be asbestos, lead mold or PCB or other hazardous substance which has not been rendered harmless, Contractor shall immediately stop Work in the area affected and report the condition to the Customer. The Work in the affected area shall not thereafter be resumed except by written agreement of the Customer and Contractor. The Work in the affected area shall be resumed in the absence of such hazardous substance, or when it has been rendered harmless and so agreed in writing by the Customer and Contractor. All cost of testing for, removal of, or to render asbestos, lead, mold or PCB harmless, shall be born by Customer.

9. DEFAULT BY CUSTOMER. If Customer fails, or is unable for any reason, to make any payment when due, or prevents Contractor from completing its Work in a timely and uninterrupted manner, or fails to comply with any term, condition or provision of this Contract, Contractor may resort to any remedy available to it by this Contract, or by law.

10. REMEDIES OF CONTRACTOR. In case of any default by Customer, including but not limited to failure to make timely payment, Contractor may, after reasonable notice and opportunity to cure, which need not exceed seven (7) days; (a) suspend all work at the site (b) demand payment of the contract price, less a sum equal to Contractor's cost of any labor and materials not yet furnished or ordered, (c) remove its equipment and any unused material from the Premises, (d) terminate the contract and demand payments referred to in item (b) above and, (e) pursue such other or additional remedies as may be provided by law.

11. DISPUTE RESOLUTION. The parties shall attempt to resolve disputes between themselves, using more senior officials of their respective organizations if necessary, and prior to the institution of any legal action, they agree to meet with a mutually agreeable or, upon mutual application, court appointed mediator for a minimum of one five hour session. In any such dispute resolution, each party shall bear their own expenses. In the event of any legal action to enforce the terms of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees from the other.

12. HOURS OF WORK. Contractor is obligated to perform the Work only during its regular working hours and has no responsibility to work beyond such regular hours. All time beyond regular hours which is required by Customer shall be paid for by Customer in addition to the contract price, at applicable premium rates of pay.

13. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties. No representations, statements, correspondence or discussions between Contractor and Customer or Customer's Representative shall be a part of this Contract unless specifically referred to in this Contract.

14. MODIFICATION. No waiver, alteration or modification of the terms and conditions of this Contract shall be binding unless said waiver, alteration or modification be in writing and signed by a duly authorized representative of each party.

STANDARD INSURANCE ADDENDUM
Indicating Insurance Carried by
Western Specialty Contractors ("Contractor")
and incorporated into its Proposal Submitted to
City of Green Bay ("Customer")
Project: ***Pine Street Ramp - PT Repair 2020***

Contractor maintains, and shall maintain, insurance coverage substantially as outlined below, throughout the life of the project (shown above) which is the subject of the Proposal, Bid, Contract or Subcontract to which this Addendum is attached. Any contract or subcontract entered into is qualified to include this coverage, exclusive of any other insurance requirements.

Workers Compensation coverage is maintained in all states where Contractor operates, including the state in which the project which is the subject of this proposal or bid is located. Employer's Liability coverage is also included with limits up to \$1,000,000. Stop gap coverage is provided in monopolistic states: ND, OH, WA, WY.

Carrier: **The Travelers Indemnity Company of America / Travelers Property Casualty Company of America**

General Liability coverage is written on the Travelers Commercial General Liability Form CG T1 00 which includes the following:

Carrier: **Travelers Property Casualty Company of America**

COVERAGES

- Bodily Injury
- Broad Form Property Damage
- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Medical Payments
- Fire Damage Legal Liability
- Personal and Advertising Injury
- Independent Contractor's Liability
- Coverage for Explosion, Collapse, and Underground
- Separation of Insureds/Severability of Interest

POLICY LIMITS

General Aggregate ⊕	\$4,000,000
Products Completed Operations Aggregate	\$4,000,000
Personal and Adv. Injury	\$2,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$500,000
Medical Exp. (Any one person)	\$10,000

⊕ General Aggregate applies per project.

The General Liability Policy contains an exclusion for claims arising in whole or in part out of the presence of fungi or bacteria in a building or structure.

Automobile Liability coverage is carried in all states consistent with or greater than statutory requirements.

Carrier: **Travelers Property Casualty Company of America**
Combined Single Limit: \$2,000,000

A 30 day notice of cancellation provision is included under our policies.

Coverage and limits will be certified through a standard form Certificate of Insurance issued to Customer or through a Memorandum of Insurance upon Execution of Contract.

The structures involved in this project do not contain any EIFS (Exterior Insulation and Finish System). Contractor's insurance program is written on a nationwide basis for all its locations, and not on an individual project basis. Any requests for deviations from standard coverage must be requested in writing, prior to Contract execution. Contractor reserves the right to review any Consolidated or Controlled Insurance Program prior to agreeing to enroll, and to increase its price to cover additional insurance requests.



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

Calvin Winters

AGENDA ITEM # E.4

Approval for purchase of refuse truck from Envirotech Equipment for the sum of \$248,875 to replace equipment that is unrepairable. Sole Source attached.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Refuse Truck Replacement

City of Green Bay, Wisconsin
REQUEST FOR APPROVAL OF "NO SUBSTITUTE" PURCHASE SPECIFICATION

TO : Purchasing Division/Administrative Services

DATE: 10/22/20

FROM: Department/Division DPW-Operations

REQUISITION #

List "No Substitute" Item(s) here:

2018 Crane Carrier chassis with New Way Sidewinder automated side loading refuse body.

Select One:

1) One Time Purchase Estimated Cost: \$ 248,875

2) Annual Commodity purchase: Estimated annual cost: \$

3) Item may be purchased again: Indicate term: Estimated Annual Cost: \$

Example: 1 year, indefinite, etc. Long term requests will be reevaluated periodically)

We request approval of a "NO SUBSTITUTE" specification for the purchase of the subject item(s)

Check appropriate justification(s). Provide DETAILED explanation(s) below.

- 1. Sole Source – The below signed has searched the market and verified that no comparable item is available.
- 2. Single Source – Although comparable items are available, THIS is the only brand/model that will work.
- 3. Item(s) is (are) only acceptable replacement part(s) known for _____ (Identify)
- 4. Continuity of design is overriding consideration (ex: playground equipment or street furniture)
- 5. Safety:
- 6. Other: *Emergencny purchase-replacement for truck 113*

*Explanations shall contain sufficient information and justification for the items to be considered and approved as "NO SUBSTITUTE" items. Failure to do so will result in the request being denied and returned to the originator.

*Recommending Department Head will be available to defend said recommendation to the appropriate City Committee and/or Common Council.

PLEASE EXPLAIN YOUR REASONS FOR THIS REQUEST (additional info may be attached on a separate sheet):

Truck 113, a 2007 automated side loading refuse truck experienced engine failure. The cost to repair the engine far exceeds the value of the truck and parts are no longer available for the chassis as the chassis manufacture is out of business. The requested truck is a new carryover 2018 model year truck being offered at a significantly discounted price.

Approvals:

Requestor:

Date:

Department Head:

Date:

Purchasing Manager:

Date:



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

Calvin Winters

AGENDA ITEM # E.5

Approval for purchase of refuse truck from Fredrickson Supply for the sum of \$285,000 to replace equipment that is unrepairable. Sole Source Attached.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Refuse Truck Replacement- Lavrie

City of Green Bay, Wisconsin
REQUEST FOR APPROVAL OF "NO SUBSTITUTE" PURCHASE SPECIFICATION

TO : Purchasing Division/Administrative Services

DATE: 10/29/20

FROM: Department/Division DPW-Operations

REQUISITION #

List "No Substitute" Item(s) here:

2020 Autocar chassis with Labrie Automated side loading refuse truck body

Select One:

- 1) One Time Purchase Estimated Cost: \$ \$285,000
 2) Annual Commodity purchase: Estimated annual cost: \$
 3) Item may be purchased again: Indicate term: Estimated Annual Cost: \$

Example: 1 year, indefinite, etc. Long term requests will be reevaluated periodically)

We request approval of a "NO SUBSTITUTE" specification for the purchase of the subject item(s)

Check appropriate justification(s). Provide DETAILED explanation(s) below.

1. Sole Source – The below signed has searched the market and verified that no comparable item is available.
 2. Single Source – Although comparable items are available, THIS is the only brand/model that will work.
 3. Item(s) is (are) only acceptable replacement part(s) known for _____ (Identify)
 4. Continuity of design is overriding consideration (ex: playground equipment or street furniture)
 5. Safety:
 6. Other: *Emergencny purchase-replacement for truck 112*

*Explanations shall contain sufficient information and justification for the items to be considered and approved as "NO SUBSTITUTE" items. Failure to do so will result in the request being denied and returned to the originator.

*Recommending Department Head will be available to defend said recommendation to the appropriate City Committee and/or Common Council.

PLEASE EXPLAIN YOUR REASONS FOR THIS REQUEST (additional info may be attached on a separate sheet):

Truck 112, a 2004 automated side loading refuse truck experienced engine failure. The cost to repair the engine exceeds the value of the truck and parts are no longer available for the chassis as the chassis manufacture is out of business. The requested truck is a new carryover 2020 model year truck at a discounted price.

Approvals:

Requestor: _____

Date: 10/29/20

Department Head: _____

Date: 10/29/2020

Purchasing Manager: _____

Date: 10/29/2020



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.6

For consideration with possible action on a request to borrow \$340,000 from the State Trust fund loan for a five year term for Revaluation Assessment Service approved at the August 18, 2020 Common Council meeting.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. [sharpescans@greenbaywi.gov_20201029_165326](mailto:sharpescans@greenbaywi.gov)

**STATE OF WISCONSIN
BOARD OF COMMISSIONERS OF PUBLIC LANDS
101 EAST WILSON STREET, 2ND FLOOR
POST OFFICE BOX 8943
MADISON, WISCONSIN 53708-8943**

APPLICATION FOR STATE TRUST FUND LOAN

CITY - 20 YEAR MAXIMUM

Chapter 24 Wisconsin Statutes

CITY OF GREEN BAY

Date sent: September 24, 2020

Received and filed in Madison, Wisconsin:

ID # 05605432

TTN

RETURN THIS ORIGINAL – DO NOT RETURN PHOTOCOPY

TO: BOARD OF COMMISSIONERS OF PUBLIC LANDS

We, the undersigned **Mayor** and clerk of the City of **Green Bay**, in the County(ies) of **Brown**, Wisconsin, in accordance with the provisions of Chapter 24 of the Wisconsin Statutes, do hereby make application for a loan of **Three Hundred Forty Thousand And 00/100 Dollars (\$340,000.00)** from the Trust Funds of the State of Wisconsin for the purpose of **financing reevaluation assessment service for the City 2020-2022**.

The loan is to be continued for a term of **5** years from the 15th day of March preceding the date the loan is made. The loan is to be repaid in annual installments, as provided by law, with interest at the rate of **2.50** percent per annum.

We agree to the execution and signing of such certificates of indebtedness as the Board may prepare and submit, all in accordance with Chapter 24, Wisconsin Statutes.

The application is based upon compliance on the part of the City with the provisions and regulations of the statutes above referred to, as set forth by the following statements which we do hereby certify to be correct and true.

The meeting of the common council of the City of **Green Bay**, in the County(ies) of **Brown**, Wisconsin, which approved and authorized this application for a loan was a regularly called meeting held on the _____ day of _____, 20____.

At the aforesaid meeting a resolution was passed by a majority vote of the members of the common council approving and authorizing an application to the Board of Commissioners of Public Lands, State of Wisconsin, for a loan of **Three Hundred Forty Thousand And 00/100 Dollars (\$340,000.00)** from the Trust Funds of the State of Wisconsin to the City of **Green Bay** in the County(ies) of **Brown**, Wisconsin, for the purpose of **financing reevaluation assessment service for the City 2020-2022**. That at the same time and place, the common council of the City of **Green Bay** by a majority vote of the members, adopted a resolution levying upon all the taxable property in the city, a direct annual tax sufficient in amount to pay the annual installments of principal and interest, as they fall due, all in accordance with Article XI, Sec. 3 of the Constitution and Sec. 24.66(5), Wisconsin Statutes.

A copy of the aforesaid resolutions, certified to by the city clerk, as adopted at the meeting, and as recorded in the minutes of the meeting, accompanies this application.

A statement of the equalized valuation of all the taxable property within the City of **Green Bay**, certified to by the **Mayor** and clerk, accompanies this application.

Given under our hands in the City of **Green Bay** in the County(ies) of **Brown**, Wisconsin, this _____ day of _____, 20____.

Mayor, City of Green Bay

Clerk, City of **Green Bay**

RETURN THIS ORIGINAL – DO NOT RETURN PHOTOCOPY

FORM OF RECORD

The following preamble and resolutions were presented by Alderman _____ and were read to the meeting.

By the provisions of Sec. 24.66 of the Wisconsin Statutes, all municipalities may borrow money for such purposes in the manner prescribed, and,

By the provisions of Chapter 24 of the Wisconsin Statutes, the Board of Commissioners of Public Lands of Wisconsin is authorized to make loans from the State Trust Funds to municipalities for such purposes. (Municipality as defined by Sec. 24.60(2) of the Wisconsin Statutes means a town, village, city, county, public inland lake protection and rehabilitation district, town sanitary district created under Sec. 60.71 or 60.72, metropolitan sewerage district created under Sec. 200.05 or 200.23, joint sewerage system created under Sec. 281.43(4), school district or technical college district.)

THEREFORE, BE IT RESOLVED, that the City of **Green Bay**, in the County(ies) of **Brown**, Wisconsin, borrow from the Trust Funds of the State of Wisconsin the sum of **Three Hundred Forty Thousand And 00/100 Dollars (\$340,000.00)** for the purpose of **financing reevaluation assessment service for the City 2020-2022** and for no other purpose.

The loan is to be payable within **5** years from the 15th day of March preceding the date the loan is made. The loan will be repaid in annual installments with interest at the rate of **2.50** percent per annum from the date of making the loan to the 15th day of March next and thereafter annually as provided by law.

RESOLVED FURTHER, that there shall be raised and there is levied upon all taxable property, within the City of **Green Bay**, in the County(ies) of **Brown**, Wisconsin, a direct annual tax for the purpose of paying interest and principal on the loan as they become due.

RESOLVED FURTHER, that no money obtained by the City of **Green Bay** by such loan from the state be applied or paid out for any purpose except **financing reevaluation assessment service for the City 2020-2022** without the consent of the Board of Commissioners of Public Lands.

RESOLVED FURTHER, that in case the Board of Commissioners of Public Lands of Wisconsin agrees to make the loan, that the **Mayor** and clerk of the City of **Green Bay**, in the County(ies) of **Brown**, Wisconsin, are authorized and empowered, in the name of the city to execute and deliver to the Commission, certificates of indebtedness, in such form as required by the Commission, for any sum of money that may be loaned to the city pursuant to this resolution. The **Mayor** and clerk of the city will perform all necessary actions to fully carry out the provisions of Chapter 24, Wisconsin Statutes, and these resolutions.

RESOLVED FURTHER, that this preamble and these resolutions and the aye and no vote by which they were adopted, be recorded, and that the clerk of this city forward this certified record, along with the application for the loan, to the Board of Commissioners of Public Lands of Wisconsin.

RETURN THIS ORIGINAL – DO NOT RETURN PHOTOCOPY

Alderman _____ moved adoption of the foregoing preamble and resolutions.

The question being upon the adoption of the foregoing preamble and resolutions, a vote was taken by ayes and noes, which resulted as follows:

- | | | | | |
|-----|----------|-------|-------|-------|
| 1. | Alderman | _____ | voted | _____ |
| 2. | Alderman | _____ | voted | _____ |
| 3. | Alderman | _____ | voted | _____ |
| 4. | Alderman | _____ | voted | _____ |
| 5. | Alderman | _____ | voted | _____ |
| 6. | Alderman | _____ | voted | _____ |
| 7. | Alderman | _____ | voted | _____ |
| 8. | Alderman | _____ | voted | _____ |
| 9. | Alderman | _____ | voted | _____ |
| 10. | Alderman | _____ | voted | _____ |
| 11. | Alderman | _____ | voted | _____ |
| 12. | Alderman | _____ | voted | _____ |

A majority of the members of the common council of the City of **Green Bay**, in the County(ies) of **Brown**, State of Wisconsin, having voted in favor of the preamble and resolutions, they were declared adopted.

RETURN THIS ORIGINAL – DO NOT RETURN PHOTOCOPY

STATE OF WISCONSIN

County(ies) of **Brown**

I, _____, Clerk of the City of **Green Bay**, in the County(ies) of **Brown**, State of Wisconsin, do hereby certify that the foregoing is a true copy of the record of the proceedings of the common council of the City of **Green Bay** at a meeting held on the ____ day of _____, ____, relating to a loan from the State Trust Funds; that I have compared the same with the original record thereof in my custody as clerk and that the same is a true copy thereof, and the whole of such original record.

I further certify that the common council of the City of **Green Bay**, County(ies) of **Brown**, is constituted by law to have _____ members, and that the original of said preamble and resolutions was adopted at the meeting of the common council by a vote of _____ ayes to _____ noes and that the vote was taken in the manner provided by law and that the proceedings are fully recorded in the records of the city.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of **Green Bay** this ____ day of _____, 20__.

Clerk (Signature)

Clerk (Print or Type Name)

City of **Green Bay**

County(ies) of **Brown**

State of Wisconsin

RETURN THIS ORIGINAL – DO NOT RETURN PHOTOCOPY

STATE OF WISCONSIN
COUNTY(IES) OF **BROWN**

TO: THE BOARD OF COMMISSIONERS OF PUBLIC LANDS

I, _____, Clerk of the City of **Green Bay**, County(ies) of **Brown**, State of Wisconsin, do hereby certify that it appears by the books, files and records in my office that the valuation of all taxable property in the City of **Green Bay** is as follows:

EQUALIZED VALUATION FOR THE YEAR 20____ * \$ _____

* Latest year available

I further certify that the whole existing indebtedness of the City of **Green Bay**, County(ies) of **Brown**, State of Wisconsin, is as follows (list each item of indebtedness):

NAME OF CREDITOR	PRINCIPAL BALANCE (EXCLUDING INTEREST)
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL INDEBTEDNESS:	\$ _____

Clerk (Signature)

Clerk (Print or Type Name)

City of **Green Bay**

County(ies) of **Brown**,

State of Wisconsin

_____, 20____
Date

THE TOTAL INDEBTEDNESS, INCLUDING THE TRUST FUND LOAN APPLIED FOR, MAY NOT EXCEED 5% OF THE VALUATION OF THE TAXABLE PROPERTY AS EQUALIZED FOR STATE PURPOSES. (Sec. 24.63(1), Wis. Stats., 1989-90)

RETURN THIS ORIGINAL – DO NOT RETURN PHOTOCOPY



MINUTES OF THE COMMON COUNCIL

TUESDAY, AUGUST 18, 2020, 6:00 PM

Virtual Meeting

Public may also view at

www.youtube.com/CityOfGreenBay

A. ZOOM MEETING INFORMATION

I. Please find information and instructions about the Zoom (virtual) meeting.

B. ROLL CALL.

Present: Brian Johnson (arrived at 6:04 p.m.), Chris Wery, Jesse Brunette, John VanderLeest, Mark Steuer, Veronica Corpus-Dax, Lynn Gerlach, Barbara Dorff, Bill Galvin, Craig Stevens, Randy Scannell, Kathy Lefebvre

C. PLEDGE OF ALLEGIANCE.

D. INVOCATION.

The invocation was led by Alder Mark Steuer, District 10.

I. The invocation will be led by Alder Mark Steuer, District 10.

E. APPROVAL OF MINUTES.

3. To approve a partial discontinuance of a landscape easement located at 2845 Greenbrier Road, subject to the following conditions:

1. AT&T has fiber optic cables in this area and they may be in conflict with the driveway proposal. A solution must be met between the applicant and AT&T prior to recording this discontinuance.

2. In the event that sidewalks are required to be constructed along Greenbrier Road, the adjacent owner(s) shall, at their expense, regrade the area to conform to the established sidewalk grade ordinance.

4. To amend Chapter 13-1716(e), Green Bay Zoning Code regarding game day parking. (Public hearing held 08/10/20)

5. To amend Chapter 13-522, Green Bay Zoning Code regarding game day camping. (Public hearing held 08/10/20)

Q. REPORT OF THE FINANCE COMMITTEE (AUGUST 4, 2020).

Moved by Ald. Randy Scannell, seconded by Ald. Barbara Dorff to approve with the exception of Items 2 and 3. Motion carried.

1. To approve a resolution authorizing 2020 transfer of \$378.00 from contingency to sandbags related to Brown County invoice for prefilled sandbags for the public.

2. To approve the Forward Appraisal revaluation contract for the sum of \$388,900.00.

Moved by Ald. Randy Scannell, seconded by Ald. Bill Galvin to approve Item 2. Motion carried.

3. To approve a resolution authorizing 2020 transfer of \$50,000.00 from contingency to Assessor's contractual services for the Forward Appraisal revaluation contract.

Moved by Ald. Randy Scannell, seconded by Ald. Barbara Dorff to approve Item 3. Motion carried.

APPENDIX B

Revaluation Billing Schedule

2020	\$50,000
2021	\$214,032
2022	\$124,868

Work

Month/Year	Billing Date	Billing Amount
Aug-2020	31-Aug-2020	\$10,000
Sep-2020	30-Sep-2020	\$10,000
Oct-2020	31-Oct-2020	\$10,000
Nov-2020	30-Nov-2020	\$10,000
Dec-2020	31-Dec-2020	\$10,000
Jan-2021	31-Jan-2021	\$17,836
Feb-2021	28-Feb-2021	\$17,836
Mar-2021	31-Mar-2021	\$17,836
Apr-2021	30-Apr-2021	\$17,836
May-2021	31-May-2021	\$17,836
Jun-2021	30-Jun-2021	\$17,836
Jul-2021	31-Jul-2021	\$17,836
Aug-2021	31-Aug-2021	\$17,836
Sep-2021	30-Sep-2021	\$17,836
Oct-2021	31-Oct-2021	\$17,836
Nov-2021	30-Nov-2021	\$17,836
Dec-2021	31-Dec-2021	\$17,836
Jan-2022	31-Jan-2022	\$17,836
Feb-2022	28-Feb-2022	\$17,836
Mar-2022	31-Mar-2022	\$17,836
Apr-2022	30-Apr-2022	\$17,836
May-2022	31-May-2022	\$17,836
Jun-2022	30-Jun-2022	\$17,836
Jul-2022	31-Jul-2022	\$17,852
		\$388,900

} \$338,900.00



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.7

Update with possible action on tax litigation matters pending before the Tax Appeals Commission and in Circuit Court.

The Committee may convene in closed session pursuant to Section 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.8

Resolution authorizing 2020 transfer of \$45,000.00 from contingency for legal expenses related to Georgia Pacific tax appeal for real estate and personal property.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Resolution-Transfer from Contingency for legal fee for Property assessment litigation - 11-10-2020
CC

**RESOLUTION AUTHORIZING
TRANSFER OF FUNDS**

November 10, 2020

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY, RESOLVED:

Pursuant to the recommendation of the Finance Committee at its meeting of November 2, 2020, the following 2019 transfer of funds is hereby authorized:

	<u>ACCOUNT</u>	<u>AMOUNT</u>
From:	101099-59001 Contingency	\$45,000.00
To:	101140-53021 Legal Expenses	
	Vendor: Seibel Law Offices, LLC, Bill Miller, Integra Realty Resources & Thomas W. Hamilton	\$45,000.00

Adopted _____

Approved _____

Mayor

Clerk



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.9

Report of the Claims Committee.

The Committee may convene in closed session pursuant to Section 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Committee may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. CONFIDENTIAL Claims Committee Rpt October 2020



Report to the
Joint Finance/Personnel Committee
of the City of Green Bay

MEETING DATE

November 2, 2020

PREPARED BY

AGENDA ITEM # E.10

A request by Ald. Wery to the Finance committee which states: Due to ongoing reasons of 'inadequate staffing' and 'prioritizing of tasks' in our Law Dept, I am requesting we hire City Ethics Inc, or a similar qualified party, to draft revisions to the city's Code of Ethics and Code of Conduct as recommended in their 2018 findings paid for by the City of Green Bay.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Invoice Green Bay Oct 2018
2. Green Bay Review FINAL
3. Model Ethics Code City Ethics
4. Censure Procedure
5. Ethics Commission Complaint Procedures



Vanessa Chavez
City Attorney
Green Bay, Wisconsin

Invoice

Consultation Services:

October, 2018 Review of Ethics Code, Code of Conduct and draft of opinion letter (4 hours @\$150 hour; cap of \$500)	\$500.00
TOTAL FEES:	\$ 500.00

Please make check payable to "City Ethics" and mail to:

Carla Miller
8120 Merganser Drive,
Ponte Vedra, FL 32082

EIN: 20-0975087

Carla Miller, Esq.
President & Founder, City Ethics Inc.

REVIEW OF ETHICS CODE AND CODE OF CONDUCT—GREEN BAY

In order to conduct this review, I analyzed the Wisconsin Ethics Code, the local Green Bay Code of Conduct and the Green Bay Ethics Code and spoke with City Attorney Vanessa Chavez and Alderman Chris Wery.

My recommendations are based upon my 35 years of experience in the ethics and anti-corruption field, including being a federal prosecutor, Fellow at the Harvard Ethics Center, Ethics Director of Jacksonville, Florida, Founder of [CityEthics](#) and ethics consultant with cities across the United States, the Middle East, Europe and China.

It is most important to know the difference between the 3 basic types of governing documents for Council members:

1. **Codes of Conduct.** These codes focus on general values, such as fairness, respect, honesty, transparency. They are aspirational in nature and cover what a person “should do”. This type of code cannot successfully be enforced with legal processes, such as complaints, hearings and fines. (See the [Ethics and Value Code](#) of Santa Clara, CA for a good example of this type of code.)
2. **Legal Ethics Codes.** These codes contain specific “do’s and don’ts”; a minimum standard of behavior. The laws flow from the general ethical concepts that you see in the broader Codes of Conduct. For example, the general value of not using one’s office for personal gain can be translated into a legal requirement that officials not accept gifts from those doing business with the City.

