

Town of Goshen
BOARD OF SELECTMEN

January 23, 2024

REGULAR MEETING

This meeting held in-person and recorded via Zoom.us and is available as a recording

PRESENT: Todd M. Carusillo, Scott Olson, Dexter S. Kinsella (zoom)

OTHERS: Dawn Wilkes; Patrick Lucas; Marissa Wright; Judi Armstrong; Henrietta Horvay, Audrey Blondin; Michael Leonard; Bernie Harrington; Lorraine Lucas; Eric Warner, *The Goshen News*

1. Call to order: Todd M. Carusillo called the meeting to order at 5:00 p.m.

2. Approval of the minutes of the meeting of January 16, 2024. In a motion made by Dexter S. Kinsella, seconded by Scott Olson, it was **voted** to approve the minutes of January 16, 2024 as submitted. Voted unanimous.

3. Matters Arising out of the January 16, 2024 meeting: None

4. Approval of the Payroll and Warrant – January 25, 2024:

In a **motion** made by Scott Olson, seconded by Dexter S. Kinsella, it was **voted** to approve the total warrant and payroll of January 25, 2024 in the amount of \$414,887.17. Included in this warrant were the payroll in the amount of \$30,420.95 and the warrant in the amount of \$384,466.22. Voted unanimous. Included in this warrant: Connecticare Ins. - \$17,836.12; O&G Paving – \$337,682.04; USA Waste (recycle) - \$9,541.00.

5. First Selectman's Report:

Payment to O&G was for paving done on Sutton Ct; Lyman La; West Hyerdale and Town Hill Rd.

A vehicle travelling too close to one of Goshen's plow trucks (truck #3) was struck in the front when the plow truck proceeded to back up. Unfortunately, the vehicle immediately left the scene (left the scene of an accident in an attempt to avoid responsibility). Todd called the State Police. An accident report is being drawn up by the them.

Todd is part of the Municipal Solid Waste Task Force through the NWCOG. The NWCOG is sending over a "letter of intent" to purchase the facility. Out of the 21 towns; 12 towns use the transfer station. If it is purchased, the NWCOG will control who dumps there and best of all, will control the fees. I received notice from MIRA that they will be raising their tipping fees from \$116. To \$131.

Heidi Jespersen has been asked to serve as *temporary* Animal Control Officer (Wild Animals). Goshen's Animal Control Officer, Kate Graham, will be taking a temporary Family Leave of Absence (FMLA).

6. Public Comment:

Henrietta Horvay offered a brief summary of the history of the actions taken back in 2008 to assemble an Ethics Committee for Goshen. She would be happy to share that information to assist in the process to assemble another.

Lorraine Lucas took issue with the publication in the recent issue *The Goshen News* of municipal employees' e-mail addresses. While scheduled times of public events and other information relative to public safety, can be shared, subjects of any "issues" of concern or those to be subject to opinion/vote to the municipalities *cannot* be shared/discussed via e-mail, phone, or conversation of municipal employees.

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Scott Olson requested from Henrietta Horvay some public information regarding the action of the former Code of Ethics committee in attempting to become a formal Committee for Goshen back in 2008. The "Code" Committee submitted their plan to the Board of Selectmen, and it did not pass. There was no "action taken" and there was no feedback from the attorney.

7. Correspondence: None

8. Old Business: None

8a. Budgets: None

In a **motion** made by Scott Olson, seconded by Dexter S. Kinsella, it was **voted** to add to the agenda under 8b. Appointments, **Temporary Animal Control Officer**. Voted unanimous.

8b. Appointments: In a **motion** made by Dexter S. Kinsella, seconded by Scott Olson, it was **voted** to appoint *Heidi Jespersen* to serve as Goshen's **Temporary Animal Control Officer** (due to maternity leave of the current Animal Control Officer). Todd stated that Heidi is already certified in "large/dangerous" animal control from the State of Connecticut. Voted unanimous.

9. New Business:

9a. Ethics Committee Discussion

Selectman Scott Olson along with Dexter Kinsella and Todd Carusillo, reviewed 52 pages of the original draft "Code of Ethics" put together back in 2012. Selectman Kinsella and Todd Carusillo had some concerns in that they felt "enforcement action" may be problematic.

There must be a meeting of the BOS to be totally devoted to "Code of Ethics" only.

Scott Olson stated the document for review must be a sample of what you can and what you cannot do. Discussions can narrow the information down to what is pertinent to the residents Goshen. Some discussion can be addressed by attorneys. The COE committee's goal is to "play by the rules" and what is best for the "town of Goshen". Dexter Kinsella stated that the "committee" to do the proposing must be independent of town council. It is imperative who writes it, who approves it, have an "independent" attorney to review it.

In a **motion** made by Scott Olson, seconded by Dexter S. Kinsella, it was **voted** to add to the agenda, under 9. New Business – **9b. MIRA Tipping Fees**. Voted unanimous.

9b. MIRA Tipping Fees:

Todd reiterated the *urgency* and *importance* of Goshen residents to take seriously the current increase in price for recycling and the continuous increase to the town's budget. EVERYONE residing or doing business in Goshen must take an active part in reducing their solid waste. Todd spoke with First Selectman Michael Criss of Harwinton in that his town pays only 75% of their tipping fee. Todd has a slide-show that demonstrates the in-depth process of recycling that will make it easier for people to recycle and make it fair for everyone.

10. Other Business: None

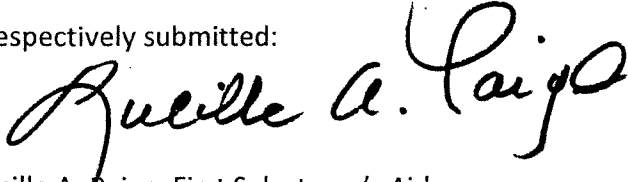
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11. Adjournment: In a motion made by Dexter S. Kinsella, seconded by Scott Olson, it was voted to adjourn the meeting at 5:59 p.m. Voted unanimous.

Respectively submitted:

A handwritten signature in black ink, reading "Lucille A. Paige". The signature is written in a cursive, flowing style.

Lucille A. Paige, First Selectman's Aide

Received Jan. 25, 2024 @ 12:57 PM

Attest Bartlett Z. Blum
Goshen Town Clerk

ORDINANCE ESTABLISHING TOWN OF GOSHEN CODE OF ETHICS

1.0 PREAMBLE

The goal of this code is to establish clear standards of ethical conduct for all who serve the Town of Goshen, whether in a paid or volunteer capacity, without discouraging participation in Town Government by the talented and committed individuals on whose services the town relies.

2.0 STANDARDS OF CONDUCT

2.1 Conflict of Interest

No official or employee shall engage in any business or transactions or shall have a private financial interest or personal interest, direct or indirect, which is incompatible or in conflict with the proper discharge of his/her official duties in the public interest or would tend to impair his/her independence or judgment or action in the performance of his/her duties.

2.2 Disclosure and Recusal

Whenever a matter arises with respect to which an official or employee may have a conflict of interest, the official or employee shall disclose it in writing to his/her board or supervisor and shall abstain from participation in the deliberation, decision-making and action with respect to the matter unless and until he/she procures an advisory opinion under this Code that provides otherwise.

Candidates for Town or Board elective or appointive office or for Town or Board employment are encouraged to familiarize themselves with this Code and to disclose during the process of election, appointment or employment anything addressed in this Code that might impair their ability to perform in the office or position that they seek or for which they are being considered.

2.3 Gifts and Other Things of Value

No official, employee, relative, or business shall solicit or accept anything of value, including without limitation a gift, loan, service, reward, or promise of employment that could reasonably be expected to influence the action or judgment of the official or employee in any Town or Board matter.

2.4 Use of Town Property

No official or employee shall use, or permit the use of, Town property of any nature, including vehicles, supplies and real property, for the benefit of himself or herself, except when such property is made available to the general Public and then on terms and conditions not more favorable than those available to the general Public.

2.5 Representation of Private Interests

No official shall appear or act in any material capacity on behalf of private interests before any Board on which he or she serves, or represent any such interests in litigation involving an action of that Board. Disclosure and recusal will not suffice to cure a violation of this provision. This prohibition shall continue for six months after the termination of the Official's service to the Town or Board. Nothing contained herein shall prevent an Official from appearing in his or her own behalf on a matter before the Town or a Board provided he or she abstains from deliberating, deciding or acting with respect to the matter.

2.6 Use of Town Position

No Official or Employee shall use his or her position, or knowledge acquired through that position which is not available to the general Public, for the purpose of obtaining or furthering a Financial Interest or a Personal Interest.