A legal code contains clear advance warning of what constitutes a violation; it is not subjective and up for interpretation. Legal Ethics Codes can be enforced and violations penalized with letters of reprimand or fines. Most legal ethics codes cover potential conflicts of interest and they can also cover campaign activities. CityEthics has developed a model ethics code which I have attached for reference as to the types of provisions that should be considered for a Code of Ethics.

It is possible to start a legal Code with a “preamble” or “declaration of policy” that lays out the values and purpose behind the actual laws. But, it should be clear that these general provisions are background, and not enforceable by a legal process.

3. **Council Internal Operating Rules.** These are rules that lay out the process for Council meetings: leadership positions, committees, how to take public comment, how to conduct orderly meetings and what to do about disruptions to meetings. For an example, see [Seattle, WA Council Rules](#) The Council always has the option with Robert’s Rules of Order to censure members of the body for their conduct during the meeting. This is an expression of disapproval of a member’s acts. It is best to have a procedure for censure

in place that ensures due process. I have enclosed a sample of one that I developed for the Council of the District of Columbia. (Note: when you have a procedure for censure, you have to discuss what types of actions can be the subject of a censure. Can it be any bad behavior or only bad behavior in City meetings and interactions? I believe it is best practice to only censure bad acts related to City related business.)

Now that we have reviewed the three types of governing documents, I will comment on your current Code of Conduct and your current Ethics Code.

CODE OF CONDUCT. Green Bay

This is an interesting document because it combines all 3 types of documents into one and then sets up a legal process to enforce it. It is not possible to enforce these types of value driven concepts: “take the high road”, “members shall not be degrading” (what does that mean?), “making belligerent comments”, or “having clear and honest communication”. These are all good things to aspire to but everyone will interpret violations differently. It is arbitrary to try to enforce these values in a legalistic fashion.

Here are the “values” type provisions in this Conduct Code: Section 2, being civil and having decorum; not using abusive language; Section 3, treating all staff as professionals; never demeaning employees; Section 4, making the public feel welcome, no signs of partiality; demonstrating honesty and being welcoming; Section 6B, being sensitive as to how they are viewed at Board meetings; 6C being respectful of diverse opinions. These are all good goals to discuss and to try to live up to. If a person habitually violates the values of the community as an elected official, the penalty is that it is likely the person will not get re-elected. Punishment with fines or community service and formal evidentiary hearings are inappropriate for violations of aspirational value goals.

Most of the Conduct Code covers items that should be moved to be in the Council’s Internal Operating Rules. This would cover how to maintain order at Council meetings and how to treat citizens at meetings. For example, 1. B. point of order during meetings if inappropriate statement made; Section 4 (how to welcome speakers; fairness in allocating speaking time to public; don’t argue with public; follow parliamentary procedure); and Section 7, Contact with media.

There are also sections of the Conduct Code that need to be in the Code of Ethics as laws; these are more in the nature of “do’s and don’ts” that can be enforced. For example, Section 3D—soliciting political support from City Staff; and sections 5A and 6A need to be turned into specific conflicts violations. See CityEthics Model Code provisions 1, 3, 5 and 6.

Also, there could be an ethics law developed to cover the issues in Section 3.C. on superseding administrative authority. This law would lay out specific parameters on how officials can interact with City employees and the Department Heads. It is important to lay out laws like “Cone of Silence” during procurement or contract negotiations to prevent improper influence of elected

officials on the process. Section 3.C, improper influence in purchasing and contracts is a key area and should be elaborated on and included in your legal Code of Ethics and made enforceable.

Recommendations:

Remove Section 8 of the Code of Conduct, "Enforcement". Values cannot be enforced with complaints and legal proceedings; it is too arbitrary and will be contested by anyone accused of vague violations, for example "my statement wasn't impertinent", or "my communication was honest and clear". Review the Conduct Code for potential additional sections on values (see Santa Clara Code.)

Pull out all sections from the Conduct Code that regulate the specifics of how meetings are run and how the public are engaged and add them to your Council Internal Operating Procedures. (If you don't have a set of those, they should also be enacted.) Discuss and enact a censure policy for your Council.

Pull out provisions that should be in the Legal Code of Ethics and make them specific so they can be enforced, for example: campaign activities, conflicts in front of Boards, withdrawal if conflicted. Confer with your City Attorney to make sure that the Wisconsin law on local ethics codes does not already govern this behavior; see section 19.59, state law.

ETHICS CODE. (Section 1.90) Green Bay

There are many improvements you could implement in your Ethics Code. Here are some ideas:

1. Section 8, Ethics Board.

All members should not be appointed by the Mayor. This does not encourage independence. Either assign the appointments to other officials or have community organizations provide a pool of qualified applicants for the officials to select from.

The City Attorney should provide all services to the Board, unless there is a documented conflict and then outside counsel would be retained (in many jurisdictions, attorneys volunteer to do this); if outside counsel is retained, then that person would only provide legal services in the areas that involve the conflict, not in other routine matters in the case. There should be budget limitations that are enforced.

The Ethics Commission should be required to enact comprehensive Rules of Procedure to ensure due process in hearings; it is not enough just to say they shall conduct a "due process hearing". Here is an example: *"The Commission shall establish and post rules and procedures to provide for due process in the charging and prosecution of violations of this Code."*

I have enclosed a set of such due process rules that can be reviewed by your Commission. It is useful to have a provision in your Ethics Code allowing the Ethics Commission to dismiss charges when appropriate:

*The Commission may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the **public interest would not be served by proceeding further**, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the Commission dismisses a complaint as provided in this subsection, the Commission shall issue a public report stating with particularity its reasons for the dismissal.*

So for example, if a person leaves office, is it reasonable to use taxpayer funds to pursue a case? The Ethics Commission could consider this type of situation and say “no”—it’s not worth it, and dismiss the case in the public interest.

Ethics proceedings should be confidential until a probable cause determination on the validity of the accusations is made; the process can become a circus if opened up immediately.

2. Section 4, Fair and equal treatment needs to be re-written into a misuse of property and position code provision. The existing language is a combination of a value statement and an actual prohibition. See section 11, Model Code.
3. See section above on the Code of Conduct; you need specific laws governing political activities, voting conflicts, withdrawal from certain matters and rules on officials representing other interests in City proceedings: Model Code sections 1,3, 5 and 6.
4. Penalties; it is fairly severe to remove someone from office; is that allowable under state law? What about fines up to \$1000?
5. Section 5(c). Incompatible employment. In order to prevent this type of conflict, it is advisable to have a requirement that all officials and employees file a disclosure of any secondary employment they might have so it can be reviewed for any prohibited conflicts. (I can send forms and procedures on this if you are interested.)
6. There should be an “Ethics Officer” designated for the City. This person is in charge of creating a preventative training program and in working with the Ethics Commission. It can be a collateral, part time duty of a current employee.
7. Periodic ethics training should be required of all employees and officials, especially when beginning a new role. This should be a requirement in the Code and cover training on your local laws, state ethics laws (with examples) and values based concepts.
8. Your gift provision (5.c 3) is weak. Left up to “reasonable, prudent people”, someone could consider a \$500 gift OK or say the gift doesn’t influence me. There are lots of options here for disclosure and/or reasonable limits being set.
9. Section 5e needs to be developed more. When is a disclosure made? It should be prior to any discussion on the matter. See section 101 of the City Ethics Model Code for discussion on this topic.
10. You may want to consider a procedure for a confidential hotline for the Ethics Commission and a basic whistleblower protection clause.

Full Text of Model Ethics Code www.cityethics.org

- Model Code
 - Part A: Ethics Provisions
 - - 100. General Conflicts of Interest Provisions.
 - - 1. Conflict of Interest.
 - 2. Legislators Employed by City
 - 3. Withdrawal from Participation
 - 4. Gifts
 - 5. Representation
 - 6. Appearances
 - 7. Confidential Information
 - 8. Political Solicitation
 - 9. Patronage
 - 10. Post-Employment
 - 11. Misuse of City Property and Reimbursements
 - 12. Nepotism
 - 13. Transactions with Subordinates
 - 14. Fees and Honorariums
 - 15. Endorsements
 - 16. Consultants
 - 17. Complicity with or Knowledge of Others' Violations
 - 18. Falsely Impugning Reputation
 - 19. Meeting Attendance
 - 20. Honesty in Applications for Positions
 - 101. Transactional Disclosure.
 - 102. Exclusions from the Code of Ethics and from Transactional Disclosure.
 - 103. Annual Disclosure.
 - 104. Disclosure by Applicants.
 - 105. Advisory Opinions.
 - 106. Void Contracts.
 - 107. Penalties for Violation of This Code.
 - - 1. Resignation, Compensatory Action, Apology.
 - 2. Disciplinary Action.
 - 3. Civil Fine.
 - 4. Damages.
 - 5. Civil Forfeiture.
 - 108. Debarment.
 - 109. Injunctive Relief.
 - 110. Whistle-Blower Protection.
 - 111. Definitions.

- **Part B: Administrative Provisions**
 - - 201. Duties of City Clerk.
 - 202. Maintenance of Disclosure Statements.
 - 203. Ethics Commission: Establishment; Qualifications of Members; Appointment of Members; Term of Office.
 - 204. Ethics Commission: Vacancies.
 - 205. Ethics Commission: Removal of Members.
 - 206. Ethics Commission: Meetings.
 - 207. Ethics Commission: Jurisdiction, Powers, and Duties.
 - 208. Lists, Complaint Forms, and Disclosure Statements.
 - 209. Advisory Opinions.
 - 210. Waivers.
 - 211. Training and Education.
 - 212. Annual Reports; Review of Ethics Laws.
 - 213. Filing a Complaint; Investigations.
 - 214. Public Hearing Process.
 - 215. Finding of Violation; Penalties; Injunctive Relief.
 - 216. Judicial Review.
 - 217. Public Inspection of Records; Public Access to Meetings.
 - 218. Miscellaneous Provisions.
 - 219. Distribution and Posting.
 - 220. Liberal Construction of Code.
 - 221. Severability.
 - 222. Effective Date.
- **APPENDIX A: Annual Disclosure Statement**

To read the foreword and introduction to this Model Code, click [here](#).

To discuss the Model Ethics Code Project itself, click [here](#).

To discuss municipal ethics codes in general - their value, necessity, and role in ethics programs - click [here](#).

To discuss problems and solution with respect to getting ethics codes passed or improved, click [here](#).

Model Municipal Code of Ethics

Declaration of Policy, Purpose, and Obligations

To discuss declarations of policy, click [here](#).

The proper operation of our city's government requires that its public officials and employees act as fiduciaries entrusted with and responsible for the property and resources of the community; that they make governmental decisions and policies in the proper channels of the government structure, free of coercive or other improper influence; that they use their position in the best interests of the city rather than for personal interests, whether their own interests or those of their family, friends, or

business associates; and that they do not, directly or indirectly, in a positive or negative sense, treat anyone preferentially, that is, other than in a manner generally accorded to city residents.

It is central to gaining and retaining the public's trust in our city's government that public servants seek to avoid even the appearance of impropriety. Fulfilling one's role as public servant sometimes means sacrificing rather than gaining opportunities.

This code focuses on conflicts of interest, which affect the decisions of government officials and employees in ways that are unfair both to the community and to individuals and entities who lack special relationships with our city's officials. When public servants make decisions that are not or do not appear to be impartial, this seriously undermines public confidence in government.

While the vast majority of municipal officials are well-meaning, being well-meaning is not enough. It is important that officials understand the conflicts they confront every day, appreciate their fiduciary obligations to city residents, and recognize the importance of preventing conflicts from occurring, disclosing conflicts when they arise, and withdrawing from any involvement in a matter where they have a conflict.

Nothing is more important to public trust than having public servants err on the side of disclosing every possible conflict and withdrawing from participation even where they feel certain they can act impartially.

The purposes of this ethics code are:

- (a) To establish standards of ethical conduct - especially those dealing with conflicts between personal interests and those of the city - for city officials, employees, consultants, candidates, and those who do business with the city;
- (b) To provide clear guidance with respect to such standards by clarifying which acts are allowed and which are not;
- (c) To promote public confidence in the integrity of our city's governance and administration;
- (d) To provide for the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of our city's government to city residents; and
- (e) To provide for the fair and effective administration and enforcement of this code.

There is more to ethical conduct than what is covered by this code, which consists primarily of enforceable rules about conflicts of interest, and procedures for enforcing the rules and providing ethics advice. The city must also provide a healthy ethics environment with positive means of encouraging ethical behavior among its public servants. And individuals - especially community leaders - must commit themselves to dealing responsibly with their conflict situations.

Ethical conduct depends on thinking about one's acts not in terms of what is politically popular, best for oneself and one's colleagues, or even most effective and efficient, but in terms of what is in the best interests of the city. Ethics is not just about enforceable rules, but also about democratic ideals and aspirational goals. Central to ethical action is respect for city residents (treating them as ends rather than as means) as well as self-respect (integrity, expecting the best of oneself).

This code is enacted pursuant to [Section ____] of [state statutes] and is not intended to authorize any conduct prohibited by that section.

Comment: *It is helpful to list other municipal and state ethics-related laws here, or reference a supplement containing them, so that all ethics laws are available in one place. In this way, people will not have to search for them or worry if they have missed any rules or exceptions. It is also helpful for authors of ethics laws to consult all other relevant laws, so that there will not be any contradictions.*

Here are the citations in the Connecticut model code I wrote, including only references to state law: "The power to adopt an ethics code is provided in 7-148(c)(10)(b). There are some specific conflict of interest rules in 7-148t. Allegations, confidentiality, and probable cause findings are provided for in 1-82a. A business with which an official or employee is associated is defined in 1-79(b). And the Freedom of Information Act can be found in Chapter 14, 1-200 to 1-242."

Why freedom of information? Because it involves one of the most often abused conflicts of interest: between the public's right to know and the municipal official's desire to keep information hidden, for personal or political reasons (it's much easier to do one's job in secret than in the public eye; it is especially easier to act unethically when acting in secret). In fact, it would be completely appropriate for a municipal ethics code to supplement the Freedom of Information Act in areas that have been problems in a particular city. For example, an ethics code could include longer notice requirements for meetings and agendas, shorter periods in which to provide information (as well as lower reproduction costs), and requirements for notice and the placement of information on the city website.

Part A: Ethics Provisions

100. General Conflict of Interest Provisions.

1. Conflict of Interest.

To discuss this provision, click [here](#).

a. An **official or employee*** may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a **personal*** or **financial benefit***, not shared with a substantial segment of the city's population, for any of the following persons or entities (no group of government employees may be considered "a substantial segment" for the purposes of this provision):

- a. himself or herself;
- b. a member of his or her **household***, including a **domestic partner*** and his or her dependents, or the employer or business of any of these people;
- c. a sibling or step-sibling, step-child or foster child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- d. a person with which he or she has a financial or business relationship, including but not limited to:

- a. an **outside employer or business*** of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
 - b. a **client*** or substantial customer;
 - c. a substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner.
- e. a person or entity from whom the **official or employee*** has received an election campaign contribution of more than \$200 in the aggregate during the past election cycle (this amount includes contributions from a person's immediate family or business as well as contributions from an entity's owners, directors, or officers, as well as contributions to the **official or employee*'s** party town committee or non-candidate political committee); or
 - f. a nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

b. The prohibition in (a) above applies equally to attempts to use, act, or influence.

c. It is a violation of this code for an **official or employee*** to, within two years of entering city employment or service, award a contract or participate in a matter benefiting a person or entity that formerly employed him or her.

Comment: The central point of an ethics code is that city officials and employees should not prefer, over the public interest, their own interests or the interests of their family or business associates. There are other relationships that should be included in the above list, but cannot due to problems of defining them. These include romantic relationships short of domestic partnership, and close friends and associates. The general rule is: If it looks to others as if you might be giving someone special treatment, or if it would look that way to others if they knew about the relationship, then you should not act with respect to that person or entity, and instead recuse yourself and withdraw from participation in the matter under **subsection 3** below. It is important to give city residents confidence that their officials and employees are treating everyone the same, even when you believe that you can be totally impartial.

The most common way to define conflict of interest is as follows: No person subject to this code shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her public duties or employment. *However, most government officials and employees do, on occasion, have conflicting interests. The important thing is not for them to prevent them, but rather to manage them honestly and responsibly, that is, to disclose them and to not act where there is such a conflict, no matter how impartial they feel they can be. What matters is not whether one can still act with integrity, but whether one will be perceived that way. It should be noted that even voting or making a decision against a friend or relative, in order not to seem partial, is not acting impartially, because the reason for the vote or decision is wrong: it might actually be better or more fair to vote or decide in favor of the friend.*

The one thing the common approach contains which does not appear in this model code is a prohibition of outside employment where there is not a conflict with a particular government interest, but instead with the general government interest in "the proper discharge of an employee or official's duties" (a term that, by the way, is too vague to allow for enforcement). Outside employment does not only lead to conflicts of interest as defined in this code, but also interferes with doing one's job by affecting the official or employee's time, energy, and focus. Volunteers are expected to have other jobs, and it is not fair to prevent low-paid employees from having evening, weekend, or holiday jobs, but many cities have rules limiting the amount and type of outside employment. Please contribute outside employment provisions which you feel are just (or unjust), enforceable or unenforceable, and explain why. Such provisions should include procedural requirements, for example, applying for formal, written permission from one's supervisor or department head (including disclosure of any officials, employees, or contractors involved), and the written acceptance of limitations on time and place of outside employment.

There is also nothing in this model code about incompatible positions in government and parties, that is, holding legislative and administrative positions, for example, especially where one office has the power to remove or affect the other's budget; or multiple administrative positions that stretch an official or employee too thin; or non-governmental positions that can have a great effect on government, for example, a department head who is an officer of a local political party, posing a question about his or her responsibility to all citizens vs. to party members, as well as putting him in a position of affecting who his boss will be, come the next election. Often such rules do not appear in ethics codes (often they appear in the city charter), but because they do involve conflicts of interest, they should at least be included by reference. Please say how your municipality deals with this problem, or how you think it should be dealt with. Another common conflict provision is as follows: No person subject to this code shall accept other employment which will either impair his or her independence of judgment as to his or her public duties or employment or require or induce him or her to disclose confidential information acquired by him or her in the course of and by reason of his or her official duties. What does it mean to have a job that impairs one's independence of judgment, or a job that induces or requires one to disclose confidential information? And how could it be proven that particular employment could do this? Again, this sort of provision focuses on the conflict rather than on the improper management of the conflict. It is true that a developer should not be on a zoning board, nor should a contractor be in charge of a city's purchases, at least in the relevant area. But in and of themselves, these are not violations of the public trust (so long as they withdraw from participation when appropriate; but if that is very often, they are not fulfilling the obligations of their position); they are examples of seriously poor judgment on the individual's part as well as on the part of those who nominated or appointed that individual. In addition, when a developer sits on a zoning board, it is a sign of a poor ethics environment, whose leaders have not spoken out against so severe a conflict. Cities may want to add a provision like the following to deal with this situation: The withdrawal provisions of 100(3) do not permit an official or employee to make use of withdrawal on a regular basis. If withdrawal occurs with such frequency as to give the

appearance of impropriety, the official or employee is deemed to have violated the provisions of this code.

Comment: An official or employee who is forced to withdraw from matters (also known as "recusing oneself") on a regular basis should resign from his or her position. This should also be taken into account when a position is accepted.

Another approach to conflicts of interest is to deem something a conflict only to the extent that an interest is not disclosed and the official or employee participates in the matter. This approach recognizes that ignoring a conflict is the principal problem. Such an approach can be combined with defining "conflict of interest" as doing or not doing much of what appears in 100 of this model code, as it is, for example, in Kings County (Seattle), Washington. This makes it clear that the central concept of a conflict of interest takes many forms, but it also limits conflict to particular instances, in effect, saying that all other conflicts are acceptable.

New Haven, Connecticut enumerates several examples of conflicts of interest, as well as several exceptions. This is unusual, but if done thoughtfully and responsibly (being careful not to make the examples exclusive), it can provide clear guidance. The best place for such examples is, however, not in the code itself, but in explanatory guidelines on the city website or in pamphlet form. Here is what New Haven lists:

Sec. 12 5/8-6. Exception to the conflict of interest provisions.

The following situations shall not constitute a conflict of interest under section 209 of the Charter of the City of New Haven:

- a. Where a municipal employee or public official is employed by a person who enters into a contract with the City of New Haven, where said employee or public official is not directly involved in the procurement, preparation, or performance of such contract and whose remuneration is not, directly or indirectly, derived from said contract;
- b. If the municipal employee or public official is employed by any newspaper which publishes any municipal notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;
- c. If the municipal employee or public official is employed by a public utility that furnishes public utility services to the City of New Haven when the rates or charges therefor are fixed or regulated by the public utilities control authority;
- d. If the municipal employee or public official is employed by a person or business which has a contract with the City of New Haven if the total consideration thereunder, when added to the aggregate amount of all consideration payable under contracts in which said employee or public official has an interest during a calendar year does not exceed five hundred dollars (\$500.00).

Sec. 12 5/8-7. Examples of an interest requiring disclosure.

In accordance with article XXIII, section 210, of the Charter of the City of New Haven, interests requiring disclosure shall include, but not be limited to the following:

- a. Where a member of the immediate family of a member of a board, commission or task force is employed by the City of New Haven;

- b. Where a member of a board, commission or task force is employed by a nonmunicipal agency the funding of which is, in part or in its entirety, provided by funds authorized by the City of New Haven;
- c. Where a member of a board, commission or task force serves on the board of directors or governing board of a nonprofit organization when said organization is engaged in the application of federal, state or local funding authorized by the City of New Haven;
- d. Where a member of a board, commission or task force serves on the board of directors or governing board of a nonprofit organization when said organization is lobbying for specific legislation before the City of New Haven or when said organization is lobbying for specific State of Connecticut legislation which will result in the city receiving funding which is controlled by the city board, commission or task force of which the individual is a member;
- e. Where a member of a board, commission or task force serves on the board of directors or governing board of a nonprofit organization when said organization is engaged in litigation against the City of New Haven;
- f. Where a member of a board, commission or task force accepts an offer of employment, whether paid or unpaid, by the City of New Haven or by a program recommended by said task force but has not yet resigned or retired from said board, commission or task force to accept said offer of employment;
- g. Where a municipal employee or public official has a financial or personal interest in a contract which was entered prior to the time of his nomination, appointment, election or employment to said position, so long as said contract is not renewed, amended or modified subsequent to his assuming public office;
- h. Where an employee or public official seeks or obtains employment with a person, company or corporation engaged in business with the City of New Haven but has not yet resigned his position assume said employment;
- i. Where an employee or public official applies for a city program or benefit over which he has control, influence or discretionary authority.

2. Legislators Employed by City

To discuss this provision, click [here](#).

A member of the legislative body has a conflict of interest with respect to any labor contract to which he or she, or a member of his or her **household***, may be a party, and with respect to an appropriation to any city department or agency through which he or she, or a member of his or her household, is employed.

Comment: *Some cities require that there be no incompatible or even multiple offices held by an individual, especially a council member, so that this problem could only arise with respect to members of the household. In towns and small cities, it is more difficult to make such requirements, because there are sometimes too few competent and interested people to go around. Also, withdrawal can take care of instances such as those described in this subsection. But explicit restrictions in this area, especially in large cities, can be valuable.*

3. Withdrawal from Participation

To discuss this provision, click [here](#).

- a. An **official or employee*** must refrain from acting on or discussing, formally or informally, a matter before the city, if acting on the matter, or failing to act on the matter, may **personally*** or **financially benefit*** any of the persons or entities listed in **subsection 1** of this section. Such an official or employee should join the public if the withdrawal occurs at a public meeting, or leave the room if it is not a public meeting.
- b. An **official or employee*** must refrain from acting or discussing, formally or informally, a matter involving a person who appointed or recommended him or her for that position, if he or she is aware of such appointment or recommendation.
- c. If a board or agency member is requested to withdraw from participation in a matter, for the reason that he or she has a conflict of interest, by
 - i. another member,
 - ii. a party to the current matter, or
 - iii. anyone else who may be affected by a decision relating to this matter,

the member must decide whether to withdraw. If the member decides not to withdraw, the unchallenged members must consider any relevant evidence concerning such claimed conflict of interest, as defined in this code, and vote whether or not to allow the request and require that the member withdraw from participating in the matter.

- d. Withdrawal at a meeting requires the public announcement, on the record, of the reason for withdrawal. Withdrawal outside of a meeting requires disclosure in writing of the reason for withdrawal to the official or employee's supervisor.
- e. Ongoing Conflict: An **official or employee*** whose outside employment or other outside activity or relationship can reasonably be expected to require more than sporadic withdrawal must resign or cease such outside employment or activity. If the ongoing conflict involves a relationship, the **official or employee*** must resign. An **official or employee*** should not begin employment or an activity or relationship that can reasonably be expected to require more than sporadic withdrawal. If a prospective **official or employee*** is in such a situation, he or she should not accept the position.
- f. Rule of Necessity: If withdrawal would leave a board with less than a quorum capable of acting, members must disclose their conflicts on the public record, but they may then vote. If an **official or employee*** is the only person authorized by law to act, the **official or employee*** must disclose the nature and circumstances of the conflict to the Ethics Commission and ask for a waiver or advisory opinion.

Comment: "Acting on and discussing, formally or informally" means that the official should withdraw from any involvement with the matter, including conversations, appearances at meetings or portions of meetings concerned with the matter, and voting on the matter, except, of course, in a public referendum.

Sometimes inaction benefits an official or his or her close associates - for example, when a code enforcement official fails to cite her brother for a zoning violation. That is why this subsection prohibits an official's inaction, as well as action, in certain circumstances. In such an instance, the enforcement official should ask someone else to handle the matter.