3.0 ORGANIZATION AND ADMINISTRATION

3.1 Appointment and Composition of Council

The Goshen Ethics Council (the Council) shall consist of three electors of the Town who shall serve without compensation. No more than two shall be registered in the same political party. No member shall serve on any Board, other than the Council, or as an Employee during his or her term of service on the Council. Members shall be appointed to the Council, and vacancies filled, by the Board of Selectmen.

3.2 Terms of Service

Members shall serve for terms of three years, except as otherwise provided in this and the following paragraph. Service shall be limited to two successive full three-year terms. After a lapse of one year, a former member shall again be eligible for appointment. Terms shall commence on December 1. Members shall serve until their successors take office. Any term that would otherwise expire during a Council proceeding shall automatically be extended to the end of that proceeding.

3.3 Initial Appointments

Initial appointments shall be for staggered terms ending as follows: one on November 30, 2011, one on November 30, 2010 and one on November 30, 2009.

3.4 Election of Officers

The Council shall annually elect a Chair, a Secretary and a Representative to the Litchfield Hills/Northwestern Connecticut Ethics Commission (the Regional Ethics Commission)

3.5 Frequency of Meetings, Quorum, and Duties of Officers

Meetings shall be held as needed or at least semi-annually. A majority shall constitute a quorum for the conduct of business except as provided elsewhere in this Code. The Chair shall call and preside over meetings. The Secretary shall keep minutes of meetings and shall file agendas and minutes with the Town Clerk. The Representative shall participate on the Regional Ethics Commission as required.

3.6 No Inquiry on Council's Own Initiative

The Council shall have no authority to present matters for inquiry or investigation on its own initiative.

3.7 Access to Town Records and Personnel

In furtherance of its duties, the Council shall have access to Town records and personnel as permitted by law. The Council may request assistance from any Official or Employee and retain others to aid it in pursuing any investigation.

3.8 Access to Legal Counsel

The Council shall have access to Town Counsel and to special legal counsel of the Council's choosing if Town Counsel is disqualified from assisting the Council or recuses, or if the Council deems it inadvisable to proceed with advice from Town Counsel in the circumstances. If special counsel is retained, the Town's Board of Finance shall negotiate terms of engagement for special counsel.

3.9 Maintenance of Council's Records

The Council's records shall be stored in Town Hall. Those records that are designated as confidential by the Council shall be stored accordingly and shall not be available for public review except as required by law.

3.10 Notification of Filings

The Town Clerk shall serve as the Council's agent for receipt of correspondence and filings and shall promptly notify the Council of all correspondence and filings.

3.11 Delivery of this Code to each Official and Employee

Within thirty days following the adoption of this Code, a copy shall be furnished by the Town to each Official and Employee. Persons subsequently elected, appointed or employed shall receive a copy of this Code at the time their service commences. Each recipient shall acknowledge, in writing and deposited with the Town Clerk, receipt of a copy of this Code and agreement to abide by its terms.

3.12 Amendment; Adoption of Rules

The Council may recommend to the Board of Selectmen amendment of this Code and may also adopt rules in furtherance of, and not inconsistent with, its provisions.

4.0 PROCEDURE: ADVISORY OPINIONS CONCERNING ONE'S OWN POSITION

4.1 Making a Request

An official or employee or a candidate for Town office or employment may request an advisory opinion concerning the requirements of this Code as applied to him or her.

The request shall be made in writing and filed with the Town Clerk in a sealed envelope addressed to the Council. The request shall state the name and address of the person making the request and all facts relevant to the matter in question.

4.2 Issuance of Advisory Opinion

The Council may request further information from the person making the request. It shall issue its advisory opinion by majority vote of the full Council and shall do so as soon as practicable. The opinion shall be in writing and delivered to the Town Clerk, who shall mail it to the person making the request. Advisory opinions shall be available to the public except as prohibited by law.

4.3 Reliance

A person requesting an advisory opinion may rely on that opinion provided the person has disclosed all relevant facts and acts in good faith consistent with those facts.

5.0 PROCEDURE: COMPLAINTS

5.1 Definitions

Complaint — a written request for determination made by an individual or a Board regarding an alleged violation of this Code by an official or employee

Complainant — the filer of a Complaint

Respondent — the person against whom a Complaint is filed

Response — the Respondent's written answer to the Complaint

Recommendation — a written advisory issued by the Regional Ethics Commission to the Council

Determination — a written final decision by the Council with respect to a Complaint

5.2 Procedure

5.2.1 Filing of a Complaint

A Complaint may be made in writing by any individual or board. It shall be signed under oath before a notary and shall state the name and address of the Complainant, the identity of the official or employee who is the Respondent and, if applicable, the relative or business involved in the Complaint, the conduct that allegedly violates the Code, and a summary of the relevant facts.