See [101](#) for provisions concerned with the disclosure of a conflict pursuant to this subsection. Because disclosure in this sort of situation occurs at the time a conflict becomes immediately relevant to an action or transaction to be taken by an official or employee, this is referred to as "transactional disclosure."

4. Gifts*

To discuss this provision, click [here](#).

- a. An **official or employee***, his or her spouse or **domestic partner***, child or step-child, parent, or member of his or her **household***, may not solicit nor accept anything of value, directly or indirectly, from any person or entity that the official or employee knows, or has reason to believe, has received or sought a **financial benefit***, directly or through a relationship with another person or entity, from the city within the previous three years, or intends to seek a financial benefit in the future. If in doubt, the official or employee should refrain from soliciting or refuse a gift, and should first inquire into the person or entity's relationship with the city. [or: If the **official or employee*** does not know whether a person or entity fits this description, he or she should inquire and, if it is discovered that the person or entity does fit this description, the gift should be returned (or its monetary value if it cannot be returned) and no further gifts accepted during the relevant period.]
- b. A person or entity that has, in the last three years, received or sought, or is seeking, a financial benefit, directly or indirectly, from the city, may not give or seek to give anything of value to any official or employee.
- c. Gifts of property, money, or services given nominally to the city must be accepted by a resolution of the legislative body.

Comment: The first sentence of subsection 4a is difficult, even if the language itself is not. Here it is broken down and explained:

Who cannot accept or solicit gifts: An official or employee, his or her spouse or domestic partner, child or step-child, parent, or member of his or her household

What a gift is: anything of value (see the definition at [111\(6\)](#) and the exceptions in [102](#))

Whom one cannot accept gifts from: any person or entity that has received or sought a financial benefit from the city within the previous three years, or that intends to seek a financial benefit in the future. Such persons or entities are usually referred to as "restricted sources."

Must the gift giver have *directly* received or sought a financial benefit from the city? No, it also counts if it sought a financial benefit through a relationship with someone or some entity. See [this City Ethics blog post](#) for an example of indirect benefit.

"

What the official or employee must know about the gift giver's relationship with the city: he or she must know the gift giver's relationship with the city, or know enough that he or she has reason to believe that such a relationship may exist. If uncertain, the gift should be refused and questions asked.

With respect to higher officials and department heads, and for officials and employees who deal directly with contractors and permittees, a city might choose to prevent them from receiving any gifts at all, other than campaign contributions and gifts from close relatives.

Cities have taken a great variety of approaches to the gift problem. The approach here is to limit only gifts from people and entities that do business with or otherwise get financial benefits from the city, including permits, zoning approval, etc. Other common approaches are to limit the amount of gifts or to limit the type of gifts or the type of givers.

There are two principal goals here: (1) to give clear guidance to officials, employees, and potential gift givers; and (2) to ensure city residents that their public servants are not accepting gifts from people and businesses who might be trying to influence them, whether or not that is a purpose for the gift (since no one can ever know the purpose). The choice of the above approach is intended to keep the process simple: if there is any question of the giver's relationship with the city, do not accept the gift. If there is any reason to believe there is an improper motive behind the gift, do not accept it. There are exceptions to this rule below (at 102), but they are few and essentially allow just a lunch or two each year.

Another approach to gift-giving is to require the annual disclosure of all gifts either by itself or in addition to prohibitions. This puts a great deal of pressure on the city's informal oversight resources (citizen and media), since such gifts would be out of the jurisdiction of official boards. Since party organizations provide the most effective informal oversight in most communities, depending on disclosure will politicize this part of the city's ethics process. Here is language for that approach:

Officials and employees must file with the Ethics Commission, on or before January 31, a list of all gifts received during the preceding calendar year by them or by their spouse or domestic partner, child or step-child, parent, or member of their household, to the extent that the aggregate amount of gifts received from an individual or entity (including gifts from all employees, partners, or investors) during the year is \$50 or greater.

Information to be disclosed is as follows:

1. the date the gift was received and who received it;
2. a description of the gift;
3. the fair market value of the gift;
4. the name, address and employer of the person who provided the gift;
5. the name of any organization or individual represented by the person or on whose behalf the person was acting in providing the gift.

Another common approach, which I included as an alternative in my original text, is to make it a violation of the ethics codes to take gifts with an understanding that some action will occur or not occur in return (usually the language includes the word "influence"). The problem is that this is not an ethical issue, but rather a crime. The gift

is no longer a gift, but a bribe. Ethics commissions have no jurisdiction over this sort of crime, so it is best that this language not appear in an ethics code.

If an official or employee purchases goods, rents, or accepts a loan from a restricted source, and is not certain whether it has been discounted and is therefore a gift, the official should declare it, since there is an appearance of impropriety either way. And then the restricted source should be required to prove to the ethics commission that no discount was given. The restricted source can better handle this burden, since it has better access to the necessary information. At the end of the process, there will either be no more appearance of impropriety, or the official will not make the purchase, rent from the restricted source, or accept a loan from the restricted source.

5. Representation

To discuss this and the following provision (Appearances), click [here](#).

An **official or employee*** may not represent any other person or entity before the city, nor in any matter not before the city, but against the interests of the city. However, it is acceptable for elected officials to represent constituents without compensation in matters of public advocacy.

Comment: The second sentence of this subsection recognizes that officials are elected to serve their constituents. Thus, for example, when a resident complains to a council member that the public works department blocks the resident's driveway with snow, a council or board member must be able to pursue that complaint with the proper city authorities.

Some cities go into more detail and cover more people in their limitations on representation. Such provisions include the representation by business associates of officials and employees, and acting as an expert witness before the official or employee's board or agency.

6. Appearances*

To discuss this and the previous provision (Representation), click [here](#).

An **official or employee*** may not **appear*** before any city department, agency, board or commission, except on his or her own behalf or on behalf of the city. Every time an official or employee appears before the meeting of any municipal body, or when he or she writes a letter to the editor or other publicly distributed writing, he or she is required to disclose before speaking or clearly on the writing whether he or she is appearing in an official capacity or as a private citizen. If the speech or writing is in response to criticism or other communication directed at or regarding his or her official role, the official or employee may respond only in his or her official role.

Comment: Subsections 6 and 7 appear to overlap, because one who represents another usually makes an appearance. However, it is much more clear when an "appearance" has been made than when there is a "representation" relationship, so including both makes it more clear what conduct is being prohibited. Also, subsection 6 includes representation of private interests outside of the city's own boards and departments, when it is against the interests of the city, usually but not exclusively when the city is a party to business or a proceeding. And subsection 7 deals with

appearances where the official is representing himself or herself, but it is not clear which hat the official is wearing.

Again, the general rule is that if others see your relationship with a person or entity as "representation," then you should not do it, because it would be perceived as a conflict with your principal role of representing the city. Similarly, if your appearance at a meeting or in writing does not appear to be in the city's interest, you should not appear. Why are officials and employees restricted from appearing before boards or agencies other than their own? Because restricting only appearances before your own board or agency would, for example, allow a code-enforcement official or the city attorney to represent private clients before the city planning board, because those officials are not members of that board. It would be very difficult to list every possible instance where an appearance before other boards and agencies would be inappropriate. When there is no such conflict, an official or employee should obtain a waiver from the Ethics Commission pursuant to [210](#).

Some municipalities may go beyond actual representation, and include assistance or legal assistance, with an exclusion for representation or assistance in the performance of the official or employee's official duties.

For volunteers, towns might want to limit restrictions on representation and appearances to their own board or commission, especially those on boards where the opportunity for conflict elsewhere is very small, such as the library board. A list of boards where this exception applies could be added to a subsection 8 that read:

8. Volunteer members of the following boards and commissions may represent persons and entities before, or appear before, any town department, agency, board, or commission other than their own.

7. Confidential Information

To discuss this provision, click [here](#).

An **official or employee***, a former official or employee, a contractor or a **consultant*** may not use confidential information, obtained formally or informally as part of his or her work for the city or due to his or her position with the city, for his or her own benefit or for the benefit of any other person or entity, or make such information available in a manner where it would be reasonably foreseeable that a person or entity would benefit from it.

Comment: Some cities will want to define "confidential information" more exactly. Here is possible definition language, based on the IMLA Model Code:

"Confidential information" means information obtained in the course of holding public office or employment, or as a contractor to the city, which is not available to members of the public and which the **official or employee*** is not authorized to disclose, except to designated individuals or bodies, including written and non-written information. When such information is also available through channels open to the public, **officials and employees*** are not prohibited from disclosing the availability of those channels.

The IMLA Model Code states explicitly, in its confidential information provision, that an ethics commission is, effectively, considered a designated body.

New York City adds a valuable exception to its confidential information provision:

"provided, however, that this shall not prohibit any public servant from disclosing any

information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest."

8. Political Solicitation

To discuss this provision, click [here](#).

An official, employee, or municipal candidate may not knowingly request, or authorize anyone else to request, that any **subordinate*** or potential future subordinate participate, or not participate, in any political activity, including the making of a campaign contribution. Nor may he or she engage in any political activity while on duty for the city, with the use of city funds, supplies, vehicles, or facilities, in uniform, or during any period of time during which he or she is normally expected to perform services for the city, for which compensation is paid.

Comment: Political solicitation of subordinates by an official fosters the appearance, if not the reality, of coercion. The word "knowingly" here means that neither an official nor a campaign committee is required to cull the names of municipal officials from voter registration lists it mails to. However, a targeted mailing to municipal officials is prohibited.

Similarly, candidates are barred from soliciting from appointed officials and employees who may fear reprisal, such as being fired, if they refuse to aid the candidate's campaign, even if they do not currently work under that candidate.

Note that this code does not restrict voluntary political contributions or political activity by any official or employee.

Some municipalities may wish to add a bar on soliciting from persons or entities that have sought or received a financial benefit from the municipality within the previous twenty-four months.

9. Patronage

To discuss this provision, click [here](#).

No **official or employee*** may promise an appointment or the use of his or her influence to obtain an appointment to any position as a reward for any political activity or contribution.

Comment: As has been shown so skillfully in Chicago, patronage involves both promises of jobs in return for political activity, and the threat of losing jobs in return for political activity, so that patronage continues on forever. Even the Shakman Decree of 1983 did not put an end to the Chicago patronage system: it just went underground. It was twenty years before the new version, based on fraud, was taken on.

Most ethics codes do not include patronage provisions, although many do prohibit asking subordinates to participate (however, this can occur without implicit requests or threats). Patronage involves the most basic conflict of interest in government: the conflict between holding on to power and acting in the public interest. A city government based on patronage cannot have a truly ethical environment, because most of its officials and employees are there on the basis of a quid pro quo/special consideration relationship, which is inconsistent with ethics.

I would like to hear how various cities have dealt with or ignored patronage as an ethics issue.

10. Post-Employment

To discuss this provision, click [here](#).

a. **Representation.** For a period of two years after the termination of his or her city service or employment, an **official or employee*** may not, on behalf of any other person, for compensation, directly or indirectly, formally or informally, act as agent, attorney, lobbyist, or other sort of representative, to or before his or her former agency, department, authority, board, or commission. For the purposes of this provision, a mayor, chief of staff or vice-mayor, city manager or assistant manager, council member or council aide is deemed to have worked for every city department, agency, authority, board, and commission. Acting indirectly includes action by a partner, associate, and other professional employee of an entity in which the former official or employee is a partner, associate, or professional employee, as well as acting by a member of the former official or employee's immediate family.

b. **Particular Matters.** With respect to particular matters on which the official or employee personally and substantially worked while in city service or employment, the foregoing prohibition is permanent.

c. **Area of Responsibility.** With respect to matters for which the official or employee had official responsibility, but were not personally and substantially involved, the foregoing prohibition is for a period of two years after termination of city service or employment.

d. **Employment.** An **official or employee***, or a member of his or her immediate family, may not accept employment with, or with the help of, (a) a party to a contract with the city, within two years after the contract was signed, when he or she participated personally and substantially in the preparation, negotiation, or award of the contract, and the contract obliged the city to pay an aggregate of at least \$25,000; or (b) an individual or entity who has, within the previous two years, benefited directly from any decision made by, or based on advice or information supplied by, the official or employee or by a subordinate. An elected or appointed official, or a member of his or her immediate family, may not accept employment if the body of which he or she is a member or was a member within the previous two years had any role in filling the job, including an advisory role. A mayor, chief of staff or vice-mayor, or council member, or a member of his or her immediate family, may not, for two years after termination of city service or employment, accept any full-time compensated position with the city. For the purposes of this section, "employment" includes full-time and part-time jobs, and professional and other work for hire, given directly or indirectly.

e. **Exceptions.** Former officials and employees are not prohibited from acting if:

1. They are working for the city on a volunteer basis.
2. They are acting on behalf of another federal, state, or local government.
3. They are giving testimony under oath and is not being compensated for it.
4. They are providing scientific or technological information at the government's request.
- e. They performed only **ministerial acts***.

f. **Waivers.** The Ethics Commission may waive the prohibitions of this provision if it determines that the situation does not create a potential for undue influence, unfair advantage, or a serious appearance of impropriety. See [§210](#) for the waiver process.

Comment: "Personally worked" means the official actually worked on the matter, not that he or she supervised a department that worked on the matter, which is included under having "official responsibility."

The appearance of impropriety of getting a job based on what you did as a city official or employee is so great that each official or employee should err on the side of not seeking or accepting work with people or firms that had business before his or her agency or board.

If an official or employee is not certain whether this provision applies to work they are seeking or are requested to do, and does not want to turn it down, he or she should ask the Ethics Commission for an advisory opinion or a waiver.

This provision is intended to, as stated in the waiver section, prevent people and firms from having undue influence or unfair advantage by hiring officials and employees to help them use their contacts before their agencies or boards. In addition, it is intended to make it harder for firms to use a job offer to get special treatment from officials and employees. And it is intended to prevent officials and employees from using their positions to gain jobs with firms that have business before them and, similarly, to prevent the appearance of impropriety that arises when an official takes a job with a firm that had business before his or her agency or board.

In short, it is important that officials focus on the public interest while in office, and not have an incentive to give preferential treatment to firms or individuals who may hire them when they leave public service.

One year is too short a time period to accomplish the goals of a post-employment provision, but the longer the bar, the more difficult it might be to hire qualified officials or find qualified candidates for office. This is the trade-off every local government must make in setting the time period. Two years is a reasonable compromise between effectiveness and the burden on government officials.

Allowing former officials to immediately work for the city as paid consultants would allow the official to continue to act in the city's interest, but such an exception would allow for sweetheart deals between the city and former officials, who normally have the edge in competing with vendors lacking their municipal contacts. Therefore, according to this subsection, a former official could consult to the city only on a volunteer basis for his or her first year after city service.

*The **confidential information provision** also applies to former officials and employees. And the other side of the revolving door, from business to government, is dealt with in **§100(b)**, as a conflict of interest.*

11. Misuse of City Property and Reimbursements

To discuss this provision, click [here](#).

An **official or employee*** may not use, or permit others to use, any city funds, property, or personnel for profit or for **personal convenience or benefit**, except (a) when available to the public generally, or to a class of residents, on the same terms and conditions, (b) when permitted by policies approved by the local legislative body, or (c) when, in the conduct of official business, used in a minor way for personal convenience. "City funds" includes travel and other expense reimbursements, which may not be requested for nor spent on anything but official business.

Comment: *The IMLA Model Code takes this further by requiring care in the use of city property, so that there is no waste. This is an essential element of government ethics, but it is a difficult thing to put into law. People - especially opposition parties - often paint other people's actions as wasteful and negligent. The duty to use city property and resources with care belongs in the aspirational section of an ethics code, or it invites frivolous complaints, making it almost impossible to reject any complaint as frivolous.*

12. Nepotism

To discuss this provision, click [here](#).

No **official or employee*** may appoint or hire, or participate in influencing the appointment or hiring of, his or her spouse or **domestic partner***, child or step-child, sibling or step-sibling, parent, or member of his or her **household*** for any type of employment, including by contract (unless competitively bid), with the city. No **official or employee*** may supervise or be in a direct line of supervision over his or her spouse or **domestic partner***, child or step-child, sibling or step-sibling, parent, or member of his or her **household***. If an **official or employee*** comes into a direct line of supervision over one of these persons, he or she will have six months to come into compliance or to obtain a waiver.

Comment: *Some cities might also want to broaden the range of relations that constitute nepotism to include, say, aunts and uncles, nephews and nieces, and direct in-laws. Comments should include a statement that officials should not participate with respect to the hiring of relatives not expressly included in the list, even if this is not clearly a violation. It is always best to stay out of any dealings that involve relatives.*

*This is a popular provision in terms of requests for **waivers**, and for good reason. There are situations where enforcing this provision would mean the resignation of a valuable employee. As important as it is to prevent nepotism, this prohibition needs to be balanced against other considerations.*

Here is an interesting provision from Oakland, CA, which combines a prohibition against nepotism with one against cronyism, which is defined as follows:

participating in any employment decision that may be viewed as a conflict of interest, such as one involving a close friend, a business partner, and/or professional, political, or commercial relationship, that would lead to preferential treatment or compromise the appearance of fairness.

*The provision, §2.40.060 (Title 2, Ch. 2.40 of the **Oakland Municipal Code**), reads as follows:*

No official, manager or employee may engage in cronyism and/or attempt to influence the City or any official, manager or employee, to hire, promote, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship.

13. Transactions with Subordinates

To discuss this provision, click [here](#).

No **official or employee*** may engage in a financial transaction, including the giving or receiving of loans or monetary contributions, including charitable contributions, with a

subordinate* or person or business over which, in the **official or employee's*** official duties and responsibilities, he or she exercises supervisory responsibility, unless (a) the financial transaction is in the normal course of a regular commercial business or occupation, or (b) the financial transaction involves a charitable event or fundraising activity which is the subject of general sponsorship by a state or municipal agency through official action by a governing body or the highest official of state or municipal government.

Comment: Exception (b) allows for United Way campaigns and the like, but officials should be careful not to abuse this exception by getting pet charities approved by the mayor or city manager. *Too often, charities are as much about the official as elections are, and even good causes should not be aided through coercion.*

Some cities might also want to except situations where the subordinate or business offers or initiates the financial transaction, but this exception can be abused in instances where a subordinate or business acted under pressure and does not feel in a position to anger a supervisor or someone responsible for handing out contracts.

14. Fees and Honorariums

To discuss this provision, click [here](#).

No **official or employee*** may accept a fee or honorarium for an article, for an appearance or speech, or for participation at an event, in his or her official capacity. However, he or she may receive payment or reimbursement for necessary expenses related to any such activity.

15. Endorsements

To discuss this provision, click [here](#).

No **official or employee*** in his or her official capacity may publicly endorse products or services. However, this does not prohibit an official or employee from answering inquiries by other governmental officials, consumer organizations, or product information services regarding products or services.

16. Consultants*

To discuss this provision, click [here](#).

A **consultant*** may not represent a person or entity other than the city in any matter, transaction, action, or proceeding in which the consultant participated personally and substantially as a consultant to the city. Nor may a consultant represent a person or entity in any matter, transaction, action, or proceeding against the interest of the city.

Comment: Other rules that apply expressly to consultants are **100(8)** (Confidential Information), **100(21)** (Honesty in Application for Positions), and **101(2)** (Transactional Disclosure). Also see the comments to **100(11)**, the post-employment provision.

Many codes also include language such as: A consultant may not accept other employment that will either impair the consultant's independence of judgment with respect to the consultant's official duties for the city, or that will require or induce the consultant to disclose confidential information pursuant to **subsection 8** of this section. *The same problem appears as in the comments to **100(1)** above: how does one know or prove that employment will impair someone's judgment or induce someone to*

disclose confidential information? It is enough that consultants are prevented from representing parties against the city or in matters the city hired them to deal with, and that they be included in the confidential information provision, 100(8).

17. Complicity with or Knowledge of Others' Violations

To discuss this provision, click [here](#).

No one may, directly or indirectly, induce, encourage, or aid anyone to violate any provision of this code. If an **official or employee*** suspects that someone has violated this code, he or she is required to report it to the relevant individual, either the employee's supervisor, the board on which the official sits or before which the **official or employee*** is **appearing*** or will soon appear, or the Ethics Commission if the violation is past or if it is not immediately relevant to a decision, to discussion, or to actions or transactions. Anyone who reports a violation in good faith will be protected by the provisions of 110.

Comment: *This subsection seems to turn all city officials and employees into stool pigeons. But, in fact, a principal reason why ethics programs are ineffective is that officials and employees feel they can get away with unethical conduct because no one will turn them in. Instead of having a culture based on ethics, their city has a culture based on loyalty. People in such a city ignore conflicts of interest, because they feel protected. There are two reasons for this: (i) no one wants to be a tattletale and (ii) everyone is afraid to be a tattletale, because doing so might threaten their jobs, lead to harassment and failure to advance, or undermine their relations with people in power. This subsection, along with the whistleblower protection in 110, allows the people who know most what is going on in city government - city employees - to safely foster an ethical environment by preventing action in the public interest from being against their self-interest. The inclusion of this provision makes it clear to all officials and employees that government ethics is a group activity, that unethical behavior is less an individual problem than an organizational problem.*

Such a provision appears in the IMLA Model Code; the comments to the IMLA provision state, in part, "Even if a community ultimately decides not to impose any duty [to report violations], it would be better off for having debated the issue."

Whether or not anonymous reports would be accepted is another area for debate. Creating a hotline for reports of violation (anonymously or not) makes it easier for city employees and others to fulfill their duty to report violations. As long as the ethics commission can file its own complaint in such an instance, there is the protection for respondents that the ethics commission must feel satisfied, after a preliminary investigation, in the truth of the report. People's experiences with such hotlines, good and bad, would be very helpful, as would information about debates about the duty to report and about hotlines and anonymous reporting of violations.

Back to tattling, which is rarely defended in a rational way. Not tattling is something very important in childhood, where it helps maintain solidarity of children against adults. But for adults there is not a group to maintain solidarity against (hopefully not the city's residents, to whom officials have a fiduciary duty) and, therefore, this sort of unquestioning loyalty is inappropriate. The best thing to do, before reporting, is to try to prevent unethical conduct before it occurs, to directly recommend, for example, that someone withdraw from participation or seek advice from the ethics commission. But it

is important that officials and employees know that unethical conduct will not be protected by the silence of fear or misplaced loyalty.

The first sentence of this subsection, on complicity and inducement, is equally important. Under most ethics codes, a private citizen or company that induces a municipal official to violate ethics laws runs no risk of penalty. For example, hoping to keep a city's business, a bank might give a personal loan to the city treasurer at a below-market interest rate. If this loan is discovered, the official might lose his or her job as a result; however, the bank will lose nothing and, more important, knowing this, it is more likely to offer the loan. Since the goal of this code is to prevent conflicts between the official's interests and the public interest, it is important that the code also make it less likely that officials are tempted into these conflicts. Please share your experiences with provisions such as this, including instances where suits have been brought, arguing that ethics commissions have no jurisdiction over anyone other than public servants.

18. Falsely Impugning Reputation

To discuss this provision, click [here](#).

An **official or employee*** may not falsely impugn the reputation of a city resident. If an **official or employee*** believes his or her accusation to be true, and then learns that it was false, even in part, he or she should apologize in the same forum the accusations were made. A failure to so apologize within a reasonable period of time after learning of the falseness of the accusations will create the presumption that the conduct was fully intentional.

Comment: A common way for officials to intimidate residents who speak out and to prevent others from similarly speaking out is to use their positions of respect to falsely attack people who lack such positions, and thereby destroy their reputation and the legitimacy of their arguments, so that opposition from that individual and others will lessen. This form of misuse of office is central to undermining free debate as well as citizen oversight of executive and legislative actions.

19. Meeting Attendance

To discuss this provision, click [here](#).

All members of boards and commissions are expected to attend their meetings. It is a violation of this code to miss more than a third of a board or commission's meetings in a twelve-month period.

Comment: This might seem rough, but it is rough on a board when its members do not attend meetings. In fact, it can make quorums difficult and, thereby, undermine the functioning of the board. If a board member has health problems, lives out of town a large part of the year, or has ongoing scheduling problems, the responsible thing to do is resign. If things change in the future, the board member can ask to be appointed when the next position opens up. Reappointment should be easy for someone so responsible.

20. Honesty in Applications for Positions

To discuss this provision, click [here](#).

No person seeking to become an **official or employee,* consultant*** or contractor may make any false statement, submit any false document, or knowingly withhold information about wrongdoing in connection with employment by or service for the city.

To discuss other provisions, including those suggested below, click [here](#).

Additional Comment to 100: Some codes, including the IMLA Code, make it an ethical duty to comply with laws, including criminal laws, discrimination and sexual harassment laws, and lobbying laws. The chronic violation of more minor laws and rules is also sometimes cited.

It is a difficult question whether to involve an ethics commission with every violation of law. Criminal and other undesirable activity by public servants certainly undermines the public trust in municipal government. But is the ethics process the right place to deal with such matters, or are they better dealt with by supervisors or, in the case of elected officials, by voters? The duty to comply with laws is not included here because, as long as the violation of other laws is made public, criminal and other proceedings should deal with them as well as the ethics process. However, if the violation is somehow hidden from the public, it might be appropriate for an ethics commission to make the violation public. Has anyone seen language to this effect?

I believe that cities should consider special ethical guidelines and rules for city attorneys. This is a complicated area, where it is sometimes not clear what it means to represent the city (the mayor, the council, the public interest in such things as truth, openness, and a fair process). I feel that guidelines are important not only for attorneys, who often do not recognize the special conflicts they face, but also to protect the public interest, which is harmed by city attorneys who ignore conflicts in the name of representing their client. Who their client is in each sort of instance needs to be clarified. Attorney conflicts of interest are covered by their state's disciplinary rules, but (i) these rules are enforced by lawyers rather than city residents; and (ii) these rules do not deal with the special conflicts that city attorneys are faced with. I would like to see a discussion about it, including recommended provisions to deal with the problems practitioners, both lawyers and non-lawyers, have witnessed.