A Complaint must be filed within two years after the matter in question has allegedly occurred.

The Complaint shall be filed with the Council in a sealed envelope addressed to the Council and marked confidential. It shall be delivered to the Town Clerk either by hand or by certified mail, return receipt requested. The Complaint shall be deemed to have been filed on the date of its receipt by the Town Clerk and shall be treated by the Town Clerk as a confidential Document.

The Town Clerk, upon direction of the Council, within three business days after the filing shall notify the Respondent by certified mail, return receipt requested, of the filing and date of the Complaint and enclose copies of the Complaint and this Code.

Once the Complainant has performed the function of raising a possible violation of this Code, the Council shall decide, in the circumstances of the individual case, what further role, if any, the Complainant should have in the matter.

5.2.2 Probable Cause

The Council shall review the Complaint to determine whether probable cause exists for further proceedings and may conduct an investigation for this purpose. Any investigation conducted prior to a probable cause finding shall be confidential unless confidentiality is waived in writing by the Respondent. Respondent may submit a preliminary written reply to the Council within fifteen days after the filing of the Complaint and before a probable cause finding issues.

If the Council decides by majority vote of members eligible to vote that the Complaint does not warrant further investigation because of its lack of factual basis, its de minimis nature, or otherwise, it shall issue a finding of no probable cause dismissing the Complaint. The finding and the Complaint shall remain confidential unless confidentiality is waived in writing by the Respondent. A finding of no probable cause shall be final. The Council shall direct the Town Clerk to forward copies of the finding to Complainant and Respondent by certified Council by mail, return receipt requested, within three business days thereafter.

If, by majority vote of members eligible to vote or by tie vote, the Council finds probable cause, the Council shall direct the Town Clerk to forward copies of the finding to Complainant and Respondent by certified mail, return receipt requested, within three business days thereafter. Upon a finding of probable cause, the Complaint, the finding, and the information gathered during the investigation, if any, shall be made available to the public, and all filings and proceedings that follow shall be public except as required by law, provided however that deliberations may be held in executive session to the extent permitted by the Connecticut Freedom of Information Act.

5.2.3 Response

Respondent shall have thirty days after his or her notification of a finding of probable cause to file a Response with the Town Clerk. The Council may, upon reasonable grounds, extend this deadline for filing.

5.2.4 Regional Ethics Commission

After a finding of probable cause and after a response has been filed with the Town Clerk, the Complaint shall be forwarded to the Regional Ethics Commission for their consideration and Recommendation.

5.2.5 Determination

Following the Recommendation of the Regional Ethics Commission, the Council shall evaluate the Recommendation and issue a Determination as soon as practicable. They shall file it with the Town Clerk, who shall mail copies to Complainant and Respondent within three business days thereafter. No member may vote on a Determination unless he/she has participated in all deliberations. Deliberations may be held in executive session to the extent permitted by the Connecticut Freedom of Information Act. A Determination of violation requires a majority vote of members eligible to vote. In the event of a tie vote, the Determination shall be that there is no violation.

A Determination of no violation of this Code shall be final.

If a violation is found, the Council may, but need not, also recommend sanctions in its Determination which may include, but need not be limited to, censure, required recusal, disclosure of conflicts, and removal from appointive office or employment. Any sanctions imposed under this Code shall be separate from, and not in limitation of, any other actions that may be taken against Respondent in any proceedings outside this Code.

5.2.6 Submission of Determination of Violation

A Determination of violation of this Code shall be submitted by the Town Clerk within three business days to the Board of Selectmen for such action as it deems appropriate, provided however that if the Respondent is an official or employee of the Board of Education, the submission by the Town Clerk shall be to the Board of Education for such action as it deems appropriate.

6.0 EFFECTIVE DATE

This ordinance shall become effective _____.

SAMPLE FORM

Request for an advisory Opinion

BY HAND DELIVERY OR CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Goshen Ethics Council
c/o Town Clerk, Town of Goshen
42 North Street
Goshen, CT 06756

Date _____

Dear Ethics Council:

This is a request for an advisory opinion from the Council with respect to my situation. I am a Town [Official / Employee] serving [on the _____ Board / employed in the _____ Department].