101. Transactional Disclosure.

To discuss this provision, click [here](#).

1. Whenever an **official or employee*** has reason to believe that he or she should withdraw from participation under **§100.3** of this code, he or she must:

- a. immediately refrain from participating further in the matter, formally or informally;
- b. promptly inform the appropriate individual or body, pursuant to subsection 3 below, that he or she has a conflict, and the nature of the conflict; and
- c. promptly file with the ethics commission [or city clerk, if there is no commission] a signed statement disclosing the reasons for withdrawal or, if a member of a board or commission, state this information on the public record of that board or commission.

Comment: *In subsection 1(c) and in 104(2) there are references to placing information on the public record. This appears to assume that municipal meetings have a published transcript or, at least, a recording, video or aural, that is available to the public. But especially in smaller cities and towns, and in less important meetings, this is not the case. How have cities dealt with this problem of not having a public record to place disclosures on? Is it required that minutes include all disclosures?*

2. Whenever someone suggests or requests (privately or publicly) that an **official or employee*** withdraw from participation under §100.3 of this code, and he or she chooses not to do so, he or she must promptly file with the ethics commission [or city clerk, if there is no commission] a signed statement disclosing the reasons for refusing to withdraw or, if a member of a board or commission and if the suggestion was made publicly at a meeting of that board or commission, state this information upon the public record of that board or commission.

Comment: *See the comment to 100(3) for more information.*

3. An **official or employee*** is required to inform the appropriate individual or body pursuant to subsection 1b, as follows:

- a. If a member of a board, commission, committee, or authority, inform the chair or the entire body at a public or executive session (if at an executive session, the disclosure should also be made after going back into regular session); if the chair, inform the secretary;
- b. If not on such a body and appointed by the city manager/director of administration/mayor, inform the city manager/director of administration/mayor;
- c. If an employee of the Board of Education, inform the Superintendent of Schools;
- d. If the Superintendent of Schools, inform the chair of the Board of Education;
- e. If an elected official, inform the mayor;
- f. If a **consultant,*** inform the chair or head of the board, department, or agency that hired the consultant.

4. An **official or employee*** with an interest in a contract must disclose this interest prior to the first of any of the following events of which the official has knowledge:

- a. The preparation of the contract specifications.
- b. The solicitation of the contract.
- c. The bidding of a contract.
- d. The negotiation of a contract.
- e. The approval of the contract.

5. An **official or employee*** need not make a disclosure pursuant to this section if he or she, with respect to the same matter, has already made such a disclosure.

Comment: *Transactional disclosure provides specific disclosure when a conflict arises, that is, when an official or employee's personal relationship or interest actually creates a conflict with the public interest. It is at this point that it is most important that the official or employee seriously consider the effects of this conflict on his or her actions or judgment, as well as the effects on how his or her involvement would appear to the public if it knew about the conflict.*

Subsection 3: These specific guidelines to informing of conflicts should be adapted to each city's particular form and structure.

102. Exclusions from the Code of Ethics and from Transactional Disclosure.

To discuss exclusions and waivers, click [here](#).

The provisions of 100 and 101 of this code do not require withdrawal or transactional disclosure as a result of:

1. An action specifically authorized by statute, rule, or regulation of the State of _____ or of the United States.
2. A **ministerial act***.
3. **Gifts*** (a) received by the **official or employee*** from his or her parent, spouse or **domestic partner***, child or step-child, or sibling or step-sibling; (b) received by the official or employee, his or her spouse or domestic partner, child or step-child, parent, and member of his or her **household***, from a person or entity (any person who works for or is otherwise related to an entity is considered as having given on behalf of that entity), having an aggregate value of \$50 or less during any twelve-month period; or (c) accepted on behalf of the city and transferred to the city pursuant to **100(4)(b)**.
4. **Gifts*** or **financial benefits*** having a value of \$50 or less that are received by a city official or employee for the solemnization of a marriage officiated by that official or employee at a place other than his or her normal public place of business and at a time other than his or her normal work hours.
5. Public awards from charitable organizations having a value of \$100 or less.

Comments: *Subsection 3 contains an annual dollar limit for gifts given to an official or employee plus his close relations. Many ethics codes' dollar limits are per gift, usually around \$50, in the belief that taking an official out to lunch is acceptable. However, such a limit is easy to get around by giving lots of small gifts to officials and their relatives, which add up to large gifts over time. Another way around such a rule is to give large gifts that are naturally spread out over time, such as a restaurant or club tab, or season tickets. Other codes' gift rules contain many detailed instances and amounts, for such things as private or public or charitable functions. A simpler rule, with an annual limit, is more clear and therefore provides better guidance. I would like to hear people's opinions about this, as well as their experiences with the approaches: how successful they've been, how they've been enforced, etc.*

103. Annual Disclosure.

To discuss this provision, click [here](#).

1. Officials, Employees, and Others Who Are Required to File.

Those holding the following job titles or positions are required to file a signed annual disclosure statement:

1. Elected officials;

2. Department heads and those authorized to act on their behalf (e.g., first deputies);
3. **Officials and employees*** who hold policymaking positions, including members of municipal boards, such as ethics commissions, finance boards, planning and zoning boards, boards of zoning, buildings, and assessment appeals, wetlands and conservation boards, economic development boards, and parks and recreation boards;
4. Officials whose job descriptions or whose actual duties involve:
 - i. The negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses;
 - ii. The purchase, sale, rental, or lease of real property, personal property, or services, or a contract for any of these;
 - iii. The obtaining of grants of money or loans; or
 - iv. The adoption or repeal of any rule or regulation having the force and effect of law;
 - v. candidates for elected office;
 - vi. political party committee officers; and
 - vii. **relatives of officials and employees** who, pursuant to subsection 5(d) of this section, are required to file because they are employed by the city, but who would not otherwise be required to file.

2. Time and Place for Filing.

a. Annual disclosure statements (for the calendar year) are to be filed with the Ethics Commission:

- (i) Within one-hundred-and-twenty days after the effective date of this section;
- (ii) Within thirty days after taking one of the job titles or positions listed in subsection 1 of this section; and
- (iii) No later than May 15 of each year thereafter.

b. For candidates for elected office:

- (i) With the filing of the certificate of candidacy or declaration of intent.
- (ii) No later than May 15 of each year thereafter. If an annual disclosure statement is overdue and is not filed within 20 days after the candidate receives from the Ethics Commission written notice of the failure to file, the candidate is considered to have withdrawn his or her candidacy.

3. Changes in Disclosed Information.

Within thirty days after a change in the information contained in his or her most recently filed annual disclosure statement, an official, employee, or candidate must file a signed amendment to the statement (as in subsection 2), indicating the change.

4. Contents of Annual Disclosure Statement.

The annual disclosure statement will include:

- a. The location of any real property in the city, or within one mile of the boundary of the city, in which the person disclosing, or his or her **relative***, has a **financial interest***, and the type of financial interest.
- b. With respect to each **outside employer or business*** of the person disclosing:
 - (i) Its name (if any);

- (ii) The nature of its business;
 - (iii) If it is an entity, the type of entity;
 - (iv) The person disclosing's relationship to it, such as sole proprietor, owner, partner, official, director, member, employee, bondholder, or shareholder.
- c. With respect to each **outside employer or business*** of the person disclosing's spouse or **domestic partner***, the information required by paragraph (b) of this subsection.
- d. The names and addresses of all **relatives*** employed by the city as employees, contractors, or **consultants***, including **relatives*** who work for or are subcontractors of contractors, **consultants***, or subcontractors.
- e. Failure to disclose the information required by subsection 4 of this section with respect to a person disclosing's spouse or other **relative*** does not constitute a violation of that subsection if the person disclosing made a good faith effort to obtain the information and if he or she also sets forth those efforts in his or her disclosure statement.
5. Any person who is subject to the disclosure provisions of this and the following subsection is required to obtain and preserve, for a period of three years following the date of the relevant disclosure statement, all accounts, bills, receipts, and other documents necessary to complete and substantiate such disclosure statement. These documents will be made available for inspection upon request by the Ethics Commission or its agent after reasonable notice.
6. The Director of Finance must certify to the Ethics Commission, no later than May 15 of each year, a list of all business entities doing business with the city, currently bidding for business with the city, or that have done business with the city over the prior three years. This list will be made available to the public at no cost.

Comment: While less significant than transactional disclosure, annual disclosure does fill an important role in an ethics program. In particular, annual disclosure reveals potential conflicts of interest before they arise and thus alerts the official - and the citizenry - to those potential conflicts. Annual disclosure thereby provides a check on transactional disclosure and protects officials by identifying potential ethical pitfalls, which the official can then take steps to avoid.

Politicians often focus their condemnation of ethics codes on annual disclosure statements. They insist that forcing people to disclose their interests will prevent people from getting involved in city government. But the disclosure statements in this model code are far from what, say, U.S. Senators are required to file. No one is being asked to disclose how wealthy or poor they are. They are only being asked to say who their employer is (not what they're paid), what local companies they have financial interests in (not how big their interest is), what land they own in the municipality, and which of their relatives work for the city. The only people who will truly mind disclosing this information are those who have so many interests or involved relatives, or so much land in town, that they probably would face many conflicts of interest and, therefore, should probably not be involved in city government, except in areas that do not deal with businesses, developers, or contractors. After all, the biggest complaint people have about municipal governments is that they're run by local businessmen, developers, and contractors, those who represent them, and their relatives. This problem is only compounded when officials do not want to admit publicly what they do for a living.

Some cities will want to go beyond these minimal disclosure requirements, especially for senior officials. Such cities will want annual disclosure of all information directly relevant to the ethics code, including all interests, direct and indirect, that might conflict with government responsibilities (see 100(1) above). Major debtors and creditors may also be listed, as well as any applications made to the city during the year. It may be specified that the disclosure statement is being filed under oath.

Subsection 1: For the sake of clarity, each municipality should list the job titles or positions of the persons required to file annual disclosure statements.

Subsection 2: May 15 was chosen because it is one month after personal income tax returns are due, providing them with both fresh information and the time to prepare the disclosure statement.

Subsection 4: In the event a person disclosing, after a good faith effort, is unable to obtain the required information from an estranged spouse or from a relative, he or she need only set forth his or her efforts in the disclosure statement; there is no need to review land records.

Subsection 6: Information in disclosure statements is useful only if it can be checked against information. That is the purpose of this subsection: to allow the comparison of an official's business connections with a list of businesses that do business with the city. Should failure to file a disclosure statement be a violation requiring a complaint to be filed, placing the burden on citizens or the ethics commission and requiring an investigation and hearing for a clear-cut violation? Or should the burden be on the person disclosing to file (at least a request for a 30-day extension), requiring from the ethics commission only a notice and a reasonable length of time before a stated penalty is automatically due?

There have been cases, such as in Rhode Island, where a large number of officials did not file disclosure statements, making it almost impossible for the ethics commission to take action against them all (it is my understanding that they chose to go after the governor first). A late fee and serious penalty for not filing would require officials to take the requirement seriously. I would like to know others' experiences with enforcement of annual disclosure.

104. Disclosure by Applicants.

To discuss this provision, click [here](#).

1. When a person requests that the city, or a city **official or employee***, take or refrain from taking any action (other than a **ministerial act***) that may result in a **financial benefit*** to either any official or employee or to one of the other persons listed in 100(1) of this code, the person requesting must disclose the name of any such person or persons, to the extent of his or her knowledge at the time of the request.

2. If the request is made in writing, the disclosure must accompany the request. If the request is oral and made at the meeting of a public body, the disclosure must be set forth in the public record of the body. If the request is oral and not made at the meeting of a public body, the disclosure must be set forth in writing and filed with the city clerk, who will send a copy to the Ethics Commission.

Comment: An example of how this section works is that an applicant for a zoning variance is required to list the name of any city official or employee, or others listed in

100(1), who might benefit from the granting of the variance. Applicant disclosure provides a check on transactional and annual disclosure.

This section does not require that the applicant research which officials, if any, have an interest in the matter, but only requires that the applicant disclose the names of interested officials to the extent the applicant knows of the interest. Also, the section imposes no burden on the applicant to update the disclosure if the applicant later learns that certain officials have an interest in the application.

105. Advisory Opinions.

To discuss advisory opinions, click [here](#).

1. Upon the written request of any **official or employee***, including former officials and employees whose position was terminated within three years as well as people who intend to soon become an official or employee, as well as any candidate, **consultant**, or person or entity doing business with the city, or person or entity doing business with or seeking a special benefit from the city, or intending to soon do so, the Ethics Commission must render, within fifteen days after the date of its next regular meeting, a written advisory opinion with respect to the interpretation or application of this Code with respect to future actions only. If an earlier response is desired, or if the Ethics Officer determines that the situation does not require a formal advisory opinion, an informal verbal or e-mail opinion will be provided by the Ethics Officer. For more information about advisory opinions, see **Section 209** of this code.

2. Any person or entity may request informal advice from the Ethics Officer about any situation, including hypothetical situations, but such advice is not binding and there are no time requirements.

Comment: For more information about advisory opinions, see **209**, in the Administration part of this code. The Ethics Commission's other duties are set forth in the Administration part of this code, which is of interest to most people only in extreme situations. But all officials and employees, as well as many residents, will have occasion to take advantage of the Ethics Commission's or Ethics Officer's advice. And this is the Ethics Commission's most important responsibility. It is very important for local government officials and employees, whenever they are uncertain as to whether they should proceed with a matter, to immediately seek advice. This will prevent unethical conduct from occurring due to a lack of knowledge or understanding, and will create a series of precedents to guide officials and employees in the future.

In smaller jurisdictions that do not provide for paid staff, ethics officers sometimes work on a volunteer or part-time basis (and ethics officers can be shared among small jurisdictions). They can be very helpful in providing quick advice before possible conflicts can cause problems. Ethics Commissions rarely meet often enough to provide timely advice, and town, city, and county attorneys rarely have the training, and rarely are unbiased enough, or seen as unbiased enough, to provide trustworthy advice.

There is nothing worse than having an official told by a government attorney that he or she can do (or not do) something which, whether a violation of the ethics code or not, would undermine citizens' trust in their government officials. And yet this happens all the time. A truly neutral ethics officer can prevent this from happening.

Although it is common for informal ethics advice not to be binding on the ethics commission and not to require an official to follow it, if the informal ethics advice is put

into writing, and the facts are confirmed by the requester, it is best to treat the informal ethics advice as binding on both the requester and the ethics commission.

106. Void Contracts.

To discuss penalties relating to contracts, click [here](#).

Any contract, permit, or other transaction entered into by or with the city which results in or from a violation of any provision of sections 100 or 101 of this code is void, without further action taken, unless ratified by the city's legislative body in an open session held after applicable public notice. Such ratification does not affect the imposition of any penalties pursuant to this code or any other provision of law.

107. Penalties for Violation of This Code.

To discuss penalties and other relief, click [here](#).

To discuss negotiating with unions regarding penalties that apply to employees, click [here](#).

1. Resignation, Compensatory Action, Apology.

Violation of any provision of this code should raise conscientious questions for the **official or employee*** concerned as to whether a sincere apology, compensatory action, or resignation is appropriate to promote the best interests of the city and to prevent the cost - in time, money, and emotion - of an investigation and hearings.

Comment: An official should not compound ignoring a conflict of interest by again putting his or her personal interest ahead of the public interest by denying, obfuscating, or covering up what he or she knows to be true, or by, directly or indirectly, falsely accusing others of misconduct. An apology that includes sincere remorse and a willingness to make reasonable reparations restores respect and dignity, brings peace to personal and partisan rancor, assures the public that it is safe from further harm.

2. Disciplinary Action.

Any person or entity that is found to have engaged in action or inaction that violates any provision of this code may be reprimanded, suspended, or removed by the Ethics Commission, or the Ethics Commission may seek or impose any of the sanctions or remedies listed below or in **215**.

Comment: *Many cities do not choose to allow ethics commissions to suspend or remove officials and employees. This can be a special problem where the employee is covered by a collective bargaining agreement. Below is alternative language for such cities:*

Any person or entity that is found to have engaged in action or inaction that violates any provision of this code may be reprimanded by the Ethics Commission. If the Ethics Commission recommends that the violator be suspended or removed from office or employment, or be subject to any other sanction or remedy authorized by law or collective bargaining agreement not listed in this section or in **215**, the legislative body

must choose, in an open session held after applicable public notice, whether and to what extent to impose such sanctions.

Requiring the legislative body to make a determination on the ethics commission's recommendation is very important, because otherwise a council majority could prevent the matter from being debated (or they could dispose of it secretly in executive session). An alternative approach is to make it more clear what sort of violation of this code can lead to suspension or removal, and to require a supermajority, as in the following language:

The Ethics Commission may suspend or remove a respondent from office, or employ other sanctions or remedies authorized by law or collective bargaining agreement not listed in this section or in 215. To suspend or remove a respondent, the violation must have been committed either with (i) fraudulent intent to secure the unjust enrichment of the respondent or another person or (ii) malicious intent to inflict pecuniary or other substantial injury upon another person. A respondent can be suspended or removed only by the vote of four members of the Ethics Commission.

Two important limitations on an ethics commission suspending or removing employees must be taken into account: (i) union rules and procedures; and (ii) civil service rules and procedures. Since these vary greatly, each city must determine how to take these into consideration without undermining the Ethics Commission's enforcement powers, especially with respect to elected and appointed officials who are neither union members nor civil service employees (and most ethics proceedings involve such officials). Protection of union and civil service prerogatives can be used a way to take enforcement power out of the Ethics Commission's hands. Please share your experiences with union and civil service conflicts with ethics enforcement.

When politicians do give this power to an Ethics Commission, especially one not of their choice, it makes a strong commitment to a neutral, non-politicized ethical environment and sends a clear message to people in the city government and to those who work with it.

Please also share your experiences with ethics commissions that do have the power to suspend or remove employees, as well as with situations where this power is reserved to the legislative body or other individuals or bodies.

3. Civil Fine.

Any person or entity that violates any provision of this code may be subject to a civil fine of up to \$2,000 for each violation, payable to the city. A civil fine may be imposed in addition to any other penalty authorized by this code or by law, other than a civil forfeiture pursuant to **subsection 5** of this section.

4. Damages.

Any person or entity that violates any provision of this code is liable in damages to the city for any losses or increased costs incurred by the city as a result of the violation. Such damages may be imposed in addition to any other penalty authorized by this code or by law, other than a civil forfeiture pursuant to **subsection 5** of this section.

5. Civil Forfeiture.

Any person or entity that violates any provision of this code is subject to a civil forfeiture to the city of a sum equal to twice the value of any **financial benefit*** he, she, or it

received, or caused others to receive, as a result of the conduct that constituted the violation. A civil forfeiture may be imposed in addition to any other penalty authorized by this code or by law, other than a civil fine pursuant to [subsection 3](#) or damages pursuant to [subsection 4](#) of this section.

108. Debarment.

To discuss penalties relating to contracts, click [here](#).

1. Any person or entity that intentionally or knowingly violates any provision of this code, in more than a de minimis manner, as well as any entity owned by such person or entity or by an owner of the entity in violation, is prohibited from entering into any contract, other than an employment contract, with the city for a period not to exceed three years.
2. Nothing in this section may be construed to prohibit any person or entity from receiving a service or benefit, or from using a facility, which is generally available to the public.
3. Under this section, a corporation, partnership, or other entity is not vicariously liable for the actions of an employee. A corporation, partnership, or other entity is not debarred because of the actions of an employee unless the employee acted in the execution of company policy or custom, or with knowledge of one or more company officers. A store, region, division, or other unit of an entity is not debarred because of the actions of an employee of that unit unless the employee acted at the direction, or with the actual knowledge or approval, of the manager of the unit.

109. Injunctive Relief.

To discuss penalties and other relief, click [here](#).

1. Any resident, official, or employee of the city may initiate an action or special proceeding, as appropriate, in a court of appropriate jurisdiction for injunctive relief to enjoin any person or entity from violating this code or to compel any person or entity to comply with the provisions of this code. In lieu of, or in addition to, injunctive relief, the action or special proceeding, as appropriate, may seek a declaratory judgment.
2. No action or special proceeding may be prosecuted or maintained pursuant to subsection 1 of this section, unless (a) the plaintiff or petitioner has filed with the Ethics Commission a complaint alleging the violation, (b) it is alleged in the complaint or petition filed with the court that at least six months have elapsed since the filing of the complaint with the Ethics Commission, and that the Ethics Commission has failed to issue a determination in the matter, and (c) the action or special proceeding is filed within ten months after the alleged violation occurred.

Comment: This section addresses the failure of the Ethics Commission to act on a matter before it. When the Ethics Commission does act within the period prescribed by subsection 2, the remedy of the aggrieved party (the complainant or the alleged violator) lies in a proceeding to review the commission's determination (see [216](#)). If the Ethics Commission files a determination in the matter after the 109 suit has been filed, the matter should proceed as a review proceeding, provided that the plaintiff or petitioner is aggrieved by the Ethics Commission's determination.

110. Whistle-Blower Protection.

To discuss this section, click [here](#).

1. Neither the city nor any person, including **officials and employees***, may take or threaten to take, directly or indirectly, official or personal action, including but not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any official, employee, or other person (or against any member of their family) because that person, or a person acting on his or her behalf, (a) reports, verbally or in writing, or files a complaint with the Ethics Commission regarding an alleged violation of this code, or (b) is requested by the Ethics Commission to participate in an investigation, hearing, or inquiry, or is involved in a court action relating either to the alleged violation or to evidence presented or given as part of an Ethics Commission investigation or hearing. The provisions of this section are not applicable when the complainant, witness, or reporter of a violation made accusations or other statements that were malicious and false. A violation of this section is a violation of this code.

2. Anyone who alleges a violation of subsection 1 may bring a civil action for appropriate injunctive relief, or actual damages, or both within ninety days after the occurrence of the alleged violation. A court may order reinstatement of the plaintiff to such a suit, or the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the plaintiff all or a portion of the costs of litigation, including reasonable attorney fees and witness fees. The initiation of such litigation is not a violation of the confidentiality provisions in **100(8)** or **213(9)**.

Comment: Without whistle-blower protection, city employees - the people who best know what is going on in the city government - will be unlikely to come forward with reports of ethics code violations. It is difficult enough to betray the strong feelings of loyalty that exist in most workplaces, and almost impossible when speaking out endangers your job and pension. With whistle-blower protection, city officials will know their violations might be reported and, therefore, will be more likely to act consistent with the code (that is, their personal interest in protecting themselves will be closer to the public interest in their acting fairly and impartially).

111. Definitions.

To discuss this section, click [here](#).

To discuss whether some provisions should apply only to certain officials, click [here](#).

Unless otherwise stated or unless the context otherwise requires, when used in this code:

1. To **"appear"** or "appear before" means to communicate in any form, including, without limitation, personally, through another person, by letter, or by telephone. This definition also applies to the noun form, "appearance."

2. **"Consultant"** means an independent contractor or professional person or entity engaged by the city or advising a city official, and in a position to influence a city decision or action, or have access to confidential information.

3. "Customer or client" in 100(1)(e) means (a) any person or entity to which a person or entity has supplied goods or services during the previous twenty-four months, having, in the aggregate, a value greater than \$1,000, or (b) any person or entity to which an official or employee's* outside employer or business* has supplied goods or services during the previous twenty-four months, having, in the aggregate, a value greater than \$1,000, but only if the official or employee knows or has reason to know the outside employer or business supplied the goods or services.
4. "Domestic partner" is an adult, unrelated by blood, with whom an unmarried or separated official or employee* has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.
5. "Financial benefit" includes any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law. A "financial interest" is a relationship to something such that a direct or indirect financial benefit has been, will be, or might be received as a result of it.
6. A "gift" is a financial benefit* received or given without equivalent compensation. However, a financial benefit* received or given on terms available to the general public is not a gift.
7. "Household" includes anyone whose primary residence is in the official or employee*'s home, including non-relatives* who are not rent payers or servants.
8. An "interest in a contract" is a relationship to a contract such that a direct or indirect financial or other material benefit* has been, will be, or might be received as a result of that contract. The official or employee* does not need to be a party to the contract to have an interest in it. Indirect benefit includes a benefit to the official's family or outside business or employer.
9. "Ministerial act" means an action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act. An example of a ministerial act is the granting of a marriage license by a city clerk.
10. "Official or employee" means any official or employee of the city, whether paid or unpaid, and includes all members of an office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, committee, or subcommittee of the city. The term also includes candidates for office and elected candidates prior to the time they take office, as well as anyone engaged in the performance of a governmental function. "Official or employee" does not include:
 - (a) A judge, justice, or official or employee of the court system;
 - (b) A volunteer fire fighter or civil defense volunteer, except a fire chief or assistant fire chief; or
11. "Outside employer or business" includes:
 - (a) any substantial business activity other than service to the city;
 - (b) any entity, other than the city, of which the official or employee* is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced;
 - (c) any entity located in the city or which does business with the city, in which the official or employee* has an ownership interest, except a public corporation in which the official

or employee's ownership interest is the lesser of (i) stock valued at less than \$50,000 or (ii) five percent of the outstanding stock; and
(d) any entity to which the **official or employee*** owes, or by which the official or employee is owed, more than \$10,000, either in the form of a note, a bond, a loan, or any other financial instrument.

For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses..

12. "Personal benefit" includes benefits other than those that are directly financially advantageous. These include **financial benefits*** to **relatives***, business associates, and others listed in **100(1)**, as well as non-financial benefits to these people and to oneself, including such things as reputation and the success of one's career. A "personal interest" means a relationship to something such that a personal benefit has been, will be, or might be obtained by certain action or inaction with respect to it.

13. "Relative" means a spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the **official or employee's*** latest individual state income tax return.

14. "Subordinate" means another **official or employee*** over whose activities an official or employee has direction, supervision. or control.