My request relates to [EXAMPLES: a possible conflict of interest/how to handle a disclosure and recusal in light of a conflict of interest / a gift situation / a use of Town property /a representation of private interests / a use of Town position].

All of the relevant facts relating to my request are as follows: _____

Please advise me whether my proposed [action/inaction] as follows:

_____ in these circumstances complies with the requirements of the Goshen Code of Ethics.

Sincerely,

[Signature]

[Printed or typed name]

[Address]

[Phone number]

[Home](#)

Full Text of Model Ethics Code

Saturday, November 25th, 2006

[Log in or register to post comments](#)

Part A: Ethics Provisions

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 - 220. Liberal Construction of Code.
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- 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, consistent guidance with respect to such standards by clarifying which acts are allowed and which are not, and by providing the ethics commission with a monopoly on ethics advice, training, disclosure, and enforcement;
- (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):

1. himself or herself;
2. 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;
3. 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;
4. 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.
5. 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
6. 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:

1. 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;
2. 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;
3. 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;
4. 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:

1. 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;
2. 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;
3. 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;
4. 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;
5. 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;
6. 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;
7. 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;
8. 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;
9. 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](#).

1. 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.

2. 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.

3. 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

1. another member,
2. a party to the current matter, or
3. 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.

4. 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.

5. 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.

6. 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](#).

1. 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 ("restricted source"). 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 with a restricted source. [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.]

2. 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.

3. 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(c), 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 whistle-blower 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 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:

1. immediately refrain from participating further in the matter, formally or informally;
2. 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
3. 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 of 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:

1. 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;
2. If not on such a body and appointed by the city manager/director of administration/mayor, inform the city manager/director of administration/mayor;
3. If an employee of the Board of Education, inform the Superintendent of Schools;
4. If the Superintendent of Schools, inform the chair of the Board of Education;
5. If an elected official, inform the mayor;

6. 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:
 1. The preparation of the contract specifications.
 2. The solicitation of the contract.
 3. The bidding of a contract.
 4. The negotiation of a contract.
 5. 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:
 1. The negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses;
 2. The purchase, sale, rental, or lease of real property, personal property, or services, or a contract for any of these;
 3. The obtaining of grants of money or loans; or
 4. The adoption or repeal of any rule or regulation having the force and effect of law;
5. candidates for elected office;
6. political party committee officers; and
7. 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. No one but the Ethics Commission or Officer may provide ethics advice; any other advice is not binding on the Ethics Commission and does not protect the advisee. 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, as well as of an affiliated independent office or agency or quasi-public or public-private body. 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 solely 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 solely prepare and provide forms for complaints and for annual, applicant, and transactional disclosure statements, pursuant to section 208;

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

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

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

(g) To solely conduct hearings, apply and recommend disciplinary action, assess penalties, make referrals, and initiate appropriate actions and proceedings pursuant to sections 214 and 215>/a>;

- (h) To solely dispose of waiver requests pursuant to section 210;
- (i) To solely 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. No one but the Ethics Commission or Officer may provide ethics advice; any other advice is not binding on the Ethics Commission and does not protect the advisee.

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 will 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 will 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 or self-initiated, 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 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 sufficient cause to believe that a violation of this code has occurred in order to complete the investigation and move on to a hearing.

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." If the term is used, it should be defined. But it is better not to use this confusing criminal-law term, and to emphasize instead that the goal of a preliminary investigation is simply to determine whether there is sufficient evidence to continue on to complete the investigation, if necessary, and commence a proceeding.

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 determination of sufficient cause to proceed 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 insufficient cause to proceed with the investigation or proceeding, it will dismiss the complaint and send notification of this dismissal to the complainant and respondent. If it determines that there is sufficient cause to proceed, 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 sufficient cause, the Ethics Commission must set forth a brief summary of the facts and the reasons for dismissal.

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 determines that there is insufficient cause to proceed and (b) to the complainant if the Ethics Commission determines that there is sufficient cause to proceed. 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 sufficient cause to proceed, 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 determination of sufficient cause 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 determination to proceed, the Ethics Commission should hold one or more public hearings, and the first public hearing should commence within sixty days after the determination. 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.

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 a preponderance of the evidence shows 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 determination of sufficient cause to proceed.

2. After a determination of sufficient cause to proceed, 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 determination of sufficient 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:

Story Topics:
Model Code

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