Comment: Subsection 3 ("customer or client"): An employee of a large corporation may not know many of the customers or clients of his or her employer and should not be penalized for that understandable ignorance. For that reason, the "knows or has reason to know" language is included.

Subsection 6 ("gift"): A "financial transaction -- on terms not available to the general public" includes, for example, a reduced-interest loan to a municipal official. The reduction in interest would constitute a gift.

Subsection 10 ("official or employee") used to contain an exception for members of advisory boards that have no authority to implement their recommendations. This exception was deleted for the reasons set forth in **a blog post**, which focuses on more responsible ways of dealing with conflicted potential advisory board members.

Subsection 11(c)("outside employer or business"): It is sometimes said that stock ownership in a public company is not relevant to an official's interests, because he or she owns a tiny percentage of the stock and therefore has no control over the entity. But the success of the public company does have special meaning to someone who holds a large dollar amount of that company's stock (even if that amount is large only for the individual, not for the corporation) and, therefore, it does constitute an interest that could get in the way of an official's ability to act impartially (as well as the perception of how the official would benefit from the company's success).

The amount of share holdings will not be disclosed, but since there is a minimum amount, it will be clear that any disclosed share holding is sizeable. Therefore, some cities may want a lower threshold amount, so that it is not clear whether a shareholding is large or small.

Subsection 12 ("personal benefit"): Many ethics codes require the expenditure of funds even with respect to personal benefits. But this requirement allows officials to vote, say, on whether they should have to withdraw from participation, when a committee member raises the issue at a meeting. Non-financial interests, such as reputation, are very important to people and have an equally powerful effect on their ability to make impartial

decisions. *I would like to hear about examples of personal benefits you feel should be included as giving rise to a possible conflict of interest, and how you have seen such personal benefits dealt with when they are and when they are not covered by ethics codes.*

Subsection 13: Some cities follow the IMLA Model Code by defining "relatives," generally or in such instances as gift-giving, as anyone within up to the fifth degree of consanguinity. I feel that this term is inappropriate to an ethics code because of its unfamiliarity, its difficulty, and its common usage in law (determining incest). To be in the fifth degree of consanguinity, two individual's first common ancestor must be no more than a total of five generations away. For example, if my grandfather (two degrees) is your great-grandfather (three degrees), there are five degrees of consanguinity between us. In law, because consanguinity is for the purpose of defining incest, it does not include relationship by marriage. However, relationship by marriage is relevant in government ethics.

Throughout this code there are stars next to defined words. If this usage is followed and the code is placed on a city's website, these stars should be turned into links to the Definitions section, so that the definitions can be easily consulted.

Part B: Administrative Provisions

201. Duties of City Clerk.

The City Clerk must maintain on file for public inspection and, with respect to disclosure statements, index in alphabetical order by the last name of the relevant official, employee, candidate, or applicant the following documents:

- (1) A copy of the code of ethics and amendments thereto;
- (2) A statement that the city has established an Ethics Commission, and its composition;
- (3) A copy of the form of annual statement of financial disclosure;
- (4) A list of the names and offices, or positions, of all officials and employees required to file annual disclosure statements;
- (5) Copies of all transactional, applicant, and annual disclosure statements filed pursuant to this code.

202 Maintenance of Disclosure Statements.

1. The City Clerk must transmit promptly to the Ethics Commission copies of each transactional and applicant disclosure statement filed pursuant to sections 101, 103, and 104 of this code.
2. The Ethics Commission must index and maintain on file for at least seven years all disclosure statements filed with it pursuant to sections 101, 103, and 104 of this code..

203 Ethics Commission: Establishment; Qualifications of Members; Appointment of Members; Term of Office.

To discuss the establishment and role of ethics commissions, click [here](#).

1. There is hereby established an Ethics Commission consisting of five members, plus two alternate members. All members and alternate members must be residents of the city.

2. No member of the Ethics Commission may be, or have been within the three years prior to appointment, an **official or employee***, consultant or contractor of the city; an officer in a political party or political committee; a candidate or an active member of the campaign of a candidate for any office within the Commission's jurisdiction; or a lobbyist. Nor should a member nor any member of his or her immediate family, have, within the three years prior to appointment, sought any special benefits from the city, directly or indirectly. An Ethics Commission member or staff member, or a member of his or her immediate family, may not, directly or indirectly, seek any special benefits from the city, make campaign contributions, nor participate in any way in the campaign of a candidate for any office within the commission's jurisdiction, or of an individual currently within the commission's jurisdiction.

3. Of the regular membership of the Board, no more than two may be registered in the same political party, and at least one must be registered as unaffiliated. The alternate members may not be registered in the same political party.

4. Within sixty days after the effective date of this code, and no later than December 31 each year thereafter, the city's legislative body will appoint the members of the Ethics Commission from a list of nominees prepared by [five-to-seven community organizations, such as the local branch of the League of Women Voters; see **this City Ethics blog post** to see how some local governments do this.]

Comment: *Subsection 1: Five is not a magic number for an ethics commission. In large cities, if there is a lot of activity, it would be best to have a larger number of members, and then allow, say, five-member panels for proceedings, and three-member panels for advisory opinions. When there is little activity, it is often difficult to get a quorum at ethics commission meetings, so it is best to keep the number of members low. This is especially important since an ethics commission may only act by the majority vote of its total membership, not just those members who attend a meeting.*

Subsection 2: There are constitutional problems with excluding elected officials from ethics commissions, but it is a terrible idea to have an elected or appointed official on a commission that is supposed to be independent and without its own conflicts of interest. It undermines the spirit of the ethics code.

The restriction on municipal officials and employees, and lobbyists and party officers, serving on ethics commissions seeks to ensure that the board is as free as possible from pressure from other officials, co-workers and superiors alike.

Subsection 3: The restriction on the political make-up of the board aims to strengthen both the perception and the reality of a board that is not partisan. Ethics commissions must not become political footballs, because this will undermine trust in them and cause people not to file complaints or seek advisory opinions, nor to have faith in their determinations. For the same reason, this code restricts the political activities of ethics commission members.

Subsection 4: The idea of having one or more nonpartisan civic organizations select a city's ethics commission is unusual, but there are no better alternatives to preventing an ethics commission from being (and appearing) political or to ensuring that either party cannot block a member of its party from being disciplined or from getting no more than a reprimand. Another alternative is to require that each member be selected by unanimous vote of the legislative body, but this would still allow the parties to trade votes and make the same selections the two party committees would have made (or in

fact did make). An ethics commission should be as nonpartisan, and without its own conflicts, as possible, and answerable to no one. Only a nonpartisan body can ensure this, at least on a city level (that is, without having a regional or state commission handle city ethics matters; see the next comment for more on this). In any event, instead of politicians (or even nonpartisan civic organizations) selecting only people they know, a vacancy on an ethics commission should be widely publicized, and citizens who are not politically involved should be encouraged to apply. Smaller municipalities may choose to form joint or regional ethics commissions. Since, in towns, most politically active residents have personal biases and relationships with those most likely to be brought before an ethics commission, a regional ethics commission can provide a truly neutral, independent solution. The decisions of a regional ethics commission will demand much more respect and make people more certain that ethical matters are not being decided based on local loyalties. In addition, towns lack the resources to educate ethics commission members pursuant to 211, and they have too few matters brought before them to allow members to gain the necessary experience. Another alternative, which several states employ, is to have a state ethics commission deal with municipal as well as state matters (the commission can be the same one, or a separate one that focuses on municipal matters, but has access to the same staff expertise). I would like to hear people's feelings about regional and state ethics commissions, as well as their experiences with them.

5. The term of office of Ethics Commission members is three years and runs from January 1 through December 31, except that, of the regular members first appointed, one member will serve until December 31 of the year in which the Board is established, two regular members and one alternate member will serve until the second December 31, and two regular members and one alternate member will serve until the third December 31.

6. An Ethics Commission member will serve until his or her successor has been appointed, in the same manner as the original appointments. Consecutive service on the Ethics Commission may not exceed two full terms, except that a one-term alternate member may thereafter serve two terms as a regular member, and a two-term alternate member may thereafter serve one term as a regular member.

7. Members of the Ethics Commission will not receive compensation but will be reimbursed for reasonable expenses incurred in the performance of their official duties.

8. The unexcused absence of any member from three consecutive meetings, unless the Ethics Commission has excused the absence for good and sufficient reason, shall constitute a resignation.

Comment: Subsection 5: The terms of office of members should be staggered, to provide continuity in the work and philosophy of the board. Municipalities may wish to increase or decrease the length of the term of office or establish a different year of service than the calendar year. However, terms of office should be sufficiently long to ensure that the members acquire expertise, but not so long as to discourage people from serving on the commission. In addition, ethics commission members should not be allowed to become entrenched on the commission; the model law therefore contains a term limitation. However, interested, experienced members may return to the commission after a term off.

204. Ethics Commission: Vacancies.

To discuss the establishment and role of ethics commissions, click [here](#).

When a vacancy occurs in the membership of the Ethics Commission, the vacancy will, within sixty days, be filled for the unexpired portion of the term in the same manner as regular appointments. Any person appointed to fill a vacancy on the Ethics Commission must meet the qualifications and limitations set forth in [203](#) of this code.

205. Ethics Commission: Removal of Members.

To discuss the establishment and role of ethics commissions, click [here](#).

An Ethics Commission member may be removed from office by at least a three-fourths majority of the legislative body, after written notice, including a clear statement of the grounds for removal, and opportunity for reply, at least thirty days before voting on removal. The only grounds for removal are failure to meet the qualifications or limitations set forth in [203](#) of this code, substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, and violation of this code.

Comment: The party in power cannot be allowed to change the membership of the ethics commission when a colleague comes before it. This does happen, and it can be very damaging to a city's trust in its government. It is preferable that it be made very difficult to get rid of ethics commission members. Please share experiences with the removal or attempted removal of ethics commission members.

206. Ethics Commission: Meetings.

To discuss the establishment and role of ethics commissions, click [here](#).

At its first meeting each calendar year, the Ethics Commission will elect a chair and a vice-chair from among its regular members; alternate members may vote for chair and vice-chair. A majority of the regular members is required for the Commission to take any action. The chair or a majority of the regular members may call a meeting of the Commission.

207. Ethics Commission: Jurisdiction, Powers, and Duties.

To discuss this and the following sections on ethics commission powers and duties, click [here](#).

1. The Ethics Commission may only act with respect to current and former **officials and employees*** (and those who, although acting under contract, appear to act as government officials and employees), **consultants***, applicants, candidates, and persons and entities that do or seek business with the city (including the owners and officers of such entities, and subcontractors and other indirect beneficiaries), are required to make applicant disclosures, give **gifts*** to **officials and employees*** or their **relatives***, induce, encourage, or aid anyone to violate any provision of this code, or are otherwise covered by the provisions of this code.

2. The termination of an official's or employee's term of office or employment with the city does not affect the jurisdiction of the Ethics Commission with respect to the requirements imposed on him or her by this code.

Comment: Jurisdiction over former officials and employees, as well as over those who do business with the city or give gifts, can be controversial. The extent of jurisdiction allowed by courts (when they have had to decide this issue) varies among states, but

often it is unclear, and many lawyers, especially those involved politically, will automatically say that there is no such jurisdiction. Nothing makes government officials and employees feel more secure than knowing all they have to do is quit in order to prevent an ethics or corruption matter from being investigated. Therefore, it is important to make it clear in advance to officials and employees that quitting is not an antidote to ethics violations. I would like to hear about the law in various states, and experiences people have had or know about where jurisdiction has been successfully or unsuccessfully challenged, and the effects of such challenges on ethics systems.

3. Unless otherwise stated, all Ethics Commission decisions or determinations must be made by the affirmative vote of a majority of members present.

4. The Ethics Commission has the following powers and duties:

(a) To solely prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this code;

(b) To appoint hearing officials, an executive director, if necessary, and such other staff as are necessary to carry out its duties under this code, and to delegate authority to the executive director, if any, to act in the name of the Commission between meetings of the Commission, provided that the delegation is in writing and the specific powers to be delegated are enumerated, and further provided that the Commission may not delegate the power to render a formal advisory opinion, determine a violation, impose a penalty, seek any remedy not otherwise delegated in this code to the legislative body, or refer a matter to a prosecutor. An executive director must meet the qualifications of an Ethics Commission member as specified in [203](#) of this code;

(c) To prepare and provide forms for complaints and for annual, applicant, and transactional disclosure statements, pursuant to [section 208](#);

(d) To review, index, and maintain on file disclosure statements filed with the Commission, pursuant to [sections 202 and 208](#) of this code;

(e) To render, index, and maintain on file advisory opinions pursuant to [section 209](#);

(f) To review, index, maintain on file, and dispose of complaints, and to make notifications and conduct investigations pursuant to [section 213](#);

(g) To conduct hearings, apply and recommend disciplinary action, assess penalties, make referrals, and initiate appropriate actions and proceedings pursuant to [sections 214 and 215](#);

(h) To dispose of waiver requests pursuant to [section 210](#);

(i) To provide training and education to officials, employees, and those doing business with the city pursuant to [section 211](#);

(j) To prepare an annual report and recommend changes to this code pursuant to [section 212](#);

(k) To provide for public inspection of certain records pursuant to [section 217](#); and

(l) To make this code and explanations of it available for reproduction and distribution pursuant to [section 219](#).

Comment: Subsection 4: This model code is intended to minimize the administrative burden on municipalities. For that reason, only sizeable cities will find it necessary to hire an executive director and staff for their ethics commissions. In such instances, the code should specify the powers and duties of the executive director, for example, carrying out investigations or overseeing ethics officers. All other municipalities can rely

upon other municipal staff members for the occasional secretarial services or legal advice the enforcement of the law will require.

However, care must be taken that any municipal staff used by the ethics commission maintain the confidentiality of commission actions and remain free from conflicts of interest and political and other pressures from superiors and peers. In particular, where the city attorney is a political appointee or is otherwise beholden to the chief elective official or a majority of the governing body, the commission must have the authority, when necessary, to obtain independent counsel. For that reason, some municipalities may wish to require, in their ethics code, funding for such counsel.

This raises the general issue of funding. One of the most popular ways to prevent an ethics commission from doing too good a job investigating alleged violations of the ethics code is to restrict its budget. With a small budget, it will be forced to depend on the city attorney and will have to cut corners and delay investigations. If it is possible, a city seeking to improve its ethical environment should set a healthy budget for the next few years, with minimum increases tied to inflation.

5. Ex Parte Communications

(a). An Ethics Commission member may not communicate, directly or indirectly, with any party to an ethics proceeding or with any person who has a direct or indirect interest in the outcome of an ethics proceeding (other than communications necessary to procedural aspects of maintaining an orderly process, including settlement negotiations) without notice and opportunity for all parties to participate. Such communications constitute ex parte communications.

(b). It is an ethics violation for anyone to make, or attempt to make, directly or indirectly, an ex parte communication to an Ethics Commission member.

(c). An Ethics Commission member who receives an ex parte communication must place on the record of the matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the member received, directly or indirectly, an ex parte communication. The member must advise all parties that these documents and information have been placed on the record.

(d). Within fourteen days after receiving notice of an ex parte communication, any party, or other person mentioned, may place a written rebuttal statement on the record.

(e). If, before an ethics proceeding, an Ethics Commission member receives an ex parte communication that could not properly be received during the proceeding, the member must disclose the communication to the Commission and, when the proceeding commences, the documents and memo must be placed on the record of the proceeding, as set forth in subparagraph (c).

(f). If necessary, to eliminate the effect of an ex parte communication, an Ethics Commission member who receives the communication may be asked by the Commission to withdraw. However, the Commission should not allow a party to a proceeding, or other interested person, to use an ex parte communication to remove a member from an active role in a proceeding.

Comment: *Restricting ex parte communications can make the ethics process slower and more difficult for everyone. But it is important that officials not be permitted to use their offices to influence an Ethics Commission's members. Even the appearance of*

manipulation is disastrous to an ethics program. In larger jurisdictions, where there is more than one staff member, and a separation of prosecutorial and advisory functions, an ex parte communication provision should be extended to staff performing a prosecutorial function with respect to any particular proceeding.

208. Lists, Complaint Forms, and Disclosure Statements.

To discuss this and the previous sections on ethics commission powers and duties, click [here](#).

1. The Ethics Commission will annually review the list of **officials and employees** required to file annual disclosure statements, to determine whether the lists are complete and accurate. Within ninety days after it has been formed, and by February 1 each year thereafter, the Ethics Commission must (a) cause to be filed with the City Clerk a list of the names and offices, or positions, of all officials and employees* and others required to file annual disclosure statements pursuant to **103** of this code; and (b) notify all such persons of their obligation to file an annual disclosure statement.
2. The Ethics Commission will prepare forms for complaints and for annual, applicant, and transactional disclosure statements, and will make these forms available at the City Clerk's office and on the city's website, for easy downloading.
3. By June 15 of each year, the Ethics Commission must review all annual disclosure statements filed with it to determine whether any person required to file such a statement has failed to file it, has filed a deficient statement, or has filed a statement that reveals a possible or potential violation of this code.
4. The Ethics Commission must review all transactional disclosure statements filed with it.
5. If the Commission determines that an annual or transactional disclosure statement is deficient or reveals a possible or potential violation of this code, the Commission will notify the person in writing of the deficiency or possible or potential violation, and of the penalties for failure to comply with this code.

209. Advisory Opinions.

To discuss advisory opinions, click [here](#).

1. Upon the written request of any **official or employee,*** including former officials and employees who served or were employed within the prior three years, and also including those who intend to soon become an official or employee, as well as any candidate, **consultant**, or person or entity doing business with the city or seeking a special benefit from the city, or intending to soon do so, the Ethics Commission must render, within fifteen days after the date of its next regular meeting, a written advisory opinion with respect to the interpretation or application of this Code with respect to future actions only. If an earlier response is desired, or if the Ethics Officer determines that the situation does not require a formal advisory opinion, a verbal, mailed, or e-mailed opinion will be provided by the Ethics Officer.
2. Any person or entity may request informal, verbal advice from the Ethics Officer about any situation, including hypothetical situations, but such advice is not binding and there are no time requirements.

3. The Ethics Commission will designate one of its members or alternate members, or another individual selected by the votes of at least four sitting members, to be the Ethics Officer, for the purpose of quickly responding to questions regarding the requirements of this Code. The Ethics Officer's phone number and e-mail address will be made available on the Commission's website. The Ethics Officer's informal opinions may be relied upon, in good faith, but will not be binding upon the Commission or upon the person making the request.

4. An advisory opinion rendered by the Ethics Officer or the Ethics Commission, until and unless amended or revoked, is binding upon the Ethics Commission in any subsequent proceeding concerning the person or entity that requested the opinion, or to which the advisory opinion referred, and acted in good faith, unless the requester omitted or misstated a material fact in requesting the advisory opinion. The advisory opinion may also be used as a defense in any civil action brought by the Ethics Commission or the city.

5. A written advisory opinion is also binding on an official, employee, candidate, contractor or other person under the Ethics Commission's jurisdiction to whom it directly applies. If the Ethics Commission has reason to believe that a written advisory opinion has not been complied with, it will take appropriate action to ensure compliance, including but not limited to the filing of a complaint pursuant to 213(3).

6. Advisory opinions (with unnecessary financial and personal details redacted) will be indexed and maintained on file by the Ethics Commission and will also be available on the city website. Officials, employees, and businesses should be notified about advisory opinions that directly affect their conduct.

7. A requester of ethics advice may seek reconsideration of a written advisory opinion by the Ethics Officer or the Ethics Commission. A request for reconsideration must allege that (1) a material error of law has been made; (2) a material error of fact has been made; or (3) a change in materially relevant facts or law has occurred since the request for ethics advice was made. The Ethics Officer's decision upon reconsideration may be appealed to the Ethics Commission. An Ethics Commission's decision upon reconsideration is final and may not be appealed. The Ethics Officer or Ethics Commission may reconsider its advice on its own initiative, providing notice to whoever originally requested the advice and to any official, employee, or other person under the Ethics Commission's jurisdiction that will be directly impacted by the advice. Advice stands until it has been amended; it is not suspended pending reconsideration or appeal.

Comment: *This is the Ethics Commission's most important responsibility. It is very important for local government officials and employees, whenever they are uncertain as to whether they should proceed with a matter, to immediately seek advice. This will prevent unethical conduct from occurring due to a lack of knowledge or understanding, and will create a series of precedents to guide officials and employees in the future.*

In smaller jurisdictions that do not provide for paid staff, ethics officers sometimes work on a volunteer or part-time basis (and ethics officers can be shared among small jurisdictions). They can be very helpful in providing quick advice before possible conflicts can cause problems. Ethics Commissions rarely meet often enough to provide timely advice, and town, city, and county attorneys rarely have the training, and rarely are unbiased enough, or seen as unbiased enough, to provide trustworthy advice.

There is nothing worse than having an official told by a government attorney that he or she can do (or not do) something which, whether a violation of the ethics code or not, would undermine citizens' trust in their government officials. And yet this happens all the time. A truly neutral ethics officer can prevent this from happening.

Although it is common for informal ethics advice not to be binding on the ethics commission and not to require an official to follow it, if the informal ethics advice is put into writing, and the facts are confirmed by the requester, it is best to treat the informal ethics advice as binding on both the requester and the ethics commission.

The reference to civil actions in subsection 3 refers to actions for damages, civil forfeiture, debarment, or injunctive relief.

Subsection 5: Here, cities might want to reference specific privacy laws or laws regarding public records, or refer more generally to such laws.

210. Waivers.

To discuss waivers and exclusions, click [here](#).

1. Upon written application and upon a showing of compelling need by the applicant, at an open session after public notice, the Ethics Commission may in exceptional circumstances grant the applicant a waiver of subsections **1-10, 1-11, 13-19, 21** of 100, **101(1)(a), 106,** or **108** of this code. To allow a waiver, the Ethics Commission must determine either that the applicant has a compelling need or that overall, when considering the possible damage to the community, the conduct would clearly be beneficial to the community. The Ethics Commission must also determine the extent to which the waiver might create a potential for undue influence, unfair advantage, or a serious appearance of impropriety.

2. Waivers must be in writing and must state the grounds upon which they are granted. Within ten days after granting a waiver, the Ethics Commission must publish the waiver on its website in a clearly designated area..

Comment: *A provision for waivers of ethics provisions is dangerous because it opens the door to the wholesale gutting of an ethics code, encourages political pressure on ethics commissions by individuals and groups within the community, and leads to charges of partiality, all of which undercut the perception of the ethics commission as an impartial body of high integrity. For those reasons, many municipalities may wish to forego a provision for waivers. Other municipalities, concerned about the need to remedy unnecessary hardship that ethics provisions may impose upon an individual in a particular instance, will wish to run these risks.*

To minimize the risks, this section sets a high standard for granting a waiver ("compelling need" and "exceptional circumstances"), restricts waivers to certain specified provisions, and requires that the waiver be published. Moreover, the meeting of the ethics commission at which the waiver is considered must be held in open session after public notice.

Some cities may want to list criteria for providing waivers. For example, here are the criteria that Baltimore considers sufficient (one of either (1)-(4) plus (5)):

- (1) the action would constitute an unreasonable invasion of privacy;
- (2) compliance would constitute a hardship;
- (3) the nature of the activities of the person, agency, board, or commission does not require compliance;

(4) compliance would significantly reduce the availability of qualified people for public service;

(5) the particular exemption would not be contrary to the purposes of this article. *Some cities may want to list possible reasons for waivers as a guide for both officials and the ethics commission. For example, here are Denver's sample waivers for nepotism:*

(1) The relative who was proposed to be hired was certified through a competitive process conducted pursuant to law, and the officer, official, or employee who would make the appointment did not influence or affect the certification.

(2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the relative or attempt to influence the person who did.

(3) The relative who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the relative.

And then there are exemptions. Some codes include a number of exemptions, providing an alternative list of provisions that show what is acceptable, as opposed to what constitutes a violation. These exemptions have been omitted from this model code, because I feel they are self-evident and because, although they are self-evident, they can be used as defenses by respondents who can say they misconstrued their conduct as falling within one of the exemptions. For example, as I said above, the standard of interference with discharge of duties is too ambiguous a criterion; when it is applied in the negative sense (as in (b) below) - that there is no conflict of interest where there is no such interference - it is easy to argue that there was no such interference. Here is what the IMLA Model Code lists as exemptions:

(a) No provision of this Ordinance shall be construed to prohibit or restrict any City employee from negotiating, entering into or enforcing a collective bargaining agreement between the City and a labor union to which the employee belongs pursuant to state or federal law. No public servant shall be deemed to have a conflict of interest due to any lawful action taken pursuant to a collective bargaining agreement. The mere fact that public servants have entered into a collective bargaining agreement, however, shall not exempt them from any provision of this Ordinance unless the City is barred by the collective bargaining agreement from adopting the provision in question.

(b) This Ordinance does not prevent any public servant from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her public duties, provided that the public servant complies with all applicable City requirements, including any requirements imposed by this Ordinance.

(c) No public servant shall be deemed to have a conflict of interest by virtue of carrying out any contract pursuant to which the public servant directly or indirectly received income or benefits in the form of compensation for the performance of official duties.

(d) A former public servant is not prohibited from entering into a contract to represent the City in any matter.

(e) No public servant shall be deemed to have a conflict of interest by virtue of sharing, directly or indirectly, in the benefit of a lawful City action when the benefit to the public servant is substantially the same as the benefit to the public at large or to a segment of the public to whom the benefit is provided in a nondiscriminatory manner.

(f) This Ordinance does not prohibit any public servant from taking any action to approve the lawful payment of salaries, employee benefits, reimbursements of actual and necessary expenses, or other lawful payments which are authorized in accordance with City policies.

(g) This Ordinance does not prohibit public servants from taking any official action properly within the scope of their duties with respect to any proposal to enact or modify law or public policy.

(h) This Ordinance does not prohibit an elected official from raising campaign contributions in any manner which is otherwise permitted by law.

(i) This Ordinance does not prohibit communication between an individual or organization and a candidate regarding the candidate's views, record or plans for future action regarding an issue or measure in an attempt to determine a candidate's viewpoints or how the candidate plans to act in the future, if such communication results in an endorsement of the candidate, a decision not to endorse the candidate, or a contribution or expenditure required to be recorded or reported under a state statute.

(j) Actions which might otherwise be alleged to constitute a conflict of interest shall be deemed to comply with this Ordinance and not to be a conflict of interest if:

(1) before acting, the public servant requested and received a written opinion from the City Attorney or a formal ethics opinion or a confidential advisory opinion from the Board in accordance with the procedures established in this Ordinance; and

(2) the material facts, as stated in the request for an opinion, are true and complete; and

(3) the actions taken were consistent with the opinion.

211. Training and Education.

To discuss this section, click [here](#).

The Ethics Commission (1) will, within one year after its passage, make this code, and explanations of its provisions (including information on how to fill out all forms and statements), available (including, but not limited to, on the city website) to all **officials and employees**, candidates and **consultants***, and to municipal residents and to all persons doing business or interested in doing business with the city, and (2) will develop educational materials and a required educational program for the officials and employees of the city, and those who do business with the city, regarding the provisions of this code. The educational program must begin within eighteen months after this code goes into effect. In addition, the Ethics Commission will hold an annual workshop for new and old officials and employees to discuss this code, its values and goals, its enforcement, and the ways in which it has affected their work and the working of the city government.

212 Annual Reports; Review of Ethics Laws.

To discuss this section, click [here](#).

1. The Ethics Commission must prepare and submit an annual report to the legislative body, summarizing the activities, decisions, and advisory opinions of the Commission. The report may also recommend changes to the text or administration of this code. The report must be submitted no later than October 31 of each year, covering to the year

ended August 31, and must be filed with the City Clerk and made available on the city website.

2. The Ethics Commission will periodically (no less than every five years) review this code, the enforcement of the code, and the Commission's rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in city government, and whether they set forth clear and enforceable, common-sense standards of conduct. After at least one public hearing, it may recommend to the legislative body amendments to this code.

213. Filing a Complaint; Investigations.

To discuss this section, click [here](#).

1. Upon receipt of a complaint on a form prepared by the Ethics Commission pursuant to **208(2)**, which any person or entity may file, the Ethics Commission will first determine if it, in fact, alleges an action or inaction that, if the allegations are true, might constitute a violation of this code, and that at least one person or entity accused of a violation is covered by this code. If the Ethics Commission determines that no such action or inaction has been alleged or that no one accused is covered by this code, then it will dismiss the complaint with notice to the complainant. Similarly, if the Ethics Commission determines that an alleged violation is so minor that it is not worthy of investigation, then it will dismiss the complaint with notice to the complainant. The Ethics Commission must make this determination within thirty days of receipt of a complaint.

Comment: *It is common to require complainants to swear to their allegations, and some ethics codes contain penalties for those who make knowingly false accusations in their complaints. But this makes it hard for individuals and, especially, entities to file complaints, because they often are not certain as to the facts of a matter. They have only done limited investigation. But they believe they have enough information to seek an investigation by the ethics commission. Even with whistle-blower protection, city employees - the people who know best what is happening in the city - are afraid to come forward or get involved in controversial, protracted proceedings. Officials often depend on this reluctance when they act unethically. Allowing hotline tips does not require changing this subsection, because the final complaint would be filed by the ethics commission.*

Most ethics codes limit complaints to individuals, but this model code allows entities to file as well. This is especially intended to allow civic organizations and citizens groups to file complaints, because there are many instances where an individual's filing leads to slap suits and other forms of harassment from wealthy respondents. The threat of suit is one of the most serious obstacles to the workings of an ethics system.

For more about minor or de minimis violations, see the [City Ethics blog post](#) on this topic.

2. A complaint must be filed within one year after the complainant discovered the alleged violation. Complaints may be filed against **officials and employees*** who no longer hold office or are no longer employed.

3. The Ethics Commission may, on its own initiative, determine through an inquiry into informal allegations or information provided directly to the Commission, through the hotline, by referral, in the public news media, or otherwise that a violation of this code may exist, and prepare a complaint of its own. The Ethics Commission may also amend

a complaint that has been filed with it by adding further allegations, by adding respondents involved in the same conduct, directly or indirectly, by action or inaction, or by deleting allegations that would not constitute a violation of this code, have been made against persons or entities not covered by this code, or do not appear to be supported by the facts. The Ethics Commission may also consolidate complaints where the allegations are materially related.

4. The Ethics Commission must send notification of the accepted or self-initiated complaint, as amended, as well as any further amendment, to the respondent against whom the complaint was filed, not later than seven days after making the determination in subsection 1 or the preparation of a complaint or amendment pursuant to subsection 3. A copy of the complaint, and of any amendments, must accompany such notice. The Ethics Commission must also send notification to the complainant in writing of its receipt and acceptance of the complaint, and of any amendments. Here and elsewhere, "complainant" and "respondent" might consist of more than one person or entity.

5. Settlement Agreements

a. At any time after a complaint has been filed, the Ethics Commission may seek and enter into a settlement agreement with the respondent. At any time after a complaint has been filed, the Ethics Commission may seek and enter into a settlement agreement with the respondent. The settlement agreement will include the nature of the complaint, findings of fact, conclusions of law, the Commission's reasons for entering into the agreement, an admission of violation by the respondent, and a waiver of the right to a hearing and to appeal. It will also, where relevant, include a promise by respondent not to do certain actions, the imposition of penalties permitted by this code, remedial action to be taken, and oral or written statements to be made.

b. In determining whether a matter is appropriate for settlement, the Ethics Commission should consider the following factors, as well as other factors it considers relevant: (i) the severity of the alleged conduct; (ii) the respondent's apparent level of knowledge and willfulness regarding the alleged conduct; (iii) whether the alleged conduct appears to be an isolated event or part of a pattern of conduct; (iv) whether the alleged conduct appears to indicate violations of criminal laws; (v) the complexity of issues or evidence, and the likely scope of an investigation and hearings; (vi) the involvement of other agencies in the investigation of the respondent's conduct; (vii) the existence of Ethics Commission precedent concerning the alleged conduct; (viii) the age of the facts alleged in the complaint; (ix) the resources and priorities of the Ethics Commission; and (x) whether the respondent self-reported the alleged conduct or sought an advisory opinion regarding it.

c. Any settlement agreement approved by at least three members of the Ethics Commission will be a public record. However, all meetings held and documents relating to the settlement negotiations will be kept confidential, unless the parties agree otherwise.

d. If a settlement agreement is breached by the respondent, the Ethics Commission may rescind the agreement and reinstitute the proceeding. However, no information obtained from the respondent in reaching the settlement, which is not otherwise discoverable, may be used in the proceeding.

Comment: *Most city and town ethics codes do not explicitly deal with settlement agreements, but most state ethics codes do. The above language is based on that of*

several state ethics codes and rules, especially those of Ohio and Georgia. Settlements are especially important because ethics commissions tend to have limited resources. In most cases, there is no need for lengthy investigations and hearings. And since the principle goal of ethics enforcement (as opposed to the criminal process) is to provide guidance, a public settlement agreement that includes a reasonable penalty is more important than an expensive proceeding that may or may not produce a more severe penalty. In fact, some states (and at least one city) make settlement the default or preferred approach. Arkansas' code requires a written Offer of Settlement when probable cause is found. Texas's code requires that, upon a determination that there is credible evidence, the commission "resolve and settle the complaint or motion, to the extent possible." Los Angeles delays public announcement of a finding of probable cause so that a settlement can be reached. Oregon's Administrative Rules "encourages the settlement of a case," and Ohio's extensive settlement rules shows a propensity for settlement. But most codes and rules do little more than mention the possibility of settlement, providing little guidance. Following are a few different approaches or considerations that I have found. Rhode Island explicitly refers to an informal conference between the executive director and the respondent to negotiate a settlement, as well as to a hearing of the commission to review the executive director's settlement (in executive session). Alabama includes the Attorney General or District Attorney in any settlement where they are involved, limiting settlement to "minor violations." Ohio requires consultation with the complainants, and the commission may require the complainant to file an affidavit setting forth the allegations he or she wants the commission to consider in settlement negotiations (and respondent is permitted to respond with an affidavit). Massachusetts provides three alternatives to a settlement agreement: (i) a compliance letter, which warns that future violations may be pursued through a public proceeding in cases where the violation does not involve "willful misconduct, significant economic advantage, the misuse of influence or confidential information, significant economic loss to the public, or the potential for serious impact on the public confidence in its officials"; (ii) a public educational letter, which reviews the alleged violations for preventative and educational purposes, but assesses no civil penalty; and (iii) a public enforcement letter, where the respondent does not admit to a violation. Georgia similarly distinguishes between a settlement where the respondent admits or does not admit to a violation; penalties can be imposed only in the former case.

6. If a complaint is accepted or prepared pursuant to subsections 1 or 3, the Ethics Commission must conduct an investigation. From this point on, the complainant may not withdraw his or her complaint, although he or she may request that the Ethics Commission either make a finding of no probable cause or no violation, or suggest a settlement with the respondent. In conducting such an investigation, the Ethics Commission may administer oaths or affirmations, subpoena witnesses, compel their attendance, and require the production of any books or records it deems relevant and material. The Police Department and all city agencies, bodies, officials, and employees are required to respond fully and truthfully to all enquiries and cooperate with all requests of the Ethics Commission or its agents relating to an investigation. It is a violation of this code for any **official or employee*** to deny access to information

requested by the Ethics Commission in the course of an investigation or a public hearing, except to the extent that such denial is required by federal, state, or local law.

Comment: *The reason complainants are not permitted to withdraw their complaints is to prevent respondents from pressuring them to do so. Once a possible violation has been brought to the Ethics Commission's attention, it is not a proceeding of complainant against respondent, but an ethics issue for the city to determine.*

Some cities might want to go beyond settlement at the complainant's suggestion to allowing the respondent a chance to admit and remedy violations of the code, either by providing a short period (up to two weeks) before the investigation begins, or by allowing remedy during the investigation period itself. The Commission must determine whether any actions truly remedy the situation sufficiently that not even a reprimand is in order. In the alternative, a city might want to allow the Commission to enter into settlement agreements with respondents, allowing for, say, a reprimand in return for remedying a violation, for example, by returning money, resigning from a board, making a formal apology, or changing the terms of a contract. It should be recognized, however, that in many cases, it is too late for a remedy, because action has been taken that cannot be undone.

Please share your experiences with settlements and various sorts of reparations in municipal ethics cases, and what you think of alternative approaches and provisions.

The requirement of cooperation may also be placed among the ethics provisions, because cooperation is an ethical requirement, that is, another way in which government officials should put the public interest (investigating ethics violations) ahead of their personal interests (whatever they may be that might hinder the investigation). It should appear or be referenced here, as well, as a signal to the Commission and others that such cooperation may be expected.

7. The goal of the investigation is to determine whether there is probable cause to believe that a violation of this code has occurred. "Probable cause" means that there are reasonable grounds that a violation has occurred.

Comment: "Preponderance of the evidence" is how this Model Code originally defined "probable cause," but this is the highest burden associated with a finding of probable cause, so it has been lowered. The traditional, criminal law probable cause involves a "fair probability" of criminal activity, which is much less than a preponderance of the evidence. As discussed in [a City Ethics blog post](#), many jurisdictions don't even define "probable cause." I think it's very important to define it. "Reasonable grounds," like "sufficient evidence," means that there is reason to believe there was a violation, but before a hearing and full investigation, there is not evidence sufficient to make it more likely than not that a violation occurred.

8. The respondent may file with the Ethics Commission a response to the complaint within thirty days after his or her receipt of the complaint. The response, if any, must be sent to the complainant by the Ethics Commission within five days after its filing, and, within fifteen days after receipt, the complainant may file with the Ethics Commission a response to the respondent's response, which the Ethics Commission must send to the respondent within five days after its filing.

9. During the investigation period, the Ethics Commission may amend a complaint to include other violations which it reasonably suspects to have occurred. It must send a copy of any such amendment to the respondent and complainant within seven days after the amendment has been made.

10. The investigation will be confidential unless the respondent requests that it be public or unless the respondent makes public the fact of or any information concerning the proceeding. The respondent has the right to appear and be heard, and the complainant has the right to attend any such hearing and be heard.

Comment: Confidentiality during an investigation is important to protect innocent respondents, as well as to depoliticize the process. Complaints are sometimes filed for the express purpose of embarrassing, harassing, or taking revenge on public officials, often during an election season. No one can stop people from making public accusations, but sadly, when accusations become official proceedings, they are taken more seriously by the press as well as by city residents. It is important that the proceedings themselves remain secret until a finding of probable cause has been made, and that an ethics commission be clear that even such a finding is far from an actual finding of a violation. It should be emphasized that confidentiality here refers solely to the proceedings themselves, including their existence, not to the underlying accusations. A resident can tell the world that an official is benefitting from a city contract (whether or not this is true; defamation laws deal with false accusations), but not that the ethics commission is investigating a complaint that makes this accusation.

11. If the Ethics Commission determines that there is no probable cause to believe that a violation of this code occurred, it will dismiss the complaint and send notification of this dismissal to the complainant and respondent. If it determines that there is probable cause, it will send notification of this finding to the complainant and respondent. In its letter of dismissal or notification of finding, which must be sent within five days after the vote on probable cause, the Ethics Commission must set forth a brief summary of the facts and the reasons for dismissal or a finding of probable cause.

12. Nothing in this section may be construed to permit the Ethics Commission to conduct an investigation of itself or of any of its members or staff. If the Ethics Commission receives a complaint alleging that the Commission or any of its members or staff has violated any provision of this code, or any other law, the Commission must promptly transmit to the legislative body a copy of the complaint.

13. If an allegation in a complaint is made under this section with the knowledge that it is without foundation in fact, the respondent has a cause of action against the complainant for damages caused by the complaint. If the respondent prevails in such an action, the court may award the respondent the costs of the action and reasonable legal fees.

14. The city will pay reasonable legal fees with respect to an Ethics Commission proceeding, not including a request for an advisory opinion, (a) to the respondent if the Ethics Commission makes a finding of no probable cause and (b) to the complainant if the Ethics Commission makes a finding of probable cause. The Ethics Commission will determine what fees are reasonable, both the rate and the services rendered.

Comment: Many local governments feel it is fair to protect their officials and employees from having to pay legal fees for frivolous complaints. By requiring a finding of probable cause, this protection is provided. It is less common for local governments to feel it is

fair to help complainants with their legal expenses, even though, if their allegations are true, they are doing a public service. That is why this provision provides for their legal expenses, too, but only if there is substantial evidence that their allegations are true and state a violation. This encourages complainants, who otherwise are taking a risk filing their complaint, both in terms of their jobs, if they are officials or employees, as is common, and in terms of opening themselves up to retaliation suits.

It is important that only reasonable legal fees be allowed. Otherwise, parties will have an incentive to run up large fees, delay and hamper an ethics proceeding, and use an attorney to defend their reputation and other superfluous services. The reimbursement of extravagant legal fees can sink an ethics program. Legal fees prior to a probable cause finding should be limited, because counsel plays a limited role before hearings are held. A complainant's use of counsel should be limited throughout an ethics proceeding. It is best to determine in advance a top fee rate for various types of legal professional, so that this decision is not made for a particular case.

Some respondents file suits in retaliation or to delay or even enjoin an ethics proceeding. These should be considered private matters not subject to reimbursement by the local government. If there is a situation where the city government feels a respondent's suit is necessary and in the public interest, its legislative body should be the one to consider reimbursement of legal fees. But such a situation should be exceptionally rare.

214. Public Hearing Process.

To discuss this section, click [here](#).

To discuss open vs. confidential hearings (dealt with further in [section 217](#)), click [here](#).

1. After a finding of probable cause, the Ethics Commission should hold one or more public hearings, and the first public hearing must commence within sixty days after the finding of probable cause. The goal of these public hearings is to determine whether or not a violation of the Code of Ethics has occurred. The hearings will be held with reasonable promptness, with the last hearing to be held not more than one-hundred-and-eighty days after the finding of probable cause.

2. Any person who is, in the opinion of the Ethics Commission, adversely affected by comments made during a hearing, may testify in response at a hearing, directly or through a representative.

3. The Ethics Commission may refer the matter to an authority or person or body authorized by law to impose disciplinary action pursuant to applicable law or collective bargaining agreement or, if it determines there are possible criminal violations, to the appropriate prosecutor.

4. Extension of time. Extensions of time to any of the time limitations specified in this section may be granted by the Ethics Commission, for cause, which must be stated in granting the extension. If no meeting can be held before such time limit runs out, the chair may extend the limit until the following meeting.

a. The Ethics Commission must give written notice of any extension(s) of time to the respondent and the complainant.

b. No extensions may be given for time periods required for notification.

5. Rules and Procedure for Public Hearings.

a. Public hearings will be conducted under the Ethics Commission's rules and regulations, subject to any applicable provisions of law and collective bargaining agreements. The rules and regulations will include the following: oral evidence will be taken under oath; documentary evidence may be received in the form of copies or excerpts, if the original is not readily available and, upon request, parties and the Ethics Commission will be given the opportunity to compare the copy to the original; the state's administrative rules of evidence, rather than strict rules of judicial evidence, will be followed, to allow a liberal introduction of testimony and documentary evidence; and the respondent has the right:

(1) To be represented by counsel.

(2) To present oral or written documentary evidence which is not irrelevant, immaterial, or unduly repetitious.

(3) To examine and cross-examine witnesses required for a full and true disclosure of the facts.

b. The Ethics Commission may subpoena, and its members may question verbally or in writing, witnesses to testify and may compel production of documents and other effects as evidence, and failure to obey such subpoena shall constitute a misdemeanor.

c. At all hearings relating to a complaint, a court stenographer will record the proceedings.

d. Upon the request of either the complainant, the respondent, or any member of the Ethics Commission, the Ethics Commission will cause the hearings to be tape-recorded or filmed, and a transcript to be made. If this is requested by either a respondent or complainant, the requesting party will bear the costs.

6. With respect to the public hearing process, the Ethics Commission will follow the requirements of Freedom of Information legislation.

215. Finding of Violation; Penalties; Injunctive Relief.

To discuss penalties and other relief, click [here](#).

1. Disciplinary Action.

Within thirty days after the last hearing, the Ethics Commission will determine whether to dismiss the complaint or, upon a finding of a violation of this code, to take appropriate disciplinary action pursuant to 107 of this code, or to recommend disciplinary action to the legislative body in circumstances where such action is required by 107(2) or by this section.

2. Finding a Violation.

A finding of a violation of this code requires the affirmative vote of three members of the Ethics Commission that there is clear and convincing evidence that the respondent has violated this code. Any member not present at all public hearings and deliberations may not vote. The written final decision must specify the code sections violated and provide a factual explanation supporting each violation or, if no violation is found, findings of fact and the reasons for dismissal. When determining the appropriate penalty, the following should be considered: the severity of the respondent's offense; the position and responsibilities of the respondent; the presence or absence of any intention on the part of the respondent to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and whether the incident was isolated or part of a pattern.

Another consideration is whether the respondent has depended on advice of counsel, but this cannot be used as a defense against the finding of a violation; only advice of the Ethics Officer or Ethics Commission may be considered as a defense. The Ethics Commission must file its memorandum of decision with the City Clerk, and send it to the complainant and respondent, within ten days after it votes.

Comment: *"Clear and convincing evidence" is only one possible basis on which to find a violation. Please provide information about other bases and your feelings about and experiences with them.*

3. Reprimand or Civil Fine

The Ethics Commission, on behalf of the city, may reprimand any person or entity it finds has violated this code, or it may impose on such person or entity a civil fine as provided in **subsections 2 and 3 of 107** of this code.

4. Damages.

The Ethics Commission, on behalf of the city, may initiate an action in the court of appropriate jurisdiction to obtain damages, as provided in **subsection 4 of 107** of this code.

5. Civil Forfeiture.

The Ethics Commission, on behalf of the city, may initiate an action or special proceeding, as appropriate, in the court of appropriate jurisdiction to obtain civil forfeiture, as provided in **subsection 5 of 107** of this code.

6. Injunctive Relief.

The Ethics Commission, on behalf of the city, may order a violator to cease and desist the violation if the violation is still ongoing, or it may initiate an action or special proceeding, as appropriate, in the court of appropriate jurisdiction for injunctive relief to enjoin a violation of this code or to compel compliance with this code. The Ethics Commission may also order a violator of a disclosure requirement to file an unfiled disclosure statement or to add information to a filed disclosure statement.

7. Suspension and Removal from Office.

The Ethics Commission may suspend or remove a respondent from office, or employ other sanctions or remedies authorized by law or collective bargaining agreement not listed in this section or in **107**.

Comment: See comments to **107(2)** for two alternative approaches to suspension and removal from office, as well as comments re union and civil service conflicts.

8. Prosecutions.

The Ethics Commission may refer possible criminal violations to the appropriate prosecutor. Nothing contained in this code may be construed to restrict the authority of any prosecutor to prosecute any violation of any law.

9. Debarment.

To discuss this and other penalties relating to contracts, click [here](#).

If the Ethics Commission finds that a person or entity has intentionally or knowingly violated any provision of this code, that person or entity is prohibited from entering into any contract with the city for a period not to exceed three years, pursuant to **108** of this code.

10. Limit on Ethics Commission.

Nothing in this section may be construed to permit the Ethics Commission to take any action with respect to any alleged violation of this code, or of any other law, by the Commission or by any of its members or full-time staff members.

11. Penalties imposed by the Ethics Commission are exclusive of, and not affected by, each other or any other penalties imposed pursuant other laws or policies.

Comment: Some cities require their ethics commissions to file suits through the city attorney's office. The problem with this approach is that it brings a political element into enforcement by allow the city attorney's office to choose whether or not to file a suit or, if it does, to determine how to proceed and the amount of resources to devote to the matter. Since the city attorney is generally appointed and supervised by an individual or body that often has a special interest in the outcome of the matter, the city attorney often has a conflict of interest: does he or she act in the interests of a supervisor (loyalty and self-interest) or in the public interest (pursuing violators of the ethics code, but not for political reasons). It is better for the ethics commission to work through counsel that is working for it alone.

216. Judicial Review.

To discuss this section, click [here](#).

Any person or entity aggrieved by a decision of the Ethics Commission, but not a complainant, may seek judicial review and relief from a court pursuant to ----- of [state law]. The party appealing must immediately serve notice of the appeal on the Ethics Commission.

Comment: Judicial review is not on a de novo basis.

217. Public Inspection of Records; Public Access to Meetings.

To discuss this section, click [here](#).

1. Unless otherwise stated in this code, the records of the Ethics Commission will be available for public inspection. Records available for public inspection include all disclosure statements, advisory opinions (with names and other necessary details omitted to protect anonymity, unless the requesting party states otherwise in writing), all requests for waivers and related papers and decisions, and all papers filed and all decisions made in an Ethics Commission proceeding after a finding, formally or presumed, of probable cause.

2. After a finding, formally or presumed, of probable cause, all hearings before the Ethics Commission concerning alleged misconduct will be open to the public. All meetings, or parts of meetings, of the Ethics Commission that are not directly related to an investigation or other consideration of complaints prior to a finding of probable cause will be open to the public.

218. Miscellaneous Provisions.

To discuss this and the following miscellaneous provisions (218-222, click [here](#).

1. No existing right or remedy may be lost, impaired, or affected by reason of this code.

2. Nothing in this code may be deemed to bar or prevent a present or former city **official or employee*** from timely filing any claim, account, demand, or suit against the city on

behalf of himself or herself or any member of his or her family arising out of personal injury or property damage or any lawful benefit authorized or permitted by law.

3. Any law of any sort - local, state, or federal - that requires a higher, greater, more exacting, or more restrictive standard of conduct than is provided in this code prevails over the provisions of this code and continues in full force and effect with respect to those covered by this code.

219. Distribution and Posting.

1. Within ninety days after the effective date of this section, and thereafter as appropriate, the Ethics Commission will transmit to the [chief executive official] of the city, in a form suitable for posting, those provisions of this code which the Ethics Commission deems necessary for posting. Within thirty days after receipt of those copies, the [chief executive official] must cause the copies of these provisions to be posted conspicuously in every public building under the city's jurisdiction.

2. Within ninety days after the effective date of this section, and thereafter as appropriate, the Ethics Commission will transmit to the [chief executive official] of the city, in a form suitable for distribution, a copy of this code. Within thirty days after receipt of this copy, the [chief executive official] must cause the copies to be distributed to every official and employee, to every contractor with the city, and to all city **consultants***, and must make the code readily available to the public by placing a copy on the city website and copies in the city libraries and the office of the City Clerk.

3. Every **official or employee*** elected, appointed, or hired thereafter must be furnished a copy of this code within ten days after entering upon the duties of his or her position. Each official employee, present and future, must within thirty days of receipt sign a statement that he or she has read and understood the code's provisions, and must file that statement with the Ethics Commission. In addition, such a statement should be signed and filed with the Ethics Commission every year on January 31 or, if filing an annual disclosure statement, accompanying that statement.

4. Failure of the city to comply with the provisions of this section or failure of any **official or employee*** to receive a copy of the provisions of this code shall have no effect on the duty of compliance with this code or on the enforcement of its provisions.

220 Liberal Construction of Code.

The provisions of this Code are to be construed liberally, to the end that the public interest be fully protected, and they are to be construed in a manner consistent with all applicable federal and state laws and applicable provisions of the City Charter.

221 Severability.

If any provision of this Code is held by any court, or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any federal, state, or City Charter provision, or is held by such court or agency to be modified in order to conform to the requirements of such provision, the conflicting provision of this Code is to be considered a separate, independent part of this Code, and such holding shall not affect the validity or enforceability of this Code as a whole or any part other than the part declared to be invalid.

222. Effective Date.

This law will take effect immediately upon filing in the office of the Secretary of State and in compliance with all applicable provisions of law.

APPENDIX A

Sample Annual Disclosure Statement

To discuss annual disclosure, click [here](#).

Annual Disclosure Statement for 2007

Last Name First Name Initial

Title Department, Agency, or Body

Work Address Phone No.

Home Address Phone No.

If the answer to any of the following questions is "none," please so indicate. If you have more than one entry for any of the sections, please fill out separate sheets and attach to these sheets. If you could not obtain the required information from a spouse or other relative, set forth your efforts to obtain information on a separate sheet attached to this statement.

1. Real Estate.

List the address or, if there is no address or if the address provides insufficient information to describe a large piece of property, description of each piece of real property in this city, or within one mile outside its boundaries, that you, your spouse, or other relative own or have a **financial interest** in. "Relative" means your spouse, child, step-child, brother, sister, parent or step-parent, or a person you claimed as a dependent on your latest state income tax return.

Name of Relative and Relationship to You

Address or Description of Real Estate

Type of Financial Interest (e.g., owns or partnership)

2. Your Outside Employers or Businesses.

List the names and address of the principal or local office of any outside employers or businesses from which you receive compensation for services rendered or goods sold or produced, or of which you are a member, official, or employee. Also include any entity in which you have an ownership interest, except a public corporation of which you own less than five percent of the outstanding stock or stock valued at less than \$50,000, whichever is less (such a public corporation need be listed only if it does business with or in the city). Identify the type of entity (e.g., partnership, corporation, self-employment, or sole proprietorship), and list your relationship to the employer or business (e.g., employee, owner, partner, official, director, member, or shareholder).

Name of Employer or Business

Nature of Business

Type of Entity

Your Relationship to Employer or Business

3. Your Spouse's or Domestic Partner's Employer or Business.

List the information in question 2 for your spouse or domestic partner.

Name of Employer or Business

Nature of Business

Type of Entity

Relationship to Employer or Business

4. Employed Relatives.

List the names and addresses of all relatives employed, directly or indirectly, as employees, contractors, or consultants, by the city during the prior year. See 1 above for definition of "relative."

Date: _____

Signed: _____

A Resolution
In the Council of the District of Columbia

To establish a new Council Rule on Procedures for the Reprimand and Censure of Council Members.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Reprimand and Censure Procedures Resolution of 2009”.

Rule ___ Definitions

(a) Reprimand. A reprimand should be directed to a particular Council Member based on a particular action or actions determined to be in violation of law or District or Council policy, but considered by the Council to be not sufficiently serious to require censure. A reprimand is distinguished from censure in that it is not a punishment. A reprimand may be issued based upon the Council's review and consideration of a written allegation of one or more violations. The Member accused of such violations will have an opportunity to provide a written response to the allegation. A reprimand may be issued by the City Council and, because it is not punishment or discipline, does not require an investigation or separate hearing.

(b) Censure. Censure is a formal statement of the Council officially disciplining one of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing, but it carries no fine or suspension of the rights of the Member as an elected official. Censure should be used for cases in which the Council determines that the violation of law or policy is a serious offense. In order to protect the overriding principle of freedom of speech, the Council will not impose censure on any of its members for the exercise of his or her First Amendment free speech rights, no matter how distasteful the expression was to the Council and the District.

Rule ___ Procedures

(a) Investigations

(1) A Member of the Council seeking censure as a penalty may submit, in writing, allegations concerning violations of law or policy to the Committee on Government Operations and Environment.

(2) If the Member seeks only reprimand as a penalty, he or she may submit the allegations, in writing, directly to the Council Chairman, who will determine whether to send it to the Committee on Government Operations and Environment for an investigation or present the allegations directly to the Council as a request for reprimand pursuant to (b) below.

(3) The said Committee, in a closed meeting, will determine whether to forward a recommendation to conduct an investigation to the full Council for consideration at an appropriate subsequent Council meeting.

(4) If the Committee recommends an investigation, the Council will consider, by majority vote, pursuant to Article VI of these Rules, a resolution authorizing an investigation. The Council may choose not to authorize an investigation, but instead proceed directly to a hearing pursuant to (c)(4) below.

(5) If the Committee does not recommend an investigation or the Council neither votes to authorize an investigation nor votes to proceed to a hearing, the Council member alleging the violations may submit a request for reprimand to the Council Chairman. Otherwise, the allegations are dismissed.

(b) Requests for Reprimand

(1) A copy of a request for reprimand must be provided to the Council Member accused of the conduct by personal service at least seven days prior to the Council meeting at which it will be considered, and the Council Member may file a written response to the allegations included in the request.

(2) The Council must determine, in a closed meeting, by majority vote:

- a. To reprimand the Council Member, or
- b. To take no action.

(c) Requests for Censure

(1) A copy of a request for censure must be provided to the Council Member accused of the conduct by personal service at least seven days prior to the meeting of the Committee on Government Operations and Environment at which it will be considered, and the Council Member may file a written response to the allegations included in the request.

(2) After the Committee determines that an investigation is complete, the results of the investigation will be presented in writing to the full Council. The Council, by majority vote, in a closed meeting, will determine whether to proceed with the request or dismiss the allegations.

(3) If the Council votes to proceed with the request, it will schedule a non-public fact-finding hearing. The Council Member accused will be given at least two weeks to prepare a defense.

(4) At the hearing, the Council Member accused will be given the opportunity to make an opening and closing statement. If any of the alleged conduct occurred outside the Council's proceedings, the Council Member accused may present witnesses at the hearing and question his or her accusers and any other witnesses that are presented. If the alleged conduct occurred within the Council's proceedings, then witnesses are not necessary. However, in either case, evidence may be presented and responded to, and the Council Member accused may be represented and may have the representative speak or question on his or her behalf. Judicial rules of evidence do not apply at the hearing, which is not a formal adversarial proceeding. Council's General Counsel will provide legal advice to the Council during the hearing and may question witnesses and present evidence on its behalf.

(5) A decision to censure requires the adoption of a Resolution making findings with regard to the specific allegations, based on substantial evidence and approved by a two-thirds vote of the Council.

Appendix A
Current Council Rules Relevant to This Resolution.

Council Rule 101(35) "Resolution" means an expression of a simple determination, decision, or direction of the Council of a special or temporary character and includes actions of the Council concerning its internal management and conduct.

Council Rule 251. Creation of Special Committees

Special committees to consider investigations, ethics, and other matters may be created by resolution, approved by 2/3rds of the members of the Council. The resolution shall set forth the jurisdiction, size, duration, and date for final action of the special committee.

Council Rule 421. Notice to Members

(a) The Secretary shall distribute, upon introduction, a copy of each measure to each member and, upon referral, to each committee to which the measure is assigned. The Secretary shall also distribute to each member, upon introduction or filing, a copy of each notice of public hearing or roundtable, notice of investigation by subpoena, and Mayoral disapproval of a Council act.

Council Rules Article VI on Investigations and Subpoenas

Rules for investigations.

Council Rule 1001. Parliamentary Authority.

Matters not covered by these Rules will be governed by Robert's Rules of Order, Newly Revised. It is the duty of the Chairman to interpret the Rules.

Also see Attorney General's Letter of Advice Regarding Resolution of Censure dated July 20, 2009.

ETHICS COMMISSION
CITY OF JACKSONVILLE



COMPLAINT PROCEDURES

Adopted November 5, 2012

Amended October 25, 2017

(Previously Amended May 6, 2013 and June 2, 2014)

COMPLAINT PROCEDURES

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Rule 1 – Scope, Jurisdiction, Definitions and Applicability.

- (a) **Enabling Law.** These Complaint Procedures (“Procedures”), pursuant to the Code, shall govern the receipt and disposition of all Complaints to the Commission concerning violations of the Code. These Procedures shall become effective as of the date of adoption by the Commission. As of the date these Procedures are adopted, they shall govern disposition of all Complaints regardless of date of filing.
- (b) **Jurisdiction.** The Commission shall have jurisdiction as stated in the Code and the Charter of the City of Jacksonville.
- (c) **Definitions.** Definitions are defined in the Code, Section 602.201, and in these Procedures as follows:

Clear and Convincing Evidence means evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without reasonable hesitation, about the matter in issue.

Code means Chapter 602 of the City of Jacksonville Code of Ordinances.

Complainant means the individual who brings a Complaint forward for the Commission’s review.

Complaints Committee means a division of the Commission vested with the jurisdiction to receive Complaints, recommend self-initiation of Complaints to the full Commission, appoint Investigators and Special Ethics Counsel(s), dismiss Complaints, recommend a finding of Probable Cause to the full Commission, submit a Sworn Complaint to the Hearing Panel for public proceedings, and conduct such other proceedings as necessary or ancillary to its duties under the Code and these Procedures. The Complaints Committee shall be comprised of no less than three members of the Commission. Decisions within the authority vested in the Complaints Committee under these Procedures are not reviewable by the full Commission.

Confidentiality means the authority, pursuant to Fla. Stat. § 112.324 and Code § 602.921(a), to hear pending Complaints in Executive Session and to hold documents relating to Complaints in a confidential manner, so they are not subject to public records laws until authorized by statute, in accordance with these Procedures.

Council Auditor means the City of Jacksonville Council Auditor's Office, including the Council Auditor and members of the Council Auditor's staff.

Complaint means an alleged violation of the Code which has been brought to the attention of the Office of Ethics, Compliance and Oversight or the Commission. In accordance with the Code, a Complaint may initially be received by any source (email/phone-call/hotline) but, in order to be processed as an official complaint, must be a Sworn Complaint alleging a violation of Chapter 602 or a Self-Initiated Complaint by the Commission. (Section 602.921(a)). For the purposes of these Procedures, the term Complaint shall apply to all types of Complaints.

Ethics Deputy Director means the person appointed by the Commission as the Deputy Director of the Office of Ethics, Compliance and Oversight.

Ethics Director means the person identified in Chapter 602, Part 6 as the Director of the Office of Ethics, Compliance and Oversight.

Executive Session means those meetings which are authorized by and conducted in accordance with Fla. Stat. § 112.324 (shade meetings); these meetings shall be recorded, pursuant to Code § 602.931(c).

Ex Parte Communications means any oral or written communication to a decision-making official relative to a matter before the decision-making body that occurs outside of an Executive Session or advertised public meeting pursuant to Fla. Stat. § 286.011, as set forth in Rule 15. Ex Parte Communications shall not include any communications with staff of the Office of Ethics, Compliance and Oversight or the Office of General Counsel liaison to the Commission.

Hearing Officer means such person as may be appointed by the Hearing Panel pursuant to Rule 12(f) to conduct proceedings and issue reports and recommendations on matters referred by the Hearing Panel relative to a Complaint. To serve as Hearing Officer, the candidate must be and have been a member of The Florida Bar in good standing for the preceding five years. A member of the Commission may serve as a Hearing Officer if otherwise qualified, but cannot have participated in or attended any Executive Session at which the Complaint for which he or she is appointed to serve as Hearing Officer was discussed.

Hearing Panel means a division of the Commission vested with the authority to receive and hear Complaints after a finding of Probable Cause by the Commission, to recommend a finding of violation of the Code to the full Commission, dismiss Complaints, and conduct such other proceedings as necessary or ancillary to its duties under the Code and these Procedures. The Hearing Panel shall be comprised of at least three members of the Commission who did not participate in or attend any Executive Session at which the Complaint for which they are appointed to serve on the Hearing Panel was discussed. Decisions within the authority vested in the Hearing Panel under these Procedures are not reviewable by the full Commission.

Hotline tip means any information related to an alleged violation of the Code.

Inspector General means the City of Jacksonville Inspector General's Office, including the Inspector General and members of the Inspector General's staff.

Investigator means the Ethics Director, a member of the Office of Ethics, Compliance and Oversight, the Council Auditor, the Office of General Counsel liaison to the Commission, the Inspector General, one or more members of the Commission or any other appropriate person or municipal agency who is authorized by these Procedures or the Code to conduct an investigation into a Complaint.

Legal Sufficiency refers to Complaints that are deemed legally sufficient if the Complainant sufficiently alleges facts which, if true, would constitute a violation of the Code.

Probable Cause means that the facts and circumstances are sufficiently strong to support a reasonable belief that the Respondent had committed a violation of the Code.

Respondent means the individual who is the subject of the Complaint.

Self-Initiated Complaint means a Complaint instituted by the Ethics Commission in accordance with Code § 602.921 and Rule 8.

Special Ethics Counsel means the individual appointed by the Complaints Committee to conduct appropriate investigation, gather and present evidence before the Commission (or any division thereof) with respect to a

Complaint, and otherwise advise the Complaints Committee in connection with the prosecution of a Complaint. Any individual as set forth in Rule 11 may serve as Special Ethics Counsel.

Sworn Complaint means a Complaint initiated by the receipt of a Complaint which is signed by a Complainant under oath and otherwise compliant with Rule 5(b).

- (d) **Amendment to Procedures.** These Procedures may be amended at any regular meeting by a majority vote of the Commission, provided that the amendment has been submitted in writing (1) at the previous regular meeting or (2) to the Ethics Director and Office of General Counsel liaison to the Commission at least 10 days prior to the Ethics Commission meeting at which the Procedures will be amended. For amendments submitted under Rule 1(d)(2), the Office of Ethics, Compliance and Oversight shall transmit the proposed amendments to all members of the Commission before the Commission meeting at which the Procedures will be amended. Amendments to the Procedures govern all future proceedings of the Commission, including those proceedings on pending cases.

Rule 2 – Time Periods and Statute of Limitations.

- (a) **Computation of Time.** In computing any period of time prescribed or allowed by these Procedures: exclude the day of the event that triggers the period; count every day, including intermediate Saturdays, Sundays, and legal holidays; and include the last day of the period, but if the last day is a Saturday, Sunday, or holiday for which the City of Jacksonville is closed, the period continues to run until close of business on the next day that is not a Saturday, Sunday, or holiday for which the City of Jacksonville is closed.
- (b) **Statute of Limitations.** No action may be taken on a Complaint filed more than two years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. (Section 602.939). Notwithstanding anything else in these Procedures, a Complaint alleging prevention of discovery of a violation must allege specific facts supporting that conclusion. A Complaint that is filed more than two years after the violation is alleged to have occurred and does not allege specific facts to support a finding that fraud or other device prevented discovery of the alleged violation shall be considered legally insufficient and may be returned by the Ethics Director pursuant to Rule 6(a).

- (c) **Extending or Shortening Time.** Other than Rule 2(b), the periods of time in these Procedures are not jurisdictional and the Complaints Committee, Hearing Panel, or the relevant division's Chairs may (1) extend periods of time for good cause, (2) shorten periods of time with the consent of the person subject to such period of time, and (3) shorten periods of time without the consent of the person subject to such period of time when the Complaints Committee, Hearing Panel, or the relevant division's Chair decides the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, Hearing Panel, or Complaints Committee, so long as the relevant authority decides the shortened period of time provides reasonable time under the circumstances.

Rule 3 – Filing and Serving Documents; Email Transmissions.

Documents under these Procedures shall be filed with the City of Jacksonville's Office of Ethics, Compliance and Oversight, and served, when service is required, by email, mail, hand delivery, or any combination thereof, except where specifically provided otherwise herein.

Rule 4 – Presiding Officer of Hearing Panel.

For purposes of proceedings under these Procedures before the Hearing Panel, the presiding officer shall be the Chair of the Commission or, in the event the Chair is unavailable, the Vice Chair of the Commission. The presiding officer may appoint another Commission member to serve as presiding officer for any reason in his or her discretion.

Rule 5 – Procedures Upon Receipt of a Complaint of Violation of the Code.

- (a) **Safeguarding Confidential Materials.** Upon receipt of a Complaint, the Office of Ethics, Compliance and Oversight shall print on the face thereof the date on which the Complaint was received in the Office of Ethics, Compliance and Oversight. Each Complaint received shall be assigned a control number which shall be entered on the Complaint itself and on a folder marked confidential in which the Complaint shall be filed so long as it remains Confidential. Any document related to the Complaint shall be filed in the Complaint file.
- (b) **Technical and Clerical Review for a Sworn Complaint.** Upon receipt of a Sworn Complaint, the Ethics Director shall review the Complaint to ensure that the proper Sworn Complaint form has been used, that all the information required has been provided, that only one Respondent has been named in each Sworn Complaint form submitted, and that the Sworn Complaint has been properly

signed by the Complainant under oath. One or more persons may sign a Sworn Complaint under oath; however, when the Sworn Complaint is to be filed under oath in a representative capacity on behalf of an incorporated association or group, the Sworn Complaint shall include sufficient information to indicate the authority of the person signing the Sworn Complaint to file such a Sworn Complaint on behalf of the association or group. If the Complaint is filed on behalf of an unincorporated group or association, the person(s) signing the Complaint shall be considered to be the Complainant(s) rather than the group or association. If the Sworn Complaint lacks any of the foregoing or is otherwise incomplete, a copy of the Sworn Complaint shall be returned to the Complainant identifying the defect.

- (c) **Assistance.** The Ethics Director or the Ethics Deputy Director shall provide assistance or information to persons seeking to file a Complaint, but shall not solicit or discourage the filing of a Complaint.
- (d) **Transmittal of Sworn Complaint to Respondent.** Except as provided otherwise herein, a copy of the original Sworn Complaint shall be transmitted to the Respondent by hand delivery or by certified mail, return receipt requested, by the Office of Ethics, Compliance and Oversight within ten days of its receipt. Subsequent sworn amendments to the Sworn Complaint shall be transmitted to the Respondent within five days of their receipt. If the Respondent submits a written request to the Office of Ethics, Compliance and Oversight for transmittal by any other means, the Office of Ethics, Compliance and Oversight may, at the Ethics Director's discretion, use the requested means, use hand delivery, or use certified mail. The Ethics Director shall transmit the Sworn Complaint with a cover letter that includes (without limitation) information on access to the Commission's Procedures, ways to contact the Commission, and information on how to submit documents or settlement proposals. The Ethics Director may elect, with the permission of the Chair of the Complaints Committee, to delay service of the Sworn Complaint in any matter where service of the Sworn Complaint on the Respondent would interfere with an investigation by another state or municipal agency or for other good cause. In such event, the Ethics Director shall, at the next scheduled Executive Session of the Complaints Committee, inform the Complaints Committee of the decision to delay service. The Complaints Committee may review the decision to delay service and decide, by majority vote, whether to affirm or reverse the delay of service.
- (e) **Submissions to the Commission.** The Respondent and/or his or her counsel may, in their discretion and at any time during any stage of the Commission's proceedings, make written submissions to the Commission, which may include

proposals to resolve Complaints pursuant to Rule 17, by filing those submissions with the Office of Ethics, Compliance and Oversight.

- (f) **Complaints Within 15 Days of Election Returned.** Any Complaint against a candidate in a general, special, or primary election that is received within the fifteen days immediately preceding the date of that election, will be returned by the Office of Ethics, Compliance and Oversight to the person filing the Complaint, with an explanation of why the Complaint is being returned without any action being taken by the Commission. A Complaint returned pursuant to this provision and subsequently refiled after the election shall be deemed to have been filed on the date the Complaint was first submitted to the Office of Ethics, Compliance and Oversight.
- (g) **Probable Cause Determination.** Complaints that are not otherwise disposed of, shall then proceed to subsequent investigation pursuant to these Procedures and, if applicable, consideration by the Complaints Committee and Commission to determine whether Probable Cause exists that a violation of the Code occurred, in accordance with Rule 11.

Rule 6 – Review for Sufficiency of Allegations of Violations of the Code and Order of Preliminary Investigation For Complaints.

- (a) **Review for Legal Sufficiency and/or Jurisdiction.** After the Complaint has been received, the Complaint shall be reviewed by the Ethics Director in order to determine whether the Commission has jurisdiction over the Complaint; that is, whether the Complaint is one concerning a violation of the Code that occurred within the statute of limitations (Section 602.939). If the facts in the Complaint (1) fail to allege a violation of the Code, (2) allege a violation of state ethics laws or dual jurisdiction under state and local ethics laws, or (3) a violation of the Code that occurred wholly outside the statute of limitations, the Ethics Director may, with notice to the Complaints Committee and the approval of its Chair, return the Complaint to the Complainant with notice pursuant to Rule 6(b). Complaints need not be as precise as would be required by the rules of civil procedure in a court of law and shall be deemed sufficient for purposes of Rule 6(a) if the Complainant sufficiently alleges facts which, liberally construed and if true, would constitute a violation of the Code. A Complaint shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law. In order to make this determination, the Ethics Director may request additional information from the Complainant, consult with the Office of General Counsel liaison to the Commission, and obtain information from public records or otherwise.

- (b) **Notice of Return.** If a Complaint is returned pursuant to Rule 6(a), the Ethics Director shall provide written notice informing the Complainant of the reason for the return (whether Rule 6(a)(1), 6(a)(2), or 6(a)(3)). If a Complaint is returned pursuant to Rule 6(a)(2), the notice of return shall include instructions on how to file a Complaint with the Florida Commission on Ethics. All notices pursuant to Rule 6(b) shall contain the following language in all capital letters and 14-point font: YOU MAY SEEK REVIEW OF THE DECISION TO RETURN YOUR COMPLAINT PURSUANT TO RULE 6(c) OF THE COMPLAINT PROCEDURES OF THE JACKSONVILLE ETHICS COMMISSION, AVAILABLE AT [Ethics Director to insert current website address for these Procedures]. THE PROCEDURES IMPOSE IMPORTANT DEADLINES AND OTHER REQUIREMENTS THAT YOU MUST CHECK IMMEDIATELY TO AVOID WAIVER OF REVIEW.
- (c) **Review of Rule 6(a) Return.** If a Complaint is returned pursuant to Rule 6(a), the Complainant may—by written request filed with the Office of Ethics, Compliance and Oversight within thirty days of the Ethics Director’s transmittal of the notice of return—seek review by the Complaints Committee. The written request may include additional argument and evidence. In such event, the decision to return the Complaint shall be reviewed by the Complaints Committee at an Executive Session, at which the Complaints Committee shall decide, by majority vote, whether to affirm or reverse the decision to return the Complaint. The Complaints Committee shall review the Ethics Director’s decision without deference (as if deciding the matter for the first time). If no written request for review pursuant to this Rule 6(c) is received by Office of Ethics, Compliance and Oversight within thirty days of the Ethics Director’s transmittal of the notice of return, the Ethics Director’s return shall constitute final action of the Commission and the Complaint and all documents related thereto shall become a public record and constitute a public report.
- (d) **Preliminary Investigation.** If the Ethics Director finds that the Complaint is sufficient to invoke the jurisdiction of the Commission, the Ethics Director shall, after consultation with and permission of the Chair of the Complaints Committee or, if he or she is unavailable, the Vice-Chair, (1) commence a preliminary investigation of the Complaint, (2) refer it to any other agency whose jurisdiction or purview is appropriate, or (3) prepare it for Complaints Committee consideration. The Chair of the Complaints Committee may schedule an Executive Session of the Complaints Committee, as appropriate. In the event of a referral to another agency, pursuant to Code § 602.938, the Complaints Committee may dismiss or stay any consideration of the matter until the conclusion of the other agency’s actions on the matter, and shall otherwise avoid

interfering with any ongoing criminal investigation or prosecution or any investigation or proceeding of the Florida Commission on Ethics.

- (e) **Executive Sessions.** If an Executive Session is scheduled, the Complaint shall be brought before the Complaints Committee in Executive Session with the recommendations of the Ethics Director, including (without limitation) recommendations for appointments of the Investigator and Special Ethics Counsel. The Complaints Committee may find the Complaint to be sufficient and order an investigation; may find the Complaint to be insufficient, dismiss it, and notify the Complainant that no investigation will be made; or may take such other action as may be appropriate. In any case where a Complaint is found legally insufficient and dismissed by the Complaints Committee, a summary of the reasons for dismissing the Complaint together with the Complaint itself and all documents related thereto shall become a public record and constitute a public report.

- (f) **Personnel Actions.** When an Employee of the City or one of its agencies is alleged to have violated the Code and, based on substantially the same set of facts, is subject to an ongoing disciplinary action by the City or one of its agencies, pursuant to Code § 602.938, the Complaints Committee shall stay consideration of a Complaint until the conclusion of the personnel proceeding. Nothing herein shall abridge any rights such an employee may have to collective bargaining or Civil Service Rules.

Rule 7 – Withdrawal of Complaints.

After a Complaint has been determined to be sufficient to invoke the jurisdiction of the Commission, the Commission may permit the Complainant(s) to withdraw the Complaint. Prior to a finding of Probable Cause, this authority is vested in the Complaints Committee. After a finding a Probable Cause, this authority is vested in the Hearing Panel. Withdrawal shall be requested in writing and shall be signed by the Complainant(s) and sworn before a notary public, stating the facts and circumstances constituting good cause for withdrawal of the Complaint. The Ethics Director shall prepare a recommendation regarding disposition of the request, which shall be given to the relevant division of the Commission together with the request. "Good cause" shall be determined based upon the legal sufficiency or insufficiency of the Complaint to allege a violation of the Code, the stage in disposition of the Complaint at the time the request was received, whether the Complaint should proceed in the judgment of the relevant division of the Commission despite the Complainant's wishes, the reasons given by the Complainant(s) for wishing to withdraw the Complaint, and any other considerations important to the Commission. If withdrawal is permitted, the relevant

division of the Commission shall order the Complaint dismissed and shall proceed as if the Complaint had been found insufficient under Rule 6(e). Whether or not the Commission allows withdrawal of the Complaint, the Commission may also proceed with the Complaint on their own initiation, subject to self-initiation Procedures.

Rule 8 – Self-Initiation of Complaints by the Commission.

The following process shall be followed for the Commission to self-initiate a Complaint against a city Employee or Official, or any other person subject to the Code.

- (a) **Executive Session.** Pursuant to Fla. Stat. § 112.324, any discussions by a Commission member about initiating an investigation against any person subject to the Code shall be initiated in either an Executive Session of the Complaints Committee or of the Commission as a whole. The Commission member desiring to engage in such discussions shall request, through the Office of Ethics, Compliance and Oversight, that such a meeting be scheduled or that the discussion be added to the agenda for the next scheduled meeting.
- (b) **Executive Session of the Complaints Committee.** The Complaints Committee shall handle the initial discussions and investigations of any Complaint matters in an Executive Session. After deliberation(s), the Complaints Committee shall make a motion and a written recommendation to the entire Commission that: (1) a proposed Complaint is determined to be legally insufficient or (2) a Complaint is determined to be legally sufficient and that the Commission should self-initiate a Sworn Complaint.
- (c) **Assistance to the Complaints Committee.** The initial recommendation of the Complaints Committee shall be done with the assistance of the Ethics Director and the Office of General Counsel liaison to the Commission.
- (d) **Notice of Complaints Committee Recommendation to Respondent.** After the Complaints Committee's recommendation vote, a copy of such written recommendation containing a statement of the allegation(s) shall be provided to the Respondent at least ten days prior to the meeting of the Executive Session of the Commission when the Commission will consider whether to self-initiate a Complaint.
- (e) **Transmittal of Complaint to Executive Session of the Commission.** The recommendation of the Complaints Committee shall be considered by the Commission as a whole, at which time the Commission shall either: (1) vote to

self-initiate a Complaint alleging a violation of the Code, which such vote shall require a minimum of six members of the Commission voting in the affirmative of such action or (2) otherwise dispose of a Complaint. In the event a Self-Initiated Complaint is approved by the Commission, a Sworn Complaint form, as is filed by citizens for Sworn Complaints, shall be filed and signed by the Chair of the Commission or, if the Chair votes against self-initiating, by the Vice Chair, Complaints Committee Chair, or senior member of the Commission who voted in favor of self-initiating. The Self-Initiated Complaint then shall be referred to the Complaints Committee for such further proceedings as any other Sworn Complaint.

- (f) **Respondent's Right to Attend Executive Session of the Commission.** The Respondent and/or his or her counsel shall be permitted to attend the Executive Session of the Commission where consideration as to whether to self-initiate a Complaint will be determined. The Respondent and/or his or her counsel may, in their discretion, make a written and/or oral statement to the Commission prior to the Commission's vote on whether to self-initiate a Complaint. The Commission may excuse the Respondent and his/her counsel at any time before and after the Respondent has been heard.

- (g) **Transmittal of Complaint to Respondent.** Except as provided otherwise herein, a copy of the Sworn Complaint shall be transmitted to the Respondent by hand delivery or by certified mail, return receipt requested, by the Office of Ethics, Compliance and Oversight within ten days of the Commission's Executive Session meeting where the Commission approves commencement of a Self-Initiated Complaint. If the Respondent submits a written request to the Office of Ethics, Compliance and Oversight for transmittal by any other means, the Ethics Director may, at his or her discretion, use the requested means, use hand delivery, or use certified mail.

Rule 9 – Initiation of Investigations Based on Hotline Tips or Complaints

- (a) **Receipt and Review of Hotline Tips or Complaints.** The Office of Ethics, Compliance and Oversight shall review Hotline tips or Complaints and report them to the Complaints Committee. Hotline tips shall be treated as anonymous if the Complainant does not identify himself or herself and does not provide any identifying information. In accordance with Fla. Stat. § 112.324(2)(e), identifying information provided by a Complainant will become public record when the Complaint becomes a public record pursuant to these Procedures and applicable law. Hotline tips may relate to various issues within the City, and the Office of Ethics, Compliance and Oversight may coordinate contact with the appropriate

City department. The Ethics Director may promulgate additional operational procedures to regulate the Hotline and processing of Hotline tips.

- (b) **Presentation to Complaints Committee.** When the Ethics Director presents a Hotline tip or Complaint to the Complaints Committee for review, he or she shall provide a recommendation. After review of the Complaints Committee, Hotline tips may be further investigated and Complaints shall be processed in accordance with Rule 6 or, if applicable, Rule 8.
- (c) **Hotline Tip or Other Complaint Procedure.** Unless disposed otherwise in accordance with these Procedures, all Hotline tips and Complaints shall be reviewed, considered and determined by the Complaints Committee for further investigation, action or disposal as follows: (1) if it's not a violation of the Code, it shall be disposed of by the Complaints Committee; (2) if it's an alleged violation of another jurisdiction's purview, it may be referred to the appropriate agency by the Complaints Committee, if applicable and where appropriate; (3) if it's an alleged violation of the Code, it may be further investigated pursuant to Rule 10; or (4) otherwise dismissed by the Complaints Committee pursuant to Rule 17.

Rule 10 – Investigations

- (a) **Investigations.** At the discretion of the Chair of the Complaints Committee, investigations of any matters not referred to an outside agency may be conducted by the Office of Ethics, Compliance and Oversight, by the Council Auditor, by the Office of General Counsel liaison to the Commission, by the Inspector General, by one or more members of the Complaints Committee, or by any other appropriate person or municipal agency as provided for in the Code. In the event a member of the Commission serves as the Investigator, such member shall not have served on the Complaints Committee at the time of the Probable Cause finding for the particular Complaint for which the Investigator is appointed or on the Hearing Panel for that Complaint.
- (b) **Scope of Investigation.** Investigations shall be limited to the allegations of the Complaint or the Hotline tip, but shall include an investigation of all facts and persons related to the Complaint or tip at issue.
- (c) **Evidence Unrelated to the Complaint.** If, during the course of an investigation, the Investigator discovers evidence of a wrongful act not materially related to the Complaint or tip at issue or facts giving the Investigator reason to suspect a different potential violation of the Code, the Investigator shall submit such evidence and/or facts to the Complaints Committee in a separate Investigator's

report. The Investigator shall not further investigate such wrongful act or potential violation(s) without further direction from the Complaints Committee. Upon receipt of a separate Investigator's report containing such evidence or facts, the Complaints Committee shall: (1) as soon as practicable forward evidence of the commission of a crime or other wrongful act to the appropriate disciplinary or law enforcement official and/or (2) treat potential violations of the Code in the same manner as a Hotline tip. If such official or if the Investigator wishes to file a Sworn Complaint with the Commission, he or she may do so and said Sworn Complaint shall be received and considered by the Commission in the same manner as any other Sworn Complaint. Investigator's reports pursuant to Rule 10(c) shall be maintained as part of the Confidential file with the information treated as a Hotline tip, and shall be transmitted to the Respondent together with the information required by Rule 8(d).

- (d) **Investigator Contacts with Potential Witnesses.** The Investigator shall inform the person being interviewed of the Confidential nature of the investigation and of the Complaint, unless the Respondent has waived confidentiality in writing.
- (e) **Investigator to be Impartial.** An Investigator shall strive to be impartial and unbiased in the conduct of the preliminary investigation. It is the duty of the Investigator to collect all evidence materially related to the allegations of the Complaint, whether such evidence tends to prove or disprove the allegations. If an Investigator feels that for any reason he or she cannot be impartial or unbiased during the investigation then such Investigator shall so notify the Ethics Director or Chair of the Complaints Committee and shall immediately discontinue working on the investigation. If the Complaints Committee feels that the Investigator cannot be unbiased or impartial at any point in time during the preliminary investigation, the Complaints Committee shall terminate any further investigation by the Investigator. The Complaints Committee may also terminate any further investigation by the Investigator if at any time there is the appearance of bias or partiality. No Complainant may serve as an Investigator while his or her Complaint is active before the Commission. The Investigator serves at the pleasure of the Complaints Committee, which may relieve or replace an Investigator for any reason at any time.
- (f) **Investigator's Report.** Upon the completion of either a preliminary investigation or investigation, the Investigator shall report to the Complaints Committee in an Executive Session.
- (g) **Investigatory File.** The Ethics Director shall maintain a Confidential investigatory file in the Office of Ethics, Compliance and Oversight with the

assistance of the Investigator, if the Investigator is someone other than the Ethics Director.

- (h) **Special Ethics Counsel.** The Complaints Committee shall appoint a Special Ethics Counsel to present the matter before all divisions of the Commission. The Special Ethics Counsel shall be the Ethics Director, an attorney member of the Office of Ethics, Compliance and Oversight, a member of the Office of General Counsel, or a member of The Florida Bar appointed by the Complaints Committee. The Special Ethics Counsel represents the Commission in its prosecutorial function. The Office of General Counsel liaison to the Commission may serve as Special Ethics Counsel only if the General Counsel assigns another lawyer to advise the Hearing Panel during the public hearing.

Rule 11 – Procedure Leading to Probable Cause

- (a) **Commission to Vote.** Unless a Complaint is otherwise resolved by the Complaints Committee, the Commission shall conduct an Executive Session for a final vote on whether there is Probable Cause to move forward on an alleged violation pursuant to a Complaint. The Respondent shall have a right to be heard at the Executive Session before the vote of the Commission is taken. At the Executive Session, Respondent may be represented, accompanied and/or advised by counsel.

- (b) **Probable Cause Determination.**

- (1) **Notification of Completion of Investigation.** When the Investigator’s report is completed, the Office of Ethics, Compliance and Oversight shall notify the Respondent that the report is completed and shall send to the Respondent a copy of the investigation report. The investigatory file and Complaint file shall be open for inspection by the Respondent and the Respondent’s counsel, and copies may be obtained at no more than cost.

- (2) **Time to Review Report.** Within fourteen days from the date of transmittal of the Investigator’s report, the Respondent may file with the Office of Ethics, Compliance and Oversight a written response to the Investigator’s report, which may include a proposal to settle or otherwise resolve the matter pursuant to Rule 17.

- (3) **Special Ethics Counsel’s Recommendation.** The Special Ethics Counsel shall review the Investigator’s report and shall make a written recommendation to the Complaints Committee for the disposition of the

Complaint. If the Special Ethics Counsel recommends that a public hearing be held, the recommendation shall include a statement of what charges shall be at issue at the hearing. A copy of the recommendation shall be furnished to the Respondent. Within fourteen days from the date of transmittal of the Special Ethics Counsel's recommendation, the Respondent may file with the Office of Ethics, Compliance and Oversight a written response to the recommendation.

(4) **Review Hearing.** The Complaints Committee shall meet in Executive Session to review the Investigator's report, Special Ethics Counsel's recommendation, and any responses. At this review hearing, the Complaints Committee may (A) continue its determination to allow further investigation; (B) issue a written order dismissing the Complaint if it finds no Probable Cause to believe that a violation of the Code has occurred, concluding the matter before the Commission; (C) refer the Complaint to the full Commission (with or without a recommendation) to determine Probable Cause; or (D) take such other action as it deems necessary to resolve the Complaint, consistent with due process of law.

(5) **Probable Cause Hearing.** If the Complaints Committee refers the Complaint to the full Commission to determine Probable Cause, the Commission shall consider the Complaint in Executive Session. The Respondent, the Complainant(s), their respective counsel, and the Special Ethics Counsel shall be permitted to attend the Probable Cause hearing before the Commission. Notice of the hearing shall be sent to the Respondent, Complainant(s), and Special Ethics Counsel at least fourteen days before the hearing.

(6) **Scope of Probable Cause Determination.** The Probable Cause determination is made by simple majority vote of the full Commission at the conclusion of the preliminary investigation of the Complaint and the conclusion of all proceedings before the Complaints Committee. The Respondent and the Special Ethics Counsel shall be permitted to make brief oral arguments to the Commission before a finding of Probable Cause.

(7) **Probable Cause Hearing Outcomes.** At its meeting to determine Probable Cause, the Commission may: (A) continue its determination to allow further investigation; (B) issue a written order dismissing the Complaint if it finds no Probable Cause to believe that a violation of the Code has occurred, concluding the matter before the Commission; (C) refer the Complaint for a final, public hearing before the Hearing Panel pursuant to Rule 11(c); or (D) take such other action as it deems necessary to resolve the Complaint, consistent with due process of law.

(8) **Consideration for Probable Cause Determination.** The Commission's determination shall be based upon the Investigator's report, the Special Ethics Counsel's recommendation, the Complaint, other evidence or statements received from any participant at least seven days before the Probable Cause Hearing, and staff recommendations, as well as any oral arguments made at the hearing. No testimony or other evidence will be accepted at the hearing. In making its determination, the Commission may consider:

- (A) The sufficiency of the evidence against the Respondent, as contained in the record;
- (B) The admissions and other stipulations of the Respondent, if any;
- (C) The nature and circumstances of the Respondent's actions;
- (D) The expense of further proceedings; and
- (E) Such other factors as it deems material to its decision.

(c) **Finding of Probable Cause.** If the Commission votes in the affirmative that there is Probable Cause to proceed, the Commission shall determine what charges shall be at issue for the hearing and the matter shall then proceed in accordance with these Procedures to a Public Hearing before the Hearing Panel.

Rule 12 – Public Hearing Procedures

(a) Counsel at the Public Hearing

(1) **Respondent.** Respondent may appear on his or her own behalf or may be represented by a lawyer. Subsequent to initial transmittal of the Complaint, all notices and communications to a Respondent represented by a lawyer shall be made through the Respondent's lawyer.

(2) **Complainant.** To the limited extent the Complainant is entitled to participate or observe Commission proceedings, the Complainant may be represented by legal counsel. All notices and communications to a Complainant represented by a lawyer shall be made through Complainant's lawyer.

(b) **Motions to Dismiss for Lack of Jurisdiction.** Within a reasonable time before a public hearing is to be held, Respondent may file with the Office of Ethics, Compliance and Oversight a written motion to dismiss the Complaint for lack of

jurisdiction, which motion shall state with particularity the grounds therefore. The Respondent shall simultaneously transmit a copy of any such motion to the Special Ethics Counsel. The presiding division shall meet to consider and resolve the motion to dismiss. If the presiding division finds that the Commission has jurisdiction over matters alleged in the Complaint, it shall deny Respondent's motion with respect to those allegations and shall continue its proceedings. If the presiding division finds that the Commission has no jurisdiction over matters alleged in the Complaint, it shall issue a written decision ordering the dismissal of the Complaint with respect to those allegations. The Special Ethics Counsel and Respondent may attend and provide oral argument at any meeting at which a division of the Commission will vote to resolve a motion to dismiss under Rule 12(b). A motion under Rule 12(b) does not operate to stay any proceedings before the Commission, any division, or a Hearing Officer.

(c) **Notification of Manner of Disposition.** Upon the Hearing Panel's ordering a public hearing of a Complaint, the Office of Ethics, Compliance and Oversight shall transmit the Hearing Panel's scheduling order, which shall include the deadline for filing a motion to dismiss, to the Special Ethics Counsel, Complainant, and Respondent.

(d) **Parties to Public Hearings.** The person against whom the Commission has found Probable Cause shall be the Respondent. Respondent shall be the only party unless consolidation of Complaints is granted. The Special Ethics Counsel shall be a full participant in the proceeding and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through further investigation.

(e) **Public Hearing Procedures.**

(1) **Presentation of the case.** The Special Ethics Counsel shall present his or her case first. Respondent or his or her counsel may then present his or her case. Each member of the Hearing Panel may ask questions of any person presenting a case and of any witness, including the Respondent. Rebuttal evidence may be permitted in the discretion of the Hearing Panel. Either the Special Ethics Counsel or the Respondent may ask, for good cause shown, that the hearing be recessed for further proceedings in the event that such are indicated, and such recess may be granted in the discretion of the Presiding Officer.

(2) **Opening and closing statements.** Opening and closing statements may be presented by the Special Ethics Counsel and the Respondent or his or her

counsel. The Special Ethics Counsel shall proceed first, followed by the Respondent. The Special Ethics Counsel may make a rebuttal closing statement.

(3) **Evidence.** Stipulations may be received and are encouraged as to uncontested issues. Oral evidence may be taken only on oath or affirmation. The Respondent and the Special Ethics Counsel shall have the right to present relevant evidence, to cross-examine witnesses within the scope of their direct testimony, and to impeach any witness on non-collateral matters regardless of which participant first called the witness to testify. Any relevant evidence may be admitted, and the hearing shall not be conducted according to technical rules relating to evidence or witnesses. Hearsay evidence may be used to supplement or explain other evidence, but only to the extent the Presiding Officer determines the hearsay to be reliable. The rules as to attorney-client or other privileges shall be effective to the same extent that they appear in the Florida Evidence Code. Irrelevant or cumulative evidence may be excluded at the discretion of the Presiding Officer. Affidavits shall generally not be admissible, but may be admitted for such weight as is reasonable if the affiant refuses or is unavailable to testify as defined in the Florida Evidence Code. Any relevant evidence regarding an admission made by the Respondent outside of the public hearing, if such evidence is given by a person with personal knowledge of the statement, is not hearsay and shall be admitted. The rule of sequestration of witnesses may be invoked by the Presiding Officer in his or her discretion, on his or her own motion or at the request of any participant.

(4) **Recording of the proceedings.** The proceedings at a public hearing shall be recorded by electronic means in the same manner that all public meetings of the Commission are recorded. No transcript shall ordinarily be prepared unless requested and paid for in advance by the Respondent. Nothing in these Procedures shall be construed to prevent the Respondent from providing a court reporter for a public hearing at his or her own expense.

(5) **Scheduling Order.** At the discretion of the Presiding Officer, the scheduling order may include allocated time for each participant, as well as other matters.

(f) **Referral to Hearing Officer.**

(1) The Hearing Panel may, in its discretion and by majority vote, appoint a Hearing Officer and refer to such Hearing Officer any evidentiary or non-evidentiary matter relative to a Complaint. The Hearing Officer may conduct such proceedings as he or she deems appropriate and shall follow all Procedures that

would apply if the Hearing Panel handled the referred matter, including (without limitation) Rule 14, except that a Hearing Officer does not have authority to consider resolutions pursuant to Rule 17.

(2) In proceedings before a Hearing Officer, the Hearing Officer acts as Presiding Officer and Hearing Panel, and the Hearing Officer shall submit a report and recommendation to the Hearing Panel on each dispositive matter within the Hearing Officer's referral. If a Complaint is referred to a Hearing Officer to handle the Public Hearing and recommend a final disposition of the Complaint, the Hearing Officer shall submit his or her report to the Hearing Panel within thirty days after the conclusion of the hearing or within such extended period of time as may be allowed by the Presiding Officer of the Hearing Panel. The Hearing Officer's report regarding recommendation of final disposition shall include: (A) findings of fact as to each violation of the Code of which the Commission found Probable Cause; (B) recommendations as to whether the Respondent should be found in violation of the Code, justifying disciplinary measures; (C) recommendations as to the disciplinary measures and/or civil fines to be imposed by the Hearing Panel; (D) a statement of any past disciplinary measures as to the Respondent that are on record with the Office of Ethics, Compliance and Oversight or that otherwise become known to the Hearing Officer through evidence during the course of the proceedings; and (E) a statement of costs incurred and recommendations as to the manner in which such costs should be taxed, if authorized by the Code.

(3) The Presiding Officer of the Hearing Panel shall review non-dispositive reports and recommendations from Hearing Officers. The full Commission shall review dispositive reports and recommendations from Hearing Officers. The Commission shall not reject or modify findings of fact made by a Hearing Officer unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. The Commission shall review legal conclusions and recommendations of discipline without deference (as if deciding the matter for the first time). In the discretion of the Presiding Officer of the Hearing Panel, the Commission may allow presentation of argument, written or oral. No additional evidence may be submitted after the conclusion of the Public Hearing before the Hearing Officer. Upon receipt of a Hearing Officer's report, the Presiding Officer of the Hearing Panel shall schedule a public hearing before the Commission to consider whether to adopt, modify, or reject, in whole or in part, the Hearing Officer's report and recommendations as the Public Report of the Commission. In the notice scheduling that public hearing, the Presiding Officer of the Hearing Panel shall

indicate what additional argument the Commission will consider (if any) and set deadlines for written submissions (if allowed).

(4) Where a Complaint is decided by the Hearing Panel without referral to a Hearing Officer, the Hearing Panel's (A) non-dispositive decisions and (B) decision finding no violation of the Code, are not reviewable by the full Commission except as allowed by Rule 17(b). If the Hearing Panel rules that an existing Code provision has been violated based on Clear and Convincing Evidence, the Hearing Panel shall prepare a report and recommendation to the full Commission the same way that a Hearing Officer would under Rule 12(f)(2). The Commission shall review the Hearing Panel's report the same way it would a Hearing Officer's report under Rule 12(f)(3).

(g) **Transmittal of Public Report.** Following the conclusion of the hearing, a public report shall be drafted and agreed upon by a majority of the Hearing Panel or Commission (as appropriate). Any member not in the majority may draft and file a dissent, or may simply note that he or she dissents. The public report shall be signed by the Presiding Officer, shall be transmitted to the Respondent, Special Ethics Counsel, and Complainant, and shall be made available to the public. Both the Respondent and the Special Ethics Counsel may, at the discretion and within such time designated by the Presiding Officer, present written proposed public reports to assist the Commission in its deliberations and preparation of the public report.

Rule 13 – Confidentiality

(a) **Proceedings Confidential.** Except as otherwise provided in these Procedures or by law, the Complaint and Commission activities, proceedings, and documents relating to the Complaint shall be confidential until either:

- (1) Confidentiality is waived in writing by the Respondent; or
- (2) The Complaints Committee orders the Complaint dismissed; or
- (3) The Complaints Committee makes a finding of Probable Cause.

When (1), (2), or (3) occurs, all materials relating to the Complaint shall become public records available to the public as provided in Chapter 119, Florida Statutes, except to the extent the materials are otherwise exempted from disclosure by law or court order.

(b) **Communication to Parties.** The Confidentiality provided by this rule shall not prohibit the Commission or the Office of Ethics, Compliance and Oversight from

advising the Respondent, Special Ethics Counsel, or Complainant about the status of the Complaint proceeding.

Rule 14 – Disqualification of Commission Members.

- (a) **Disqualification in General.** Commission members shall be disqualified from sitting as a member of the Commission at either the Probable Cause hearing or the final public hearing for bias, prejudice, or conflict of interest. Disqualification may be raised by the Complainant, Respondent, Special Ethics Counsel or by any member or advisor of the Commission.
- (b) **Time limitation.** Unless good cause is shown, all motions for disqualification shall be filed with the Office of Ethics, Compliance and Oversight at least five days prior to the hearing at which the member is expected to participate. The motion shall be accompanied by a sworn affidavit stating the particular facts and reasons for disqualification.
- (c) **Standard.** The motion shall be ruled on by the Commission member whose disqualification is sought (after consultation with the Office of General Counsel liaison to the Commission) and, unless the motion is denied as untimely, the ruling shall be based on whether the motion and affidavit establish that (1) the Commission member is in fact not fair or impartial in the case or (2) a Florida Statute, Code provision, or other applicable law requires the Commission member's disqualification. In ruling on the motion to disqualify, the Commission member may consider the truth of the facts alleged in support of the motion.
- (d) **Automatic Disqualification.** Any member of the Commission shall recuse him or herself on his or her own motion on all matters relating to a Complaint pending against the person who appointed him or her to the Commission, or against any particular member of a collegial body who appointed him or her, or against any relative by blood or marriage as defined in Fla. Stat. § 112.3135(1)(d) or against any persons with whom the member does business within the meaning of Fla. Stat. § 112.313(3), or with whom the member has an employment or contractual relationship within the meaning of Fla. Stat. § 112.313(7).

Rule 15 – Ex Parte Communications.

- (a) **Ex Parte Communications Disfavored.** A Commission member who is not acting as Investigator or Special Ethics Counsel shall not initiate nor consider any Ex Parte Communication relative to the merits of a pending Complaint that would be required to be disclosed pursuant to Rule 15(b).

- (b) **Ex Parte Disclosure.** A Commission member shall disclose Ex Parte Communications received from any of the following: (1) A public employee or official engaged in prosecution (including the Special Ethics Counsel) or advocacy in connection with the matter; or (2) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed action of the Commission, or his or her counsel; or (3) A Complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her counsel; or (4) An elected official.
- (c) **Procedure on Receipt of an Ex Parte Communication.** A Commission member who receives such an Ex Parte Communication shall place on the record of the matter all written communications received, or a memorandum stating the substance of all oral communications received, and shall also advise all parties that such matters have been placed on the record. Any participant, including the Ethics Director, desiring to rebut the Ex Parte Communication shall be allowed to do so, if a request for the opportunity for rebuttal is made within ten days after notice of the communication.

Rule 16 – Formal Actions.

In order to issue public censures or recommend disciplinary action, the Commission must have ruled that an existing Code provision has been violated based on Clear and Convincing Evidence.

Rule 17 – Dismissal of Violation; Resolution.

- (a) The Complaints Committee (prior to a finding of Probable Cause) or the Hearing Panel (after the Commission finds Probable Cause)—but not a Hearing Officer—may, at their discretion and at any stage within their respective processes:
- (1) Dismiss a Complaint upon determining that the public interest would not be served by proceeding further; or
 - (2) Dismiss a Complaint and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial; or
 - (3) Dismiss a Complaint in accordance with a request from the State Attorney, U.S. Attorney or other state or municipal agency; or

- (4) Enter into a settlement or resolution of the issues which may include an apology, a stipulated fine, or other action. Such settlements and the reasons for entering into one, shall be made in writing and be a public record; or
 - (5) Dismiss or suspend a Complaint if the more appropriate jurisdiction to investigate and process the Complaint is the Florida Commission on Ethics.
- (b) In the presiding division's sole discretion, upon its own motion or the request of any participant, the presiding division may refer a decision to dismiss a Complaint under any of these Procedures to the full Commission for disposition rather than dismiss the Complaint within the division. When such a request is made by a participant and directed to the Complaints Committee, it shall have the same deadline as the Respondent's response to the Special Ethics Counsel's recommendation under Rule 11(b)(3). When such a request is made by a participant and directed to the Hearing Panel, it shall be made prior to the Hearing Panel's vote to dismiss the Complaint